

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

CRR 18 of 2015

with

CRAN 7 of 2024

[REDACTED]

Vs.

[REDACTED]

For the petitioner :Mr. Karan Bapuli, Adv.

For the Opposite party :Mr. Apalak Basu, Adv.
Mr. Amrita Sinha, Adv.

Heard On : :29.04.2024, 16.05.2024,
19.06.2024, 25.06.2024,
03.07.2024

Judgment On : :04.09.2024

Bibhas Ranjan De, J. :

1. Challenge in this revision application is the judgement and order dated 31.05.2014 passed by Ld. Judicial Magistrate, 1st Court, Bolepur, Birbhum in connection with Misc. Case No. 227 of 2008 wherein Ld. Magistrate directed the

husband/petitioner herein to pay maintenance allowance to the tune of Rs. 4000/- per month in favour of wife/opposite party herein.

Backdrop:-

2. The facts leading to the application made under Section 125 of the Code of Criminal Procedure (for short Cr.P.C.) with a prayer for maintenance, is that the opposite party is a legally married wife of the petitioner herein. The marriage was solemnized on 6 Aswin, 1415 at Tarapith Mandir as per Hindu Rites and Customs, in presence of mother of the petitioner, Gopinath Bhandari, Joydeb Das & Nirmal Dey. After marriage, the petitioner/husband herein used to reside with the opposite party/wife in the house situated at Hetampur which was gifted to the petitioner by his grandmother. After demise of his grandmother the parents of the petitioner used to leave with them in Hetampur. But soon after, the petitioner used to return late at night and even inflict physical torture upon the opposite party/wife. Even the mother of the petitioner used to threaten the opposite party over phone to withdraw herself from the life of the petitioner otherwise she would face dire consequences. She even forced the opposite party to bring Rs.

1 lac from her paternal home so that it can be used by the petitioner/ husband for his business. It is further alleged that the quantum of torture increased severely and finally she was driven out from her matrimonial home in a single wearing apparel. Even after such torture the opposite party tried to reconcile with her husband/petitioner but to no avail. As per the claim of the opposite party/wife, she was unable to maintain herself and she was under the charity of her parents and therefore the aforesaid case was filed by the opposite party/wife.

Observation of the Trial Court:-

3. Ld. Magistrate after evaluation of the evidence adduced by the parties recorded her decision that both the parties to the application under Section 125 of the Cr.P.C. lived together after marriage at Tarapith at the matrimonial home of the opposite party/wife herein and after careful perusal of the statement of available witnesses it has been well established that there was marriage and co-habitation between the parties. Even though in an application under Section 125 of the CrPC strict proof of marriage is not required in order to allow maintenance if the parties have lived together and co-

habitated with each other. In addition to that the opposite party herein has been able to well establish the fact that she was subjected to physical torture and eventually she was driven out from her matrimonial home and thereafter the petitioner neglected and refused to maintain his wife/opposite party herein. In the light of the aforesaid observation Ld. Magistrate granted maintenance allowance to the tune of Rs. 4,000/- per month in favour of the opposite party from the date of Order to that effect.

Arguments Advanced:-

4. Ld. Counsel, Mr. Karan Bapuli, appearing on behalf of the petitioner has mainly canvassed his argument on the veracity of the factum of marriage or cohabitation. Mr. Bapuli has contended that there is no documentary proof of the marriage and also no photographs of the said occasion or any proof of the parties cohabiting together as husband and wife is furnished by the opposite party/wife herein. In addition to that, contradictions in the testimony of the witnesses has been highlighted by Mr. Bapuli in order to strengthen his case that the whole story regarding the purported marriage has been made up by the opposite party/wife in order to extract money

from the petitioner. In support of his contention, he has further added that no testimony of any independent witness has been adduced in this case in order to corroborate the factum of marriage or cohabitation by and between the parties. Mr. Bapuli has even contended that Ld. Advocate appearing on behalf of the opposite party/wife in the Court below has caused law clerks to depose as witnesses to the purported marriage.

5. Before parting with, Mr. Bapuli has argued that the opposite party has been previously married and no document with regard to her divorce with her previous husband has been placed in order to identify the exact date of the divorce which culminates to the position that whether the opposite party's previous marriage was duly terminated or not is not conclusively established. Moreso, the petitioner in his deposition has stated that he is already married with another lady and supporting evidence has been adduced in order to proof his existing marriage. So, the opposite party/wife by no means can claim maintenance as she is not the wife of the petitioner.

6. In support of his contention, Mr. Bapuli has taken assistance of the following cases:-

- ***Lakhi Hazra Wife of Gopal Hazra vs. Gopal Hazra son of Shyam Charan Hazra*** reported in ***2000 SCC OnLine Cal 334***
- ***Mantush Choudhury @ Mantu Choudhury vs. State of Assam and anr.*** reported in ***(2018) 3 Gauhati Law Reports 365***

7. On the contrary, Ld. Counsel, Mr. Apalak Basu, appearing on behalf of the opposite party has refuted all the allegations put forth by the Ld. Counsel appearing on behalf of the petitioner and has contended that the factum of marriage including date, place of the same has been duly proved beyond any reasonable doubt through corroborative supporting evidence. In addition to that Mr. Basu has also added that cohabitation by and between the parties can easily be assessed through the testimony of the witnesses and also the available cogent evidence.

8. Before parting with, Mr. Basu in reply to the claim of the petitioner regarding his existing marriage with another lady has submitted that this is only an attempt by the petitioner to

dissuade the opposite party from her legitimate claim of maintenance. Even if, the story of the petitioner is to be considered as gospel truth then also it is no more *res integra* that even if a person marries for the second time by suppressing his earlier marriage and cohabits with the lady is inconsequential with regard to whether he is previously married or not. By relying on the various judgments of the Hon'ble Apex Court, Mr. Basu has contended that the legality of the marriage cannot be the sole subject matter of an application for maintenance under Section 125 of CrPC as litigating circumstances to prima facie proof cohabitation of a couple as husband and wife is sufficient to grant relief to the aggrieved. Therefore, he has duly supported the impugned judgment and order passed by the Ld. Magistrate and has concluded that there is no scope for any interference with the said order as it suffers from no illegality or infirmity.

9. In support of his contention, Ld. Counsel has relied on the following the judgments which stands as follows:-

- ***Chanmuniya vs. Virendra Kumar Singh Kushwaha and another*** reported in ***(2011) 1 SCC 141***

- ***Kamala and others vs. M. R. Mohan Kumar*** reported in ***(2019) 11 SCC 491***
- ***Badshah vs. Urmila Badshah Godse and another*** reported in ***(2014) 1 SCC 188***
- ***Rajnish vs. Neha and another*** reported in ***(2021) 2 SCC 324***

Analysis:-

10. Before delving into the merit of the case, I think it would be profitable to discuss the cases relied on behalf of the parties in order to get a more clear idea about their main respective contentions.

- In the case of ***Lakhi Hazra*** (supra) this Hon'ble Court observed that even though in a proceeding under Section 125 of the CPC strict proof of marriage is not required but there must be some evidence to show that there was a valid marriage between the parties and that they resided together as husband and wife.
- In ***Mantush Choudhury*** (supra) Hon'ble Gauhati High Court held that the Court is certainly obliged to look into the evidence and materials brought on record to ascertain in the touch stone of preponderance of probability, that

there was marital relationship or marriage took place between the parties as this is the main basis for grant of maintenance under Section 125 of the CrPC. It was further held that to prove such marriage there is no necessity to adduce evidence with regard to observance of all essential ceremonies and rituals, but some evidence is certainly necessary in order to show that marriage actually took place or the fact that the parties were living as husband and wife. In absence of such materials court cannot grant maintenance under Section 125 of CrPC on mere asking.

- In the case of ***Chanmuniya*** (supra) Hon'ble Apex Court has defined the term wife and extensively dealt with the rights of a wife to maintenance so as to include those women within the definition who cohabit with another man as husband and wife and held that the question of validity of marriage is not of primary importance in determining the cases under Section 125 of the CrPC and they are also entitled to maintenance.
- In ***Kamala*** (supra) Hon'ble Supreme Court has extensively dealt with the effects of cohabitation with the woman as husband and wife and the rights accrue therefrom in favour

of the woman. It was further held that standard of proof of marriage in a Section 125 CrPC proceeding is not as strict as is required in a trial for an offence under Section 494 of the IPC.

- In the case of ***Badshah*** (supra) Hon'ble Apex Court while dealing with the right of maintenance of a second wife from her husband held that even if the husband is already married, if he duped the wife by suppressing the factum of alleged first marriage then he cannot be permitted to deny the benefit of maintenance to the wife by taking advantage of his own wrong.
- In ***Rajnesh*** (supra) the Hon'ble Supreme Court held that even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of order, it would be appropriate to grant maintenance from the date of application in all cases including Section 125 CrPC as there is significant delay in disposal of the applications for interim maintenance for years on end therefore in the interests of justice and fair play, maintenance usually should be awarded on the date of application.

11. In my humble opinion a thorough review of the evidence, in spite of few immaterial contradictions, presented by the witnesses reveals that marriage occurred on 6th Aswin, 1415 B.S. at Tarapith as per Hindu Law and they resided together as husband and wife which has been unequivocally corroborated by the evidence provided by PW1, 3,4 & 5. In addition to the date and place of marriage another cogent evidence has been adduced which solidifies the claim of the PW1 that both the parties resided at Hetampur as husband and wife after solemnization of their marriage at Tarapith. These facts have been duly supported by the evidence by the PW 3,4 & 5.

12. Now coming to the argument raised by the petitioner/husband that the opposite party was not his wife as he is already married to someone else does not dissuade the opposite party from claiming her right to maintenance under Section 125 of CrPC as it is no more *res integra* that even if a person married for the second time by suppressing his earlier marriage and cohabits with the lady, it is inconsequential whether he was previously married or not as held by the Hon'ble Apex Court in the case of **Badshah** (supra).

- 13.** Now coming to the cases relied on behalf of the petitioner, I am unable to connect the dots between the factual matrix of the cases relied on with the matter at hand. In **Lakhi Hazra** (supra) the Ld. Trial Judge after consideration of relevant facts came to a conclusion that no valid marriage had taken place between the parties whereas in the case at hand there is no such finding of the Ld. Trial Court. On the contrary, Ld. Judge has ordered grant of interim maintenance.
- 14.** Now coming to the case of **Mantush Choudhury** (supra) it was admitted position of fact that parties to that case never lived as husband and wife and Court held that the claim of the respondent relating to the factum of marriage was found improbable and absurd. But in the instant case not only the marriage but also cohabitation between the parties has been substantiated with evidence.
- 15.** With regard to evidence adduced by PW2 & 3 it was submitted that they were tutored witnesses but both the witnesses were tested through cross examination and nowhere in their evidence it surfaced that they were directly related to the Ld. Advocate appearing before the Trial Court or the opposite party herein. Therefore, I find nothing which might

compel this Court to question the veracity of the testimony provided by PW3 especially who is a law Clerk by profession.

- 16.** In view of the findings of the Hon'ble Apex Court, in an application for maintenance under Section 125 of CrPC the validity of marriage does not need to be conclusively determined. If there is reasonable presumption of marriage based on cohabitation then maintenance can be awarded without delving into the legality of the said marriage.
- 17.** In appreciation of evidence in a case under Section 125 of the CrPC, I am of the opinion that the principle of 'preponderance of probability' can be applied instead of 'proof beyond reasonable doubt'.
- 18.** It is settled proposition of law that the object behind providing maintenance, to a spouse is to the effect that the spouse can maintain herself or himself and not unduly suffer for want of funds. A spouse unable to maintain himself or herself is entitled to maintenance on the principle of **equistatus** and respect that the spouse would have enjoyed if he /she continued to live with the other spouse. While, determining the amount of maintenance the court has to necessarily arrive at the prima facie determination about the

earning capacity of the rival claimants. The determination cannot be made with exactitude. The provisions are only beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse.

- 19.** The purpose of paying maintenance is mainly two folds-
- First to prevent vagrancy as a result of strained husband-wife relationships and
 - To guarantee that the poor litigating spouse is not crippled as a result of a lack of funds to live a dignified life.
- 20.** Regard being had to the above, I find no scope to interfere with order impugned save and except the date from which the order of maintenance is to be effected. The law regarding payment of maintenance from the date of application itself has been further crystallized by the Hon'ble Apex Court in the case of **Rajnesh** (supra) which has been duly discussed above.
- 21.** Given facts and circumstances, I am of the opinion that the wife/ opposite party herein is entitled to quantum of

maintenance decided by the Ld. Trial Court from the date of filing of the application under Section 125 of the CrPC.

- 22.** In the light of the aforesaid discussion, the revision application being no. CRR 18 of 2015 stands dismissed.
- 23.** Interim order, if there be any, stands vacated.
- 24.** Trial Court Record be transmitted back immediately.
- 25.** Connected applications, if there be any, stand disposed of accordingly.
- 26.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 27.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]