
(2014) 01 TP CK 0018

In the Tripura High Court

Case No : Criminal Rev. P. No. 28 of 2005

Shri Pradip Bhowmik Vs Smt. Apu Debnath (Bhowmik) and Miss Chhanda Bhowmik

Date of Decision : 08-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24, 9
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2014) 01 TP CK 0018

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : B. Banerjee, for the Appellant; K.N. Bhattacharji, Amicus Curie and Mr. S. Roy, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—This revision petition is directed against the judgment dated 27.11.2004 passed by the learned Judge, Family Court, West Tripura, Agartala in Case No. Misc. 10/2004, whereby and whereunder the learned Family Judge directed the petitioner-husband to pay Rs. 1,500/- to the respondent No. 1-wife and Rs. 1,000/- to the respondent No. 2-daughter per month as maintenance allowance with effect from 01.11.2004. Heard Mr. B. Banerjee, learned counsel appearing for the petitioner. None appears for the respondents though an amicus curiae was appointed by this Court.

2. The respondent-wife and her minor daughter filed an application u/s 125 of the Code of Criminal Procedure (for short "Cr.P.C.") for monthly maintenance as the marriage between the respondent No. 1 and the petitioner was solemnized on 01.03.1999 according to the Hindu Rites and Customs in the house of the father of the respondent No. 1. Due to their wedlock the respondent No. 2 was born on 11.04.2000 at I.G.M. Hospital, Agartala and her name is Chhanda Bhowmik. It is also stated in the petition that at the time of marriage between the respondent No. 1 and the petitioner herein, the father of the respondent No. 1 gave all those articles/"Stri Dhan" as dowry demand made by the petitioner

and his family members at that relevant time. After the marriage, the respondent No. 1 came to the house of the petitioner at Jogendranagar to build up their marital home. But after few days of their marriage the petitioner and his family members started torture both physically and mentally upon the respondent No. 1 and the said torture became the part and parcel of daily affairs of the respondent No. 1. The petitioner used to beat and assault the respondent No. 1 frequently. The respondent No. 1 had to bear all those things as she had no other alternative. It is further stated that the petitioner and his family members also demanded Rs. 10,000/- from the father of the respondent No. 1. But the respondent No. 1 did not fulfill the said demand as at that time her father was suffering from economic crisis and he was not in a position to fulfill the said demand of the petitioner and his family members.

2(i). As the respondent No. 1 did not fulfill the demand of the petitioner and his family members, the nature of torture and humiliation by the petitioner and his family members upon the respondent No. 1 has been increased day by day. Thereafter on 22.08.1999 the petitioner and his family members deserted the respondent No. 1 from the house of her husband and not only that the respondent No. 1 also told by the petitioner and his family members that if she could not bring the said money demanded by them, they will kill her by setting fire on her body. Finding no other alternative she tried to commit suicide 2/3 times, but could not succeed.

2(ii). It is stated in the petition that from 22.08.1999, the respondent No. 1 had been living with her father at her parental house. The petitioner had not been maintaining the respondent No. 1 during that period, even he did not enquire whether the respondent No. 1 was alive or not. The respondent No. 1 being unemployed was fully dependant on the income of her old aged ailing and poor father. It is also stated that the petitioner has filed a petition against the respondent No. 1 u/s 9 of the Hindu Marriage Act, 1955 and the same was contested by the respondent No. 1 by filing written statement along with a petition u/s 24 of the Hindu Marriage Act and the learned Court after hearing the parties directed the petitioner-husband to pay maintenance @ Rs. 1,600/- per month.

2(iii). After passing the order of monthly maintenance by the Court, the petitioner informed the Court that he is ready to compromise with the matter and also ready to take back the respondent No. 1 in his house. Accordingly, the respondent No. 1 also went to her husband's house banking upon the commitment placed before the Court that he will not commit any kind of physical or mental torture upon her in future. Thereafter, the respondent No. 1 was peacefully living in her in-laws' house for a month, but after lapse of one month the petitioner and his family members again started physical and mental torture upon the respondent No. 1 and her minor child. The petitioner was/is in the habit of taking drinks regularly and used to come to the house at late night and assault the respondent No. 1 on such drunken condition. Besides that, the

petitioner had/has a love affairs with another lady and he had/has been maintaining such relation prior to his marriage with the respondent No. 1.

2(iv). As the father of the respondent No. 1 could not oblige the demand of the petitioner and his other family members, they started torture on the respondent No. 1 both mentally and physically. Subsequently, on getting the said information her parents had come to her matrimonial home and at that time the petitioner asked the respondent No. 1 to go with them to her parental house and accordingly, she left. Thereafter at no point of time, the petitioner enquired about her and their minor daughter, respondent No. 2 and also did not maintain them though he used to earn Rs. 5,000 - Rs. 6,000/- per month as an agent of LIC and besides that he has other income from the landed property.

3. The petitioner-revisionist after receipt of the process of the Court appeared and by way of filing written objection resisted the claim of the respondents. According to him, his wife, respondent No. 1, had left his house according to her own will as she did not like to stay with him at her matrimonial home. He did not admit that he demanded money from his father-in-law or he had tortured on her in any occasion. Admittedly, in the written objection the petitioner-revisionist has contended that the respondent No. 1 had a love affairs with a boy, namely, Priyalal, prior to their marriage and she was willing to go with Priyalal. It is also asserted that he had tried to convince the respondent No. 1, but of no use.

4. In support of the claim of the respondent No. 1, she examined herself as PW1 and her father as PW2. On the other hand, the petitioner examined himself as DW1. The learned Court below after considering the evidence of the witnesses passed the impugned judgment allowing the maintenance as stated supra.

5. Mr. Banerjee, learned counsel while urging for setting aside the impugned judgment would contend that admittedly the respondent No. 1 is the married wife of the petitioner and the respondent No. 2 is their minor daughter. But the respondent No. 1 is not entitled any maintenance as she herself willfully left the house of the petitioner. He has also submitted that there is no evidence on record that the petitioner demanded any dowry either from the respondent No. 1 or from her parents. Thus, the question of mental or physical torture does not arise and in absence of such mental or physical torture, leaving of matrimonial home by the respondent No. 1 does not entitle her any maintenance as sought for.

6. In support of his aforesaid contention, he has placed reliance on a decision of the Apex Court in Deb Narayan Halder Vs. Smt. Anushree Halder, wherein the Apex Court noted that "so far as the first reason is concerned, on a careful scrutiny of the evidence on record, we have also come to the conclusion that no dowry was ever demanded either before the marriage or after the marriage. Even PW-2, the mother of the respondent had to admit that the appellant had never demanded any dowry or gift. Of course she added that all this was in his mind. We are, therefore, satisfied that the trial Court properly appreciated the

evidence on record while recording the finding that there was never any demand for dowry by the appellant. There was, therefore, no reason for him to ill-treat his wife for this reason. We, therefore, find that both the reasons given in the application for her ill treatment are nonexistent".

7. Mr. Banerjee has further submitted that there is no possibility of reconciliation as the wife-respondent No. 1 has filed a criminal case against the petitioner and his family members u/s 498A/34 of the IPC.

8. Before dealing with the submission of Mr. Banerjee, it would be proper for the Court to go through the evidence on record. The respondent No. 1 examined herself as PW1 and stated in her chief that her husband had demanded an amount of Rs. 10,000/- from her father as dowry and she was asked to bring that money from her parents. She has also confirmed that her parents had failed to pay the same on account of their poverty for which her husband had asked her to go with her parents leaving the matrimonial home. She reiterated that subsequently her husband did not keep any contact with her. In her cross she did not admit that she had left her matrimonial home willingly and/or her husband had not tortured on her in any occasion on any ground. She also denied the suggestion that her husband had tried his level best to bring her back to his residence.

9. PW2, the father of the respondent No. 1, also corroborated the story narrated by the respondent No. 1 (PW1). In his statement he has specifically stated that her daughter was driven out from the residence of the petitioner. He has also stated that he had tried his level best to settle their dispute amicably, but the matter was not materialized. He has further confirmed that his son-in-law did not keep any contact with her daughter, respondent No. 1.

10. The petitioner being DW1 stated in his chief that the respondent No. 1 had love affairs with one Priyalal and they used to exchange letters. He also reiterated that his wife had left his house when he had enquired about it. He confirmed that he had tried to take his wife back to his house, but of no use. In his cross he also denied the suggestion that his wife, respondent No. 1, had no love affairs with Priyalal and/or she had not left her matrimonial home willingly.

11. On perusal of the evidence on record, it appears that the petitioner himself admitted that on his enquiry about the exchange of letters between the respondent No. 1 and one Priyalal, she left the house of the petitioner. It is also on evidence that after filing of the case for restitution of conjugal rights, the respondent No. 1 returned back to her matrimonial home and stayed there for sometime and thereafter again due to torture on her, she left her matrimonial home with her parents as asked by the petitioner. The petitioner in his evidence did not rebut the contention of the respondent No. 1 so far his income is concerned. More so, he himself admitted that the respondent Nos. 1 and 2 are his wife and daughter respectively.

12. The contention of Mr. Banerjee that as the wife-respondent No. 1 is living

separately from the petitioner on her own is not entitled to get any maintenance cannot be considered as weighty one as every woman has the right to protect her chastity when the same is doubted by her husband. In the instant case from the evidence of the petitioner himself it is clear that he has doubted the chastity of his wife-respondent No. 1 and not only that he also did not keep any contact with his wife as she left his house willingly.

13. In a proceeding u/s 125 of Cr.P.C., it is the duty of the Court to see for what reason the applicant of the proceeding, i.e. respondent No. 1, is leaving matrimonial home. In the instant case, it appears from the record that the respondent No. 1 has left the matrimonial home as she was physically and mentally tortured and also asked by her husband to leave the house with her parents.

14. The purpose of enacting Section 125 of Cr.P.C. by the Legislature is for protecting the wives, children and parents, who are unable to maintain themselves. Section 125 of Cr.P.C. contains a beneficial socio-economic provision for the assistance of un-provided for and discarded wives and children and, therefore, this provision is to be construed liberally so far as the question of taking up a plea in the application is concerned. Clause (a) of sub-Section (1) of Section 125 of Cr.P.C. clearly says that a wife who is unable to maintain herself can claim maintenance allowance from her husband if some other conditions are also fulfilled. In the instant case, it is not the case of the petitioner that the respondent No. 1 has any other source of income by which she can maintain herself.

15. When the chastity of the respondent No. 1 is doubted by the petitioner, then obviously she is entitled not to live with the petitioner and also leave his house for living separately in her parental house and it is admitted position that she has no personal income to maintain herself or to maintain their minor daughter. Thus, her claim for maintenance cannot be said to be unjustified. Mere filing of a case for restitution of conjugal right itself cannot debar the respondent No. 1 for claiming the maintenance which she is entitled u/s 125 of Cr.P.C. Undoubtedly if in a proceeding relating to restitution of conjugal right the Court directed the wife-respondent No. 1 to return to the matrimonial home, then obviously the wife-respondent is not entitled any maintenance. But in the instant case before passing the order of maintenance no such direction is given by the Court in the proceeding relating to restitution of conjugal right, which was pending at that time.

16. I have carefully considered the judgment of the learned Court below. According to me, the learned Court below did not commit any error while passing the impugned judgment. Thus, it is not necessary to interfere with the same. In the result, the revision petition is dismissed being devoid of merit.