

(2014) 05 GAU CK 0044
In the Gauhati High Court
Case No : Crl. Rev. P. No. 468 of 2012

Smt. Suparna Sen (Chanda) and Shri Ayush Chanda	APPELLANT
Vs	
Sri Ashit Chanda	RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(2), 354, 397, 401

Citation : (2015) 1 DMC 129 : (2014) 4 GLT 105

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : P.K. Deka, Advocate for the Appellant; A.K. Talukdar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.—Heard Mr. P.K. Talukdar, learned counsel for the petitioners. Also heard Mr. A.K. Talukdar, learned counsel appearing for the opposite party.

2. This application u/s 401 read with Section 397 of the Code of Criminal Procedure, 1973, for short, Cr.P.C., and Article 227 of the Constitution of India is directed against the judgment and order dated 19.06.2012 passed by the learned Principal Judge, Family Court, Cachar, Silchar, in FC (Crl.) Case No. 8/2010, whereby the learned Principal Judge had passed an award of Rs. 1,500/- to the wife, i.e., petitioner No. 1, and Rs. 1000/- for her school going minor son, i.e., petitioner No. 2, as maintenance u/s 125 Cr.P.C. from the date of the order.

3. The petitioner No. 1 was married to the opposite party following hindu rites and rituals on 28.02.2002 and out of their wedlock, a male child was born to them on 15.03.2003. Alleging that subsequent to the birth of the child, the opposite party started torturing the petitioner No. 1, both mentally and physically, and finally drove her out of the matrimonial house alongwith the child, compelling her to take shelter in her parental house, the petitioner No. 1 filed an

application u/s 125 Cr.P.C. before the learned Principal Judge, Family Court, Cachar, Silchar on 11.01.2010 and the said application was registered as F.C. (Crl.) Case No. 8/2010.

4. In the application, it was stated that the opposite party is the Head Master of an L.P. School and was getting a salary of Rs. 22,000/- per month and that he was also earning a sum of Rs. 10,000/- by doing petty business. Statements were made that despite of having sufficient means, the opposite party was neglecting to maintain her and the minor child.

5. A written statement was filed by the opposite party in which, while denying the allegations made by the petitioner No. 1, it was stated that the petitioner No. 1 did not want to come back to the matrimonial house from her paternal house where she had gone for the birth of the child inspite of requests made by the opposite party and therefore, he had filed a suit for dissolution of marriage by a decree of divorce and in the said suit, he was paying Rs. 1,000/- per month as pendente lite maintenance. He had denied that he was the Head Master of a School but stated that he was a teacher of Loharbong L.P. School. He also denied that he was drawing salary of Rs. 22,000/- as alleged by the petitioner No. 1.

6. During trial, 3 (three) witnesses were examined on behalf of the petitioners and the opposite party examined himself and one more witness, who is the uncle of the opposite party.

7. Upon perusal of the materials available on record, the learned Principal Judge recorded the finding that the opposite party neglected to maintain the first party and the minor child. Relying on the statements made by the opposite party in his evidence that he gets a salary of Rs. 12,000/- per month, the learned Principal Judge awarded maintenance allowance of Rs. 1,500 per month to the petitioner No. 1 and Rs. 1,000/- per month to the petitioner No. 2 from the date of the order, i.e., 19.06.2012, as has already been noted.

8. Aggrieved by the judgment dated 19.06.2012 passed by the learned Principal Judge, Family Court, this instant application has been filed.

9. Mr. Deka, learned counsel for the petitioners has made two-fold submissions: The first submission advanced by Mr. Deka is that award of maintenance as aforesaid was grossly inadequate and placing reliance on a certificate dated 16.08.2012 annexed with the revision petition issued by the Block Elementary Education Officer, Cachar, it is contended by him that the net salary of the opposite party is Rs. 18,217/-. It is also submitted that though the opposite party has not assailed the order of the learned Principal Judge, yet the opposite party did not comply with the direction for payment of maintenance to the petitioners, as a result of which, the petitioner No. 1 and her son, i.e., petitioner No. 2, are practically rendered destitutes.

10. It is submitted that having regard to the salary of the opposite party, which is Rs. 18,217/-, the prayer made by the petitioner No. 1 for award of Rs. 4,000/-

to her and Rs. 4,000/- to her minor son i.e., petitioner No. 2 in the Section 125 Cr.P.C. application, should be awarded. She places reliance on the judgments, in the case of Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, and in the case of Minakshi Gaur Vs. Chitranjan Gaur and Another, .

11. The learned counsel submits that in the facts and circumstances of the case, the learned Principal Judge also committed error in not awarding maintenance from the date of the application.

12. Mr. Talukdar, learned counsel appearing for the opposite party, submits that from the month of November, 2013, the opposite party is paying the awarded maintenance amount but some arrears have accumulated due to certain reasons beyond his control. The learned counsel submits that the arrears are to the tune of about Rs. 40,000/- as of date, which is also accepted by the learned counsel for the petitioners.

13. Learned counsel submits that whatever arrear amount had been accumulated, will be paid by the opposite party in 6(six) equal monthly instalments by 31.12.2014.

14. With regard to the plea of enhancement of the maintenance amount, the learned counsel, though admits the amount indicated in the certificate issued by the Block Elementary Education Officer, Cachar (Annexure-2), submits that the same was not the amount which the opposite party was drawing during trial.

15. According to him, at that relevant point of time, he was drawing a sum of Rs. 12,000/-. In absence of any document produced by the petitioners, the said amount was accepted by the learned Trial Court and accordingly, maintenance was awarded and therefore, no interference is called for with regard to the maintenance awarded by the learned Trial Court, he submits. It is also submitted that the opposite party took a house building loan for which he has to pay about Rs. 4,600/- per month towards liquidation of the said loan.

16. It is submitted that the opposite party has got a widowed mother, two unmarried sisters and two brothers, whom he has to maintain. It is also submitted that for the purpose of attending school, which is at a distance of about 55 km from his residence, the opposite party has to spend a considerable sum of money on conveyance.

17. He had also submitted that the learned Trial Court had exercised the discretion to grant the maintenance from the date of judgment, and in absence of any acceptable reason cited by the petitioners, no interference is called for with regard to that part of the order also.

18. I have considered the submission of the learned counsel for the parties and have also perused the materials available on record.

19. A perusal of the written statement filed by the opposite party would go to show that in the said written statement, he had not disclosed the amount of

salary that he was getting. However, during evidence, the opposite party disclosed that his net salary is about Rs. 12,000/-. The petitioner No. 1 did not lay any materials before the learned Principal Judge to demonstrate the income of the opposite party except for her oral statement. In the aforesaid circumstances, I am of the considered opinion that learned Principal Judge committed no illegality in relying upon the evidence of the opposite party.

20. Now the question is: Whether, if the income of the opposite party was Rs. 12,000/-, the award of maintenance of Rs. 1,500/- for the petitioner No. 1 and Rs. 1,000/- for the petitioner No. 2, is just and proper?

21. The opposite party is also required to pay Rs. 1,000/- as maintenance pendente lite in the divorce proceeding instituted by the opposite party and therefore, excluding the amount for the said purpose, the opposite party's income is in the vicinity of Rs. 11,000/-, out of which Rs. 2,500/- in all had been awarded to the petitioner No. 1 and her son, i.e. petitioner No. 2.

22. Neither in the written statement nor in the evidence, plea was taken by the opposite party with regard to payment of Rs. 4,600/- towards loan liquidation. Therefore, submission of Mr. Talukdar on this account cannot be accepted. Award of maintenance cannot be divorced from reality and the award has to be commensurate with the paying capacity of the husband. Taking into account the income of the husband and also taking note of the fact that the petitioner No. 1 is paid Rs. 1,000/- as maintenance per month in divorce proceeding, I am of the considered opinion that the sum of Rs. 1,500/- paid to the petitioner No. 1 does not call for any interference. However, the sum of Rs. 1,000/- as maintenance awarded to the minor child, i.e., petitioner No. 2 is too much on the lower side and therefore, having regard to the income of the opposite party, I consider it appropriate to enhance the sum to Rs. 2,500/- per month.

23. The next question is whether the order of the learned Trial Court awarding maintenance from the date of the order instead of date of the application is liable to be interfered with.

24. Section 125(2) of the Cr.P.C. provides that any allowance for maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance or interim maintenance and expenses of proceedings, as the case may be. Thus, there is discretion on the part of the Magistrate to grant maintenance either from the date of the order or from the date of application.

25. In Shail Kumari Devi (Supra), the Apex Court had laid down that it is open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of "special reasons" though he must record reasons as envisaged by sub-section (6) of Section 354 of the Code in support of the order passed by him. It is held that for awarding maintenance from the date of the application express order is necessary.

26. The Apex Court in Shail Kumari Devi (Supra), has held as follows:

46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of "special reasons" though he must record reasons as envisaged by sub-section (6) of Section 354 of the Code in support of the order passed by him.

47. We, therefore, hold that while deciding an application u/s 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance, can be awarded from the date of the order, or, if so orders, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provisions to that effect.

27. In Minakshi Gaur (Supra), the husband was earning Rs. 20,000/- and the Apex Court had directed payment of Rs. 5,000/- as maintenance from date of filing of application. In the said case, the wife also had independent income.

28. The learned Principal Judge exercised his discretion to award maintenance from the date of the order and not from the date of application. Learned counsel for the petitioners is unable to persuade the Court on what ground same is liable to be reviewed. In view of the above, I am not inclined to interfere with the discretion exercised by the learned Trial Court, which cannot be considered to be unreasonable, in respect of award of maintenance from the date of the order.

29. There is one more aspect of the matter. The admitted position is that from April 2012, the net salary of the opposite party is Rs. 18,217/-, which is more than Rs. 6,000/- compared to the amount which was taken into consideration when the impugned judgment was passed. It appears that the aforesaid sum of Rs. 18,217/- was received by the opposite party from the month of April 2012, i.e., while the Section 125 Cr.P.C. petition was pending for disposal.

30. It is an admitted position that there is change of circumstance in the income of the husband, i.e., the opposite party. I am of the considered opinion that such a development can be looked into and taken into consideration while disposing of the revision application, having regard to the purpose for which Section 125 Cr.P.C. was engrafted, which is to prevent destitution and vagrancy. Taking note of the rising trend in the cost of living, in the circumstances, an increase in the

amount of maintenance granted by the learned Trial Court is called for.

31. Taking that view, I direct that from the month of June 2014, the petitioner No. 1 would be entitled to a sum of Rs. 2,500/- and the petitioner No. 2 would be entitled to a sum of Rs. 3,500/- as maintenance. The amount of Rs. 2,500/- awarded in favour of petitioner No. 2 shall be payable from the date of the order of the learned Principal Judge. Entire arrear amount shall be paid by the opposite party within 31.12.2014 in 6(six) monthly instalments.

32. With the aforesaid observations and directions, the petition is allowed as indicated above.

33. Send back the LCR.