

(2005) 12 CAL CK 0012
In the Calcutta High Court
Case No : C.R.R. No. 3146 of 2000

Sangeeta Kumari Show

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2006) 2 CALLT 64 : (2006) 2 DMC 471

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Pradip Roy, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application filed by the petitioner praying for revision of the order dated 17.08.2000 passed by the learned Additional Sessions Judge, 4th Court, Barasat in Criminal Motion No. 82 of 1999 reversing the order of maintenance passed by the learned Judicial Magistrate, 3rd Court, Barrackpore on 25.01.99 in M. Case No. 192 of 1994 u/s 125 Cr. PC.

2. The circumstances leading to the above application are that the petitioner, who is the legally married wife of O.P. No. 2, their marriage having taken place on 06.05.92 according to Hindu rites and customs, was subjected to ill-treatment and torture, both physically, mentally by her husband and inmates of the family over the issue of demand of dowry, for which she was compelled to leave her matrimonial house and reside at her father's house. She brought a proceeding being M. Case No. 192 of 1994 u/s 125 Cr. PC on 18.07.94 claiming maintenance (c) Rs. 1000/- p.m. which was allowed in part on 25.01.99 by the learned Judicial Magistrate, 3rd Court, Barrackpore awarding maintenance to her @ Rs. 800/- p.m. which was reversed by the impugned order.

3. Being aggrieved by and dissatisfied with the said order, the petitioner has

preferred the present revision.

4. Since none appeared for the O.P., the matter was heard ex parte.

5. All that now requires to be considered is whether the learned Court below was justified in passing the above order.

6. Undisputedly the petitioner is the legally married wife of O.P. No.2. There is also no dispute that she has no means and she has been residing at her father's house since March 1993.

7. To sustain an application u/s 125 Cr. PC filed by a wife, two out of three essential ingredients are: (1) neglect or refusal on the part of the husband to maintain the wife and (2) husband has sufficient means.

8. So far the first ground above is concerned, systematic ill-treatment, physical cruelty, reasonable apprehension of physical ill-treatment, violent behaviour towards wife, apprehension of physical harm due to persistent demand of dowry etc. have been held to be just grounds for a wife to live apart. In the case on hand, it is the specific evidence of P.W.1 that the members of her matrimonial house demanded Rs. 10,000/- and a colour TV from her and as she failed to satisfy the said demand, she was tortured by her husband and other inmates and she was even not provided with food. It is her further evidence that her brother took her back from the house of O.P. The above evidence is buttressed in material particulars by the testimony of her brother P.W.2 who stated that over the issue of demand of Rs. 10,000/- and a colour TV. the O.P. and other inmates assaulted her sister. O.P.W. 1 who denied assault by them, to the petitioner contended that the petitioner used to quarrel with them and press him for living in a separate mess, and on her request he started residing in a rented house under landlord Ram Chandra Shaw, his father, at a monthly rental of Rs. 1500/-. He stayed there with P.W.1 for two months but she did not reside there. No rent receipt has been produced to substantiate the said claim of his residing with P.W. 1 in a rented house nor it is supported by his father O.P.W. 3 who stated that they behaved with the petitioner well but she used to behave with them roughly with a view to separating her from the mess, for which he separated her and her husband. It is the evidence of O.P.W. 1 that Dilip (P.W.2), elder brother of P.W.1, took the petitioner from their house only for two days, but thereafter they did not return her, for which he lodged a diary. The said G. D. has also not been produced. He claimed that he along with Ashok Shaw, Debdulal Shaw and Ramji went to bring her back 2/3 times but she refused to come back. He further stated that in February 1994 also he went to bring her back but he was confined in a room and was assaulted. If that be so, it would obviously have been disclosed at least to his parents, but there is no such evidence on the part of his parents O.P.Ws. 2 & 3. None of the said persons has been examined here. O.P.Ws. 3 claimed that they went to bring her back 1/4 times but she did not come back and lastly on 04.02.94 they went to bring her back which is contradictory to the above evidence of O.P.W. 1 who nowhere stated that his

father also accompanied them/him to bring back the petitioner. Now, if a wife can reside peacefully in her matrimonial house with proper prestige and dignity, she, unless in sane, would not prefer to lead a lone and miserable life in her parental house. So, considering all the above aspects there is hardly any reason to throw out the evidence of P.Ws. 1 & 2 regarding ill-treatment and torture upon the petitioner. If there was former ill-treatment which compelled her to take shelter in her father's house and there is reason to believe that there will be repetition of it in the event of her coming back, subsequent offer by the husband to take her back cannot be considered to be bona fide. As such, it appears to be a just ground for the petitioner's refusal to live with her husband.

9. As regards the second ground above, it is well settled that "means" does not signify only visible means, and if one is healthy and able-bodied he shall be held to have sufficient means to support his wife. It includes a capacity to earn and the onus is on the husband to show want of means. Here, it is the evidence of P.W.1 that the O.P. earns Rs. 2000/- or-more from his tea shop. It is admitted by O.P.W.1 that he runs a tea stall situated near Ramkrishna Cinema Hall but he contended that the said tea stall in a rented house belongs to his mother (O.P.W.2) who pays him Rs. 10/- per day. According to the evidence of O.P.W.2 the trade licence, professional tax and rent receipt in respect of the said tea stall stand in her name. Not a single document in this regard has been produced which will lead the Court to draw an, adverse inference that had those been produced, the same would not have supported her contention. It is her specific evidence that she is the tenant of the said shop of her son who earns Rs. 100/- per day which totally belies the above story of O.P.W. 1 regarding alleged payment of Rs. 10/- per day by his mother.

10. The word "maintenance", which should not be narrowly interpreted, means, the most reasonable requirement for the existence of a person to live separate, and accordingly the expenditure, broadly speaking, not only includes on food, clothing and residence but also medical expenses. The concept of providing a wife merely with food, clothing and lodging as if he is only a chattel and has to depend on the sweet-will and mercy of the husband has now become completely outdated and absolutely archaic, as was observed in the case of *Sirajmohamedkhan v. H. Yasinkhan* reported in 1981 Cri LJ 1430 (SC).

11. Taking into account the trend of rising prices of every essential material day by day, the amount of maintenance so awarded by the learned Trial Court may be held to be quite just and reasonable.

12. Therefore, considering all the above aspects, the learned Court below does not appear to have viewed the matter from proper perspective which resulted in failure of Justice, and as such the impugned order is not at all sustainable.

13. Accordingly, the revisional application allowed ex parte.

14. The impugned order dated 17.08.2000 passed by the learned Additional Sessions Judge, 4th Court, Barasat in Criminal Motion No. 82 of 1999 is set aside.

Let a copy of this order be sent down at, once to the learned Court below.