

CRIMINAL REVISION
C.R.R. No.1597 of 2007

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: June 16, 2010.

Smt. Reshma Das

Versus

Sri Bipra Kumar Das & Anr.

POINTS

MAINTENANCE –Wife living separately because of torture upon her – Whether She is entitled to get maintenance – Code of Criminal Procedure 1973, S 125 .

FACTS

The petitioner is the married wife of the opposite party and their marriage took place in 1990 and one son was born in the wedlock. The husband did not take care of the wife and he subjected the wife to torture and he lastly drove her from his house. She has no source of income. On the other hand, the opposite party is a professor of St. Xavier's College, Kolkata earning Rs.20,000/- per month. In addition to above income he earns Rs.10,000/- per month by private tuition. So the petitioner has claimed maintenance at the rate of Rs.5,000/- per month along with litigation costs.

HELD

The object of granting maintenance under Section 125 of the Cr. P.C. is to provide a speedy remedy for supply of food, clothing, etc. to the deserted wife and it is her fundamental right to get the same from her husband who has means to pay, while the wife is unable to maintain herself. Para 5

The learned Magistrate rejected the prayer for maintenance on the ground that the wife could not show her justification to live separately from her husband and son. In this regard, the wife has asserted that she has been residing separately because of torture upon her. The learned Magistrate did not accept her statement because her father did not adduce evidence in support of her claim and

no documentary evidence has been produced. This finding, cannot be supported at all. The learned Magistrate has also rejected the prayer for maintenance on the ground that the wife had deserted her own son. This observation, cannot be supported because wife has no source of income and so it would be further difficult for her to maintain her son, if the son resides with her. So the observation of the learned Magistrate that the wife did not take any step for getting her son back, cannot also be supported. Therefore, the finding of the learned Magistrate, is perverse and this cannot be supported, while it has been clearly established that the husband did not pay any maintenance to the wife. Therefore, the wife is entitled to get maintenance from her husband in this proceeding.

Para 5

For the petitioner: Mr. Sudipto Moitra.

For the State: Mr. Sobhendu Sekhar Roy,
Mr. Abhijit Kumar Addhya.

Prasenjit Mandal, J: 1.This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has been preferred against the orders dated 29.01.2007 passed by the learned Chief Judicial Magistrate, Howrah in Misc. Case No.191 of 2001 thereby rejecting the prayer for maintenance of the wife. Being aggrieved, the wife/petitioner has filed this application for setting aside the impugned order and to pass appropriate orders.

2.The petitioner is the married wife of the opposite party and their marriage took place in 1990 and one son was born in the wedlock. The husband did not take care of the wife and he

subjected the wife to torture and he lastly drove her from his house on 31.10.1999. She has no source of income. On the other hand, the opposite party is a professor of St. Xavier's College, Kolkata earning Rs.20,000/- per month. In addition to above income he earns Rs.10,000/- per month by private tuition. So the petitioner has claimed maintenance at the rate of Rs.5,000/- per month along with litigation costs.

3.The husband contested the application of the petitioner / wife denying all the material allegations against him. He contended that the wife never wanted to live in her in-law's house and she was unable to adjust. Even she abandoned her own son. The wife left his house voluntarily. The allegation of torture is totally false.

4.Upon due consideration of the evidence on record, the learned Chief Judicial Magistrate, Howrah initially allowed the application under Section 125 of the Cr. P.C. granting maintenance at the rate of Rs.1,500/- per month from the date of application. Being aggrieved, the husband preferred a revisional application and the revisional court set aside the order directing the learned Magistrate to hear the argument afresh and thus allowed the revisional application. Thereafter, by the impugned order the learned Chief Judicial Magistrate, Howrah dismissed the Misc. Case under Section 125 of the Cr. P.C.

5.After hearing the learned Advocate of both the sides and perusing the materials on record, I find that admittedly, the marriage between the husband and the wife took place out of love affairs and after marriage they lived together and one son was born in the wedlock. Admittedly, the wife has been residing at her father's house since 31.10.1999. Admittedly, the husband is a professor of economics in the St. Xavier's College. The wife has claimed that she has no income of her own. On the other hand, her husband earns Rs.20,000/- per month from his service and further Rs.10,000/- per month by private tuition. There is no evidence that the husband paid any

maintenance to the wife since 1999. The learned Advocate for the wife has referred to the decisions such as 2008(2) SCC 316, 1996 SCC Cri 762, 1999 SCC Cri 1118 and 2002(4) CHN 743 in support of his contention that the object of granting maintenance under Section 125 of the Cr. P.C. is to provide a speedy remedy for supply of food, clothing, etc. to the deserted wife and it is her fundamental right to get the same from her husband who has means to pay, while the wife is unable to maintain herself. The wife has given evidence that she has no source of income and on the other hand, the husband could not show that the wife has sufficient means to get her livelihood. But, unfortunately, the learned Magistrate rejected the prayer for maintenance on the ground that the wife could not show her justification to live separately from her husband and son. In this regard, the wife has asserted that she has been residing separately because of torture upon her. The learned Magistrate did not accept her statement because her father did not adduce evidence in support of her claim and no documentary evidence has been produced. This finding, I hold, cannot be supported at all. The learned Magistrate has also rejected the prayer for maintenance on the ground that the wife had deserted her own son. This observation, I hold, cannot be supported because wife has no source of income and so it would be further difficult for her to maintain her son, if the son resides with her. So the observation of the learned Magistrate that the wife did not take any step for getting her son back, I hold, cannot also be supported. Therefore, the finding of the learned Magistrate, I hold, is perverse and this cannot be supported, while it has been clearly established that the husband did not pay any maintenance to the wife since 31.10.1999. I am, therefore, of the view that the wife is entitled to get maintenance from her husband in this proceeding.

6.As regards the quantum of maintenance, upon due consideration of the evidence of the wife that her husband earns Rs.20,000/- per month from service and further Rs.10,000/- per month

by private tuition, I hold, cannot be disbelieved. In such circumstances, the wife has claimed maintenance at the rate of Rs.5,000/- only per month which amount, I hold, cannot be said to be excessive in consideration of the price hike of the essential commodities. Therefore, I hold, that the wife is entitled to get maintenance at the rate of Rs.5,000/- per month in the proceeding under Section 125 of the Cr.P.C. and the effect of such order should be given from the date of filing of the application under Section 125 of the Cr. P.C.

7.The order impugned cannot, therefore, be supported. It is set aside. The application under Section 125 of the Cr. P.C. filed by the wife stands allowed. The husband is directed to pay maintenance to the wife at the rate of Rs.5,000/- per month from the date of filing of the application. The arrears of maintenance must be paid within four weeks from date. Current maintenance allowance must be paid within seven days of the succeeding month. If the maintenance is not paid in the aforesaid manner, the wife is entitled to execute the order through Court.

8.The application under Section 401 read with Section 482 of the Cr. P.C. is allowed in the manner as indicated above.

9.Considering the circumstances, there will be no order as to costs.

10.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)