

(2000) 03 CAL CK 0052

In the Calcutta High Court

Case No : Criminal Miscellaneous Jurisdiction C.R.R. No. 2243 of 1999

Smt. Jolly Paul

APPELLANT

Vs

Ram Chandra Paul

RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Constitution of India, 1950 — Article 15, 39

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397(3), 401, 482

Evidence Act, 1872 — Section 134

Citation : (2000) 3 CALLT 226

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Mr. S.S. Roy and Miss Minoti Gomes, for the Appellant; Mr. Joy Sengupta, for the Respondent

Judgement

A. Talukdar, J.—"We have yet to come across a case of a wife wronged by her husband and a who had to suffer also at the hand of the Courts. For, while the Trial Magistrate disposed of the matter in a very cursory manner taking a thoroughly untenable and unjust view the High Court has rejected the Revisional Application summarily." Lamented the Hon"ble Mr. Justice M. P. Thakkar speaking for the Division Bench consisting of his Lordship and the Hon"ble Mr, Justice S. Natarajan in Smt. Kuldeep Kaur v. Surinder Singh [1989 SCC Cri 1711. Alas 1 practically a decade after the findings of the Hon"ble Mr. Justice M. P. Thakkar has become ruefully true.

2. In the Instant case 1 find that having been wronged by her husband, the Petitioner approached the learned Magistrate for maintenance who dismissed her claim and thereafter she approached the learned Lower Revisional Court which also put the stamp of approval on the order of the learned Magistrate. Even before the Ink has dried on orders adverse to her in the Courts below perhaps her tears had dried long earlier. She has carried her crusade to this Court against the wrongs suffered by her.

3. In 1995 she approached the majestic portals of the learned S.D.J.M., Howrah with a claim of Rs. 1,500/- from the delinquent husband/Opposite Party to keep her body and soul intact as the Machiavellian designs of the person with whom she had tied the nuptial knot in the fateful day of June 5, 1994 had changed the entire horizon of her life. The facts catapulted in her petition u/s 125 of the Code of Criminal Procedure (here-in-after referred to as the said Code) are not only horrendous in nature but shocks the sense of even the most Insensible man. The errant husband had an extra marital affair with one Dipti Sarkar and the Petitioner was constantly tortured and assaulted in her matrimonial house which soon became a house of horror for her as she was kept confined in a room and when she was about to be handed over to a doctor, treating mental diseases, had no other alternative before her than a compulsive relinquish ment of her matrimonial home and sought the safe circuit of the arms of her parents.

4. In her petition for maintenance which was docketed as Misc. Case No. 281 of 1995 in the Court of the learned Judicial Magistrate, 6th Court, Howrah she examined herself as P.W. 1 and one Slshr Barick as P.W.2 who proved the Salary Certificate (Ext. I) of the Opposite Party which revealed that the gross Income as on April 7, 1997 was Rs. 9,575.31. The Husband/ Opposite Party examined himself as Opposite Party No.1 to controvert her allegations. By an Order dated 23.3.98 the Petition for maintenance was dismissed by the learned Magistrate since among other things : "the Petitioner Instant any valid reasoned and withdrawn from the society of the husband then the Opposite Party is in no way be said to be under obligation to maintain his wife. As I have already held that the Petitioner have failed to substantiate the allegations against the Opposite Party and as such she is not entitled to get maintenance allowance from the Opposite Party as prayed for."

5. Her Revisional Application being Criminal Motion No. 65 of 1998 which was heard upon transfer by the learned Additional Sessions Judge, 2nd Court, Howrah was also dismissed on 22.7.99.

6. The same having proved abortive, hence this Revisional Application.

7. While rummaging through the order, refusing maintenance in favour of the Petitioner, of the learned Judicial Magistrate," 6th Court, Howrah in Misc. Case No. 281 of 1995, I am reminded of the Shakespearian drama of "Merchant of Venice." William Shakespeare in that celebrated play had divided the entire drame sequence into three phases, (a) ring episode (b) casket episode and (c) Court Scene. It seems the learned Magistrate has taken a leaf from the Shakespearian drama and divided the pathetic sequence of the real life drama of the Petitioner Into : (a) first episode--after marriage when the Parties resided at G.I.P. Colony in the house of Pritambar Pradhan where she came to learn that the Opposite Party had illicit relationship with one Dipit Sarkar. (b) Second episode--began when they shifted to Kasba where she was kept confined in the flat and was assaulted and [c) the last and final episode--started on 06.8.95 the date on which the Opposite Party handed over the Petitioner to some unknown

person who claimed himself to be a doctor of mental patient.

8. The learned Magistrate, I find to my dismay after compartmentalizing the unfortunate tale of a distressed woman Into three episodes proceeded to Investigate as to whether she has been able to prove the Illicit relationship of the Opposite Party with Dipti Sarkar or not. With the scalpel of a surgeon, the learned Magistrate thereafter dissected the anatomy of the trauma of the Petitioner and thereafter left the gapping wounds of sorrow of the Petitioner unstitched with the yardstick of adverse presumption as she failed to cite the neighbours in support of her confinement and the doctor to support her case for treatment and also could not prove the Illicit relationship of the Opposite Party with Dipti Sarkar.

9. To my utter astonishment I find that the learned Additional Sessions Judge sitting in revision over the order of refusal of maintenance passed by the learned Magistrate dealt with the entire matter mechanically and affirmed the Order of the learned Magistrate without adverting deep into the matter.

10. With captive attention I have heard the submissions of both the parties appearing on behalf of the parties and have traversed through the Judgments of both the Courts below. The learned counsel of the Petitioner while on the one hand has submitted that not only both the Courts erred in law in dismissing the prayer of the Petitioner for maintenance overlooked material evidence and came to a perverse finding which requires interference by this Court, on the other hand the learned counsel of the Opposite Party Justified the orders impugned and submitted further that in view of the bar of Second Revision this Court should not Interfere in the matter. He has placed reliance on the decision of the Supreme Court in the case of Pathumma and Another v. Mahummad as reported in 1986 SCC (Cri) 212. He submitted that the concurrent finding of facts should be left undisturbed.

11. Now let me first consider the Supreme Court Decision of Panhuman and Another v, Muhammad (supra) relied upon by the learned counsel of the Opposite Party.

12. Coming to the point raised by the learned counsel in a Second Revisional Application this Court should not Interfere with the finding of facts arrived at the Courts below 1 find that the Supreme Court in the case of Pathumma and Another (supra) held : "..... the High Court committed an error in making a re-assessment of the evidence and coming to a finding that Appellant No. 2 was not the illegitimate child of the Respondent. We have ourselves considered the evidence on record and we agree with the learned Magistrate, who had taken much pains in analysing the evidence that Appellant No. 2 was a legitimate child of the Respondent. The High Court in its re visional jurisdiction was not justified in substituting its own view for that of the learned Magistrate on a question of fact."

13. I find that the principles laid down in the case of Pathumma and Another

(supra) are not squarely applicable in the instant case. The Supreme Court deprecated the decision of the High Court as it had in its Revisional Jurisdiction substituted its own view for that of the learned Magistrate on a question of fact. But, here the position is quite otherwise. The learned Magistrate had overlooked material evidence and came to a perverse finding that the Petitioner without any valid reason had withdrawn from the society of the Opposite Party who is as such under no other obligation to maintain her, and that she could not substantiate the allegations against the Opposite Party and also would not corroborate her version of torture and confinement in her matrimonial home. The said finding as a result of misreading of evidence was mechanically echoed by the learned Sessions Judge. In the Instant case not only the order of the learned Magistrate suffered from great perversity the learned Magistrate in a maintenance proceeding had discarded the prayer of the Petitioner for maintenance in the absence of corroboration of her evidence with regard to torture, confinement and neglect. This was wholly bad in law. In a maintenance proceeding u/s 125 of the said Code the learned trial Court is to take a prima facie view of the matter. I find that since great Injustice has been done to the unfortunate lady by refusing her prayer for maintenance section 482 should be Invoked "to secure the ends of justice" for setting aside the Orders impugned. The meandering corridors of Justice is filled with the wails of a wronged woman and if in this case this Court refrains from exercising its Inherent power greater Injustice would be done. It is one of such rarest of rare cases where this Court should Interfere with the aid of section 482 of the said Code otherwise patent Injustice would be percolated. Normally, I agree with the learned lawyer of the Opposite Party that a 2nd Revisional Application should not be allowed in general circumstances but this is an exceptional case which warrants definite Interference. If the door of Justice can be slammed on the face of the distressed woman on the pretext of sub-section (3) of section 397 of the said Code then certainly even from its narrow key-hole with the magic eye of the plenary power of section 482 of the said Code this Court can definitely undo a wrong which it sees is so apparent. Otherwise section 482 would be rendered a dead letter word in the Statute Book.

14. It is with the sacred mission of justice that I seek to Interfere and set aside the Impugned orders and allow this Revisional Application on the grounds which I presently discussed here-in-below.

15. The learned Magistrate was not at all alive to the fact that a maintenance proceeding under Chapter IX of the said Code was summary in nature and aimed to alleviate the suffering of destitute woman who have been neglected in the hands of their husbands. The sacred provisions of section 125 of the said Code are meant for preventing vagrancy by compelling those errant husbands to maintain their spouses and upon whom the later have a moral claim, provisions of Chapter IX of the said Code which is summary in nature contains the speedy remedy against starvation of a deprived wife. Facts and fictions governing the criteria of a regular trial cannot be sought for while disposing of a maintenance proceeding which is as indicated earlier summary in nature and aimed at

providing scour to deprived woman. If the Court in a maintenance proceeding searches for meticulous proof and discharge of onus in the candle light of the rigorous trappings of evidence then the wax will melt away and the candle be blown off. It should be borne in mind, that the sacred provisions of section 125 of the said Code is a measure of great social Justice and has been specially Incorporated in the Statute Book to protect women and children and falls within the Constitutional sweep of Article 15 sub-clause (3), reinforced by Article 39 of the Constitution of India as has been held by the Supreme Court in the Case of Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others, .

16. The learned Magistrate was entirely wrong by discarding the prayer for maintenance of the Petitioner for want of proof of Illicit relationship of her husband and her failure to sought evidence in support of her confinement on the play of her mental illness. In fact, the learned Magistrate at the time of arriving at his finding lost sight of the pith and substance of the Petitioner's case and refused her prayer which unfortunately was also most mechanically affirmed by the learned Additional Sessions Judge. In my view the learned Magistrate by seeking corroboration of evidence of torture and neglect in the matrimonial home of a wronged woman was oblivious to the fact that a wronged woman in the shackles of an Impaired matrimony is as desolate as a ship wrecked Robinson Crusoe in the Island of her tears.

17. I also find that the maintenance proceeding having been filed sometime in 1995 could be disposed only in 1998. The learned Magistrate should have taken care to see that the legislative intent of speedy remedy u/s 125 of the said Code was adhered to.

18. I accordingly set aside the order of the learned Magistrate as also the Order of affirmation passed by the learned Additional Sessions Judge and set the clock back of Misc. Case No. 281 of 1995 to the period of time when the Petitioner had first stepped Into the Court of the learned S.D.J.M., Howrah with a Petition for maintenance. I remand the matter back to the learned Magistrate, who will, on remand, consider the case afresh on the basis of the evidence already on record and arrive at his Just decision in accordance with law. Pending conclusion of the proceeding to wipe out the tears from the eyes of the unfortunate Petitioner and to provide her some morsel of food and allow her to taste the fruit of the final decision I direct that she will be entitled to receive an amount of Rs. 1,500/- as Interim maintenance from the Opposite Parry month by month until the proceeding is concluded.

The Revisional Application is accordingly allowed.

There will be no order as to costs.

19. Application allowed