

(2014) 02 TP CK 0025

In the Tripura High Court

Case No : Crl. Rev. P. 101 of 2006

Sri Lab Bhattacharjee Vs Smt. Ruma Chakraborty

Date of Decision : 25-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(5)

Citation : (2014) 02 TP CK 0025

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : S. Acharjee, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.—By means of this petition, the petitioner herein after referred to as the husband, has challenged the order dated 12.07.2006 passed by the learned Family Judge, Agartala, whereby he dismissed the application filed by the wife petitioner u/s 125(5) Cr.P.C.

2. The undisputed facts, are that the petitioner husband was married to the respondent wife. According to the wife they were married in the year 1998 but according to the husband they were married in the year 1993 and further according to the husband they lived together only for fifteen days and, thereafter, the wife had left her husband's house without any rhyme or reason.

3. Whatever be the date of marriage, the factum of marriage is not disputed. The learned Family Judge, Agartala after recording evidence, vide his order dated 18.01.2006 upheld the claim of the wife and negated the claim of the husband that his wife had left the home without any cogent reason. The learned trial Court also found that the husband had raised doubt over the character of his wife without any proof. Therefore, the learned trial Court found that there were sufficient proof that the husband had tortured his wife mentally. This order dated 18.01.2006 was never challenged by the husband and attained finality. Thereafter the wife filed a petition for execution of the order and at this stage the husband filed a petition u/s 125(5) Cr.P.C. claiming that since his wife had

deserted him, the order of maintenance be set aside.

4. The learned Family Judge held and rightly so that since the order dated 18.01.2006 had attained finality and it had been held that the petitioner husband had driven his wife outside his home due to physical and mental torture, this matter could not be reopened u/s 125(5) Cr.P.C. which reads as follows:

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

5. Section 125(5) Cr.P.C. will only come into play if the matters which are sought to be raised u/s 125 Cr.P.C. proceedings were not matters in issue when the Court first pass the order u/s 125 Cr.P.C. A matter which has been decided by the Magistrate while deciding the application u/s 125 Cr.P.C. or which should have been raised before him cannot be re-agitated u/s 125(5) Cr.P.C. in case a party is dissatisfied by the order of the Magistrate or Family Judge u/s 125 Cr.P.C. his remedy is only to file a revision to the appropriate Court and he cannot re-agitate the same by filing a petition u/s 125(5) Cr.P.C.. Therefore, I find no merit in the petition.

6. In view of the above discussion, the present Criminal Revision petition is dismissed.

Send down the LCRs forthwith.