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**(2012) 01 GAU CK 0059**

**In the Gauhati High Court**

**Case No : Criminal Revision Petition 41 of 2011**

Smt. Bishnupriya Sutradhar

APPELLANT

Vs

Shri Nipendra Sutradhar

RESPONDENT

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**Date of Decision : 17-01-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 15, 39

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401, 498A

**Citation : (2012) CriLJ 1796**

**Hon'ble Judges : Swapan Chandra Das, J**

**Bench : Single Bench**

**Advocate : K.N. Bhattacharjee and Mr. S. Acharjee, for the Appellant; A. Sengupta, for the Respondent**

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## **Judgement**

S.C. Das

1. The petitioner named above, knocked the door of this Court presenting a petition u/s 397 r/w Section 401 of Cr.P.C. praying for granting her maintenance and to pass appropriate order thereof, against her husband, the opposite party-respdt., since her such prayer for granting maintenance, u/s 125 of Cr.P.C., has been refused by the learned Judge, Family Court, Agartala, West Tripura, in Misc. Case No. 233/2010, by an order, passed on 15.03.2011.

2. Heard learned senior counsel, Mr. K N Bhattacharjee, assisted by learned counsel, Mr. S Acharjee, for the petitioner. None appears for the respondent though the case is listed for hearing.

3. Learned senior counsel, Mr. Bhattacharjee, has submitted that the petitioner filed an application u/s 125 of Cr.P.C before the learned Judge, Family Court, Agartala, West Tripura for granting maintenance to herself and her daughter by her husband, the opposite party-respdt. and that petition was disposed of by an order, dated 15.03.2011, passed by the learned Judge, directing the respdt. to pay an amount of Rs.1,500/- (Rupees one thousand and five hundred) per month

to the minor daughter of the petitioner but her prayer was refused on flimsy ground. It is submitted that marriage between the petitioner and the respondent is not disputed. It is also not disputed that the petitioner has no income to maintain herself and that the petitioner is living apart from her husband with her minor daughter having no independent source of income. It is also not disputed that the respdt.-husband has sufficient means to maintain the wife.

Drawing attention to the Para-7 of the judgment learned counsel has submitted that the prayer of maintenance of the petitioner has been refused by the learned Judge of the Family Court on the ground that the petitioner was a quarrel some lady and she used to shout much more than her husband as stated by the witnesses examined on behalf of the husband opposite party. Refusal of maintenance by a court of equity, on such ground, has caused serious prejudice to the petitioner and, therefore, learned counsel prayed for granting adequate maintenance to the petitioner taking into consideration the income of the respdt.-husband and other factors.

4. I have gone through the impugned judgment, dated 15.03.2011, passed by the learned Judge, Family Court, in Misc. Case No. 233/2010 and also perused the petition, written statement and the evidence on record.

5. While exercising the jurisdiction u/s 397 of Cr.P.C this Court is to see the correctness, legality and propriety of the order, passed by the inferior Court and regularity of the proceeding before such Court. This Court is not ordinarily required to re-appreciate the evidence on record unless it is shown that the finding was perverse or that the judgment/order passed by the inferior Court was based on no evidence.

6. On perusal of the copy of the petition (Annexure-2), filed by the petitioner, u/s 125 of Cr.P.C and the written objection filed by the respondent (Annexure-3), I find that marriage between the petitioner and the respondent was solemnized as per Hindu customary rites and ceremonies about 8 years before the date of presentation of petition and thereafter, they lived and co-habited as husband and wife in the matrimonial home at Madhya Bijohnagar, Sidhai Mohanpur and a female child was born out of their wedlock.

Respondent married the petitioner after the death of his first wife and the respondent had two daughters born out of his marital life with his first wife. The allegation made by the petitioner was that the respondent-husband and his mother, sister and other members in the family were expecting a male child but when the female child was born to the petitioner, the respondent and other members of the family started inhuman mental and physical torture on her and she was badly treated in the matrimonial home. She was beaten up by her husband causing severe injury and had to be hospitalized and she had filed a criminal case u/s 498(A) of IPC. She was put out of the matrimonial home and she took shelter in her parental home. The respondent is a wealthy farmer having fertile paddy land and has got Power Tiller and Pump sets and has got

sufficient income but the petitioner has no income at all to maintain herself and her minor daughter and, therefore, she prayed for maintenance of Rs.6,000/- (Rupees six thousand) per month including Rs.2,000/- (Rupees two thousand) for her minor daughter.

7. Respondent contested the claim of the petitioner by filing writing objection inter alia stating that his first wife, died leaving two daughters of the respondent. and, she (the petitioner) used to misbehave with those two daughters and used to treat them with utmost cruelty. She also demanded the respondent to deliver the landed property in her name depriving the said two daughters. Her family members were also encouraging it. Since the respondent did not agree, petitioner instituted a false case against the respondent. He further stated that he has landed property of 1(one) Kani and as a cultivator, earned Rs.3,000/- (Rupees three thousand) per month. He prayed for rejection of the petition.

8. The petitioner examined herself and other witnesses in support of her contention. Respondent also examined himself and other witnesses to resist the claim of the petitioner.

9. It is evident from the pleadings as well as evidence adduced by both sides that marriage, between the petitioner and the respondent, was solemnized as per Hindu rites and they lived and co-habited as husband and wife and a female child Paramita Sutradhar was born out of their wedlock. It is also an undisputed fact that the petitioner is now living apart from the respondent, in her parental home, and she has got no independent source of income. On the other hand, it is sufficiently established that the respondent-husband, as a cultivator, has income to maintain himself, his legally married wife and children. Under such circumstances, refusal to grant maintenance to the petitioner, by the learned Judge, Family Court, is found to be against the very object of the provisions prescribed in Chapter IX of the Code of Criminal Procedure.

10. The object of the provision has been well explained by the Apex Court in the case of Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others, stating that Section 125 is enacted for social justice and specially to protect women and children as also old and infirm poor parents within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution.

The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long they are unable to maintain themselves. The proceedings under Chapter IX of Cr.P.C are not punitive. The object is not to punish a person for neglect to maintain those whom he is bound to maintain. The section provides only a speedy remedy by a summary procedure to enforce liability in order to avoid vagrancy. The provisions should be liberally construed as the primary object is to ensure social justice and to prevent vagrancy by compelling those who can support those who are unable to support themselves.

11. In the present case, on perusal of the deposition of respondent, I find that the

respdt. clearly stated that he is no longer interested to take back his wife because at any time the dispute will increase. Under such circumstances, while the respdt.-husband is not ready to take back the petitioner in the matrimonial home and where the petitioner has no independent source of income and she is living with her minor child away from her matrimonial home, it is the obligation of the husband to pay maintenance to the wife for her survival and livelihood.

12. The essence of Section 125 of Cr.P.C is to grant maintenance and not refusal of the same. The Courts exercising jurisdiction u/s 125 of Cr.P.C must keep in mind the very object of the provision and appreciate the facts and circumstances keeping in mind the legislative intents and purposes. The Court must take into consideration the broader aspect of the law and should not get swayed by the technicalities and the pits and holes here and there in the evidence and materials on record. It should appreciate the facts with broader possibility and should not reject the prayer of maintenance, as a matter like other criminal cases, taking into consideration the technicalities. Maintenance is not for luxury but for survival. After marriage it is the duty of the husband to provide shelter and maintenance to the wife. If he neglects, the wife is legally entitled to have it from the Court by petition under this Section. While the wife, children and infirmed parents approaching the Court of law being helpless, for maintenance to survive, the Courts should not shut its eye and close the door which will definitely put the petitioner in duress, vagrancy and starvation. It is true that the maintenance should be allowed keeping in mind the ability of the respondent i.e. his income, and other attending factors.

13. In the case in hand, the respondent-husband, as I find, has been neglecting and/or refusing his wife from maintenance, who is living apart from him, having no independent source of income. Refusal of maintenance to her was not justified and therefore, this Court in exercise of jurisdiction u/s 397 r/w Section 401 of Cr.P.C considered it appropriate to direct the respdt.-husband to pay maintenance to the petitioner. Having regard to the income and other factors, the respdt.-husband is directed to pay maintenance to the petitioner @ Rs.2,000/- (Rupees two thousand) per month in addition to the amount of Rs.1,500/- (Rupees one thousand five hundred) as already granted by the Family Court in favour of her minor daughter.

14. The revisional application is accordingly allowed. The Judgment and order, dated 15.03.2011, passed by learned Judge, Family Court, Agartala, West Tripura in Misc Case No. 233/2010 to the extent, is modified. The respondent is directed to make payment of maintenance to the petitioner @ Rs.2,000/- (Rupees two thousand) per month and the payment to be made in the same mood as directed by the learned Judge, Family Court in the case of minor daughter of the petitioner.

15. With this observation, the revisional application stands disposed of.

16. Send back the L.C records along with a copy of this order.