
(1987) 06 CAL CK 0023
In the Calcutta High Court
Case No : Criminal Rev. 369/87

Md. Yusuf T. I. Attarwalla

APPELLANT

Vs

Mrs. Jamena Yusuf T. I. Attarwalla

RESPONDENT

Date of Decision : 04-06-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 362

Citation : (1987) 1 CALLT 639 : (1987) CALLT 639

Hon'ble Judges : Monoranjan Mullick, J

Bench : Single Bench

Advocate : Surendra Sharma, for the Appellant; Hafizur Rahman, for the Respondent

Final Decision : Allowed

Judgement

Monoranjan Mullick, J.—This revision petition is directed against the order dated 19.12.86 passed in Case No. M-18 of 1988 u/s 125 of the Criminal Procedure Code by the metropolitan Magistrate, 11th Court, Calcutta by which the Metropolitan Magistrate restored the opposite party-wife's application for maintenance u/s 125 Criminal Procedure Code to its original file which was dismissed for default on 29.9.86.

2. On behalf of the petitioner husband it is submitted that the order of the Learned Magistrate setting aside the order dismissing the application for default and restoring such application to its original file is an illegal order and cannot be sustained and therefore, such an order is liable to be set aside.

3. The revision is resisted by the opposite party-wife.

4. On pursuing the order passed by the Learned Magistrate, dated 19.12.86, I am of the view that by that order the Learned Magistrate appears to have reviewed his earlier order setting aside the order, dated 29.9.86 dismissing the application for maintenance u/s 125 Criminal Procedure Code for default. Even though the proceeding u/s 125 Criminal Procedure Code is not criminal

proceeding in the strict sense of the term and the opposite party husband is not an accused, yet the Code does not give the Learned Magistrate power to restore a case to file after dismissing the case on the ground of default of the petitioner. It is clear a bar u/s 362 of the Criminal Procedure Code to set aside an order passed under the Code. If the opposite party-wife had any grievance against the order, dated 29. 9. 86 she could have filed an application for revision for setting aside such an order. She had no right to file an application before the learned Magistrate for setting aside the order, dated 29.9.86 and to restore the original application to file. The Learned Magistrate has also no power to set aside the order, dated 29. 9. 86. This will have the effect of reviewing his own order, dated 29.9.86 which the Learned Magistrate had no power to do; In the circumstances the order being clearly illegal is liable to be set aside.

5. The revision petition be allowed. The order, dated 19.12.86 be set aside. The Case No. 6/18 of 1985 pending before the Learned Magistrate be quashed Along with all orders.

6. Liberty is given to the present opposite party-wife to file a fresh application and the order passed in this case will be no bar.

7. The order be communicated to the Learned Magistrate at once.