
(2014) 01 CAL CK 0022
In the Calcutta High Court
Case No : C.R.R. No. 3346 of 2011

Mousumi Bibi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 401, 482

Citation : (2014) 01 CAL CK 0022

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Pratip Kumar Chatterjee, Advocates for the Appellant

Judgement

Ranjit Kumar Bag, J.—This revisional application under Section 482 read with Section 401 of the Code of Criminal Procedure arises out of judgment dated 19th August, 2011 passed by the learned Additional Sessions Judge, Kandi, Murshidabad, whereby the learned Judge enhanced the amount of maintenance of the child of the petitioner from Rs. 600/- per month to Rs. 1000/- per month.

2. The petitioner, Mousumi Bibi being the legally married wife of the opposite party, Kabirul Sk. filed an application under Section 125 of the Code of Criminal Procedure, 1973 before the court of learned Judicial Magistrate, Kandi, Murshidabad being Misc. Case No. 129/08/T.R. No. 85 of 2009 against the opposite party No. 2, Kabirul Sk. for maintenance @ Rs. 1000/- per month for herself and Rs. 900/- per month for her minor child on the ground that she was driven out of the matrimonial home by the opposite party, Kabirul Sk after inflicting torture on her and that she has been compelled to live in her parents' house along with her minor child without having any means to maintain her livelihood and that the opposite party, Kabirul Sk. has refused to give maintenance having sufficient means to provide maintenance to his minor child and wife. The opposite party, Kabirul Sk contested the said maintenance proceeding before the learned trial court. The learned trial court passed the final order on February 7, 2011 by which learned Magistrate of the trial court gave

direction to the opposite party, Kabirul Sk to make payment of maintenance to the minor child @ Rs. 600/- per month from the date of filing of the application for maintenance i.e. from 01.04.2008. The learned Magistrate did not pass any order of giving maintenance to the petitioner-wife without assigning proper reason.

3. The petitioner challenged the order passed by the learned Magistrate before the court of learned Additional Sessions Judge, Kandi, Murshidabad by filing the revisional application being Criminal Revision No. 18 of 2011, which was disposed of on August 19, 2011. The learned Additional Sessions Judge, Kandi, Murshidabad modified the order passed by the learned Magistrate and increased the amount of maintenance of the child from Rs. 600/- per month to Rs. 1000/- per month, but no maintenance was provided to the petitioner-wife. The petitioner-wife has challenged the said order passed by the learned Additional Sessions Judge, Kandi, Murshidabad on August 19, 2011 in Criminal Revision No. 18 of 2011 by filing the instant application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

4. Mr. Pratip Kumar Chatterjee, learned advocate appearing on behalf of the petitioner-wife submits that learned Magistrate did not pass any order of providing maintenance to the wife without assigning proper reason, even when the wife is unable to maintain herself. Mr. Chatterjee further submits that Ld. Additional Sessions Judge failed to exercise his jurisdiction properly by not granting any maintenance in favour of the petitioner-wife, even when the wife is unable to maintain her livelihood.

5. None appears on behalf of the State of West Bengal. Mr. Biswajit Hazra, learned advocate appearing on behalf of the opposite party No. 2-Kabirul Sk submits that the petitioner left the matrimonial home without sufficient reasons and that she has her own income and as such she is not entitled to get any maintenance under the provision of Section 125 of the Code of Criminal Procedure, 1973.

6. Having heard the learned advocates representing the respective parties and on consideration of the materials on record, I find that the petitioner is legally married wife of the opposite party, Kabirul Sk and that one child was born from the said wedlock. It also appears from record that the petitioner had to leave matrimonial home along with the minor child for valid reasons. The income of the opposite party may be considered as Rs. 3000/- per month as decided by the court of learned Magistrate in the proceeding under Section 125 of the Code of Criminal Procedure, 1973. No cogent evidence is adduced by the opposite party-Kabirul Sk before the learned trial court to establish that the petitioner has sufficient independent income for maintenance of her livelihood, except the vague evidence that she earns Rs. 500/- per month by working in a project of " Nakshi Kantha ".

7. Under the above circumstances and on consideration of the judgment of the

revisional court, I find that no cogent reason is given for refusal of maintenance to the petitioner-wife. The maintenance given to the minor child @ Rs. 1000/- per month from the date of filling of the application for maintenance i.e. from 01.04.2008 need not be disturbed by this court. However, the learned court below failed to exercise the jurisdiction conferred on him by law by not awarding maintenance to the petitioner-wife, in spite of the fact that the petitioner-wife has been compelled to live in the parents' house along with minor child and that the petitioner-wife is unable to maintain herself and that the opposite party, Kabirul Sk has sufficient income of Rs. 3000/- per month. On consideration of the income of Rs. 3000/- of the opposite party, Kabirul Sk, I am inclined to grant maintenance to the petitioner-wife @ Rs. 500/- per month from the date of filing of the application under Section 125 of the Code of Criminal Procedure, 1973 i.e. from 01.04.2008.

8. Accordingly, the judgment passed by the learned Judge of the court below is modified to the extent that the petitioner-wife will get maintenance @ Rs. 500/- per month and the minor child of the petitioner will get maintenance @ Rs. 1000/- per month from the date of filing of the application for maintenance i.e. from 01.04.2008. The opposite party, Kabirul Sk is directed to make payment of maintenance @ Rs. 1500/- per month (including maintenance for the minor child) to the petitioner. The current maintenance commencing from the month of January 2014 must be paid to the petitioner by the opposite party, Kabirul Sk within 15th day of next succeeding month and the entire amount of arrears of maintenance starting from 01.04.2008 till December, 2013 must be paid to the petitioner within 31st March, 2014, if not already paid.

The revisional application is thus, disposed of. Let a copy of this judgment be sent down to the Ld. Court below for information.

Criminal Section is directed to deliver urgent photostat certified copy of this order to the learned advocate of the parties, if applied for, as early as possible.