

District: 24-Parganas(North).

In the High Court at Calcutta
Criminal Revisional Jurisdiction

G.R.R. No. 1653 of 2006

In the matter of ;

An application under Section 401 read
with Section 482 of the Code of Criminal
Procedure;

-And-

In the matter of ;

Order dated 10.04.2006 passed by Sri
G.C.Karmakar, Learned A.C.J.M, Barrackpur,
North 24-Parganas in Case No.M/195 of
of 2005;

-And-

In the matter of ;

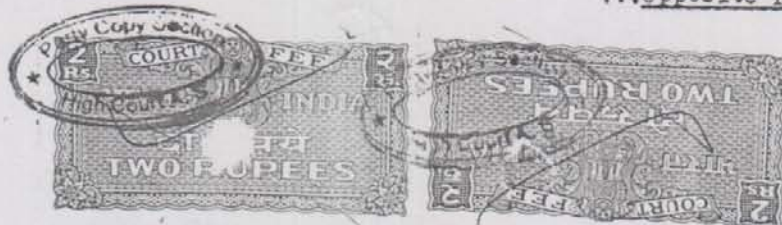
Partha Pratim Basak, son of Pramodh
Kumar Basak of 91/1/2, Neogi Pyara
Road, Baranagar, Kolkata-700 036,
P.S. Baranagar, District : 24-Parganas(N).

... Petitioner/Husband.

-: Versus:-

Arundhuti Basak, wife of Partha Pratim
Basak, daughter of Asim Kumar Basak
of 15/1, Kumud Ghosal Road, Ariadaha,
Kolkata-700 057, Police Station -
Belgharia, District : North 24-Parganas.

...Opposite Party/Wife.



C.R.R. NO. 1653 OF 2006

PARTHA PRATIM BASAK
V.
ARUNDHUTI BASAK

Mr. Jiban Ratan Chatterjee,
Mr. Koushik Dey. for the petitioner.

Ms. Dalia Roy,
Mrs. Susmita Biswas. for the O.P.

2
7.06.2007.

This revisional application is directed against the order dated 10.4.06 passed by the learned Additional Chief Judicial Magistrate (hereinafter called the ACJM), Barrackpore in connection with Case No. M/195 of 2005 thereby allowing the application under Section 125 of the Cr. P. C. filed by the Opposite Party (in short the O.P.)/ wife and granting her maintenance @ Rs.1000/- per month for herself and @ Rs.700/- per month for her minor son and directing the petitioner to pay maintenance from the date of filing of the application under Section 125 of the Cr. P. C.

Mr. Jiban Ratan Chatterjee, the learned advocate for the petitioner husband submitted that the petitioner does computer repairing job and his income is very meagre. On 18.4.05, the O.P. wife left the matrimonial home and went away to her father's house. Since then the O.P. did not come back to husband's house in spite of repeated efforts made by the husband petitioner to take her back. The learned magistrate who allowed the application under Section 125 of Cr. P. C. did not appreciate the evidence and materials on record and failed to realise that the wife left matrimonial home on her own without any just and proper cause. In view of provisions of sub-section (4) of Section 125 of the Cr. P. C., if a wife refuses to stay with the husband without any just cause, she cannot claim maintenance.

RLP
25/7/07

The learned Magistrate did not consider the relevant provisions of Section 125(4) of the Cr. P. C.

Mr. Chatterjee next contended that the learned Magistrate did not consider the income of the husband. In the written objection the husband specifically mentioned that working as a computer repairing service he earns hardly Rs.3400/- per month. No general diary or FIR was lodged by the O.P. at police station concerning torture on her which she alleged in her application under section 125 of the Cr. P. C. The allegation of torture for four years accordingly was not established when there was no paper or document to show torture on her for a continuous period of four years. The learned Magistrate without proper evidence held that there are conditions in favour of the wife which requires granting of maintenance to her. Such an observation of the learned Magistrate holding unfavourable condition of the wife was without any basis and evidence and based on surmise and conjecture. On the contrary, the evidence of the wife reveal that after marriage at least thrice she went to Puri with her husband and was leading a happy conjugal life. On 18.4.05 she went away to paternal home with her father and thereafter, she did not come back and without any just cause she is staying at her father's house. The wife is not entitled to claim any maintenance in view of the provisions of Section 125(4) of the Cr. P. C. and the order of the learned Magistrate granting her maintenance should be set aside. In support of his contention Mr. Chatterjee referred to the decisions in **Gita Das @ Sangita Das V. Tapas Das** reported in **2004(1) CHN 237** and **Kumar Sankar Chakraborty V. Juthika Chakraborty** reported in **1996 (2) CLJ 502**.

25/12/20

On the contrary, Ms. Dalia Roy, the learned advocate for the O.P. wife submitted that there were unfavourable conditions in the matrimonial home for which the wife could not live with her husband and had to leave the matrimonial home. The husband did not take any information of her during the period while she was staying in her father's house. The husband did not pay any money or maintenance to the wife or to the minor child and, this circumstance is sufficient to show negligence on the part of the husband petitioner to maintain his wife and child. The evidence of the husband reveals that he has mobile phone, land phone and visiting card. Possession of mobile and land phone as well as printing visiting card clearly suggests that the income of the husband is high and he has sufficient means to pay maintenance to the wife and the child. The learned Magistrate made no mistake by allowing the prayer of the O.P. wife under Section 125 of the Cr. P. C. and granting maintenance to her and her minor son.

I have duly considered the submissions made by the learned advocates for the parties. Before entering into the merit of the revisional application, I think it expedient to mention, in short, the history or background of the case which was started on the basis of the application under Section 125 of the Cr. P. C. filed by the O.P. wife. In her application under Section 125 of the Cr. P. C., the O.P. wife alleged that she was married with the husband petitioner on 31.1.01 and out of their wedlock a son was born to them on 20.12.01. She was assaulted on several occasions and was tortured both physically and mentally by her husband at the instigation of mother-in-law and other in-laws. She was confined in room and was not provided with adequate food and cloth and was also not allowed to talk with anybody including her parents. At the time of marriage it

42 AT
25/1/12

was disclosed that her husband is a computer engineer but after the marriage she learnt that her husband was a class I 'mistri' for repairing computer. She of course alleged that, her husband runs business under the name and style "Computer Home" at his residential address. She mentioned in the application that her husband earns Rs.15000/- per month and in spite of sufficient income he was not looking after her. The husband used to return home at night having liquor and when she protested she was assaulted, and finally on 17.4.05 she was driven out of matrimonial home. She informed the matter to her father over telephone and on the following day at morning her parents came to her matrimonial home and she went away to her parental home with her parents. Her in-laws at that time misbehaved with her parents. She claimed maintenance @ Rs.3000/- for herself and @ Rs.1500/- per month for her minor son.

The husband petitioner as the O.P. in the Court below contested the matter by filing written show-cause wherein he denied all the material averments made in the petition under Section 125 of the Cr. P. C. He inter alia contended that during the time of birth of their son all the medical expenses were paid by him. He is the only son of his parents and his only sister was already married elsewhere and in the matrimonial home his wife was receiving all kinds of love and affection from his parents. The wife used to visit her parental home at least once in each fortnight as her parents house is at a stones throw from his house. At least thrice i.e. on 20.2.01, 4.3.04 and 24.2.05 he visited Puri with his wife. He is conducting the job of repairing computers in his house but his income is hardly Rs.3500/- per month. The allegation of coming late at home and taking liquor

RR ST
25/10/02

and assaulting her are false and motivated. The parents of the wife came to their house on 18.4.05 and took away his wife for some medical treatment. He requested his in-laws not to take away his wife but, her parents paid no heed and in spite of his objection took away his wife with them and since then his wife did not come back to his house. Subsequently, he discovered that the wife had taken away all the ornaments and cash which was kept in the almirah. It establishes that the averment made in the petition by the wife that she was driven out in a single cloth was false. He went to take back his wife several times but his wife did not come back. He and his parents are still eager to take back his wife and son with full respect. He even sent a letter through their advocate but his wife was reluctant to pay any honour to his requests. The wife is residing in her parents house without any just cause and accordingly she is not entitled to claim any maintenance. He has made arrangement of opening premium of medicines for them including golden trust policy with National Insurance Company Ltd. He took all the steps for her education after the marriage for which she got necessary qualification to earn and manage herself.

On the basis of such application and written objection the learned Magistrate recorded evidence of both parties and by the impugned order dated 10.4.06 allowed the application under Section 125 of the Cr. P. C. and granted maintenance @ Rs.1000/- per month in favour of the wife and @ Rs.700/- per month in favour of the son of the parties and made the maintenance order effective from the date of filing of the application under section 125 of the Cr. P. C.

ALPT
25/12/2

From evidence of the parties the marriage as well as birth of the son out of their wedlock is admitted. It was the allegation of the wife that she was subjected to both physical and mental torture in her matrimonial home on demand of more articles though during marriage articles were gifted. On 18.4.05 her father came to her in-laws house to settle the dispute amicably but her husband and her other in-laws misbehaved with her father, and thereafter, drove out her with her son in a single cloth. On 17.4.05 her husband tried to kill her and she informed the matter to her father over phone from STD booth, and thereafter, on 18.4.05 her father came to her in-laws house to settle the matter. Since 18.4.05 her husband did not enquire about her and did not pay her any money or maintenance. She stated in her evidence that her husband is a class I 'mistri' of computer.

Her cross examination reveals that she stated in Court specifically that she would never go to her in-laws house. She further stated that she is not willing to stay with her husband considering insecure condition in her in-laws house. Her evidence reveals that she stayed in her matrimonial home for four years but she never lodged any general diary or FIR at police station regarding physical and mental torture on her during her stay in her matrimonial home. Her evidence reveals that her father-in-law is above 70 years in age and her mother-in-law is above 60 years in age and, in matrimonial home besides father-in-law and mother-in-law, she and her husband were residing. She admitted that she went to Puri with her husband thrice. At the time of delivery of their son she went to her father's house only one month prior to birth of her son. In Court she even stated that she is not interested to talk with her husband. She is not

MS
25/7/09

aware whether her husband has opened one medi-claim policy for herself, for her son and started one insurance policy with the National Insurance Company. Her evidence reveals that she is the only daughter of her father. She stated that on 18.4.05 her father stayed in her in-law's for about one hour and she would not be able to produce any document to show that her father was treated in the hospital.

The evidence of P.W. 2 Ashim Basak, father of P.W. 1 Arundhuti Basak (the wife) reveals that after marriage his daughter was happy for some time but subsequently she was subjected to torture on more dowry and even she was assaulted. His evidence reveals that concerning demand of dowry and alleged torture on his daughter both physically and mentally no general diary or FIR was lodged at police station nor any complaint case was filed in any Court. On 17.4.05 he was informed by his daughter over telephone about grave situation in her matrimonial home and he came to her matrimonial home on 18.4.05. He stated that he was assaulted by O.P. and his parents and he informed the matter at Belghoria P.S. He stated that his son-in-law is a computer mechanic. Finally he stated that he is not willing to send his daughter to her husband's house.

The husband Partha Pratim Basak as OPW 1 in his evidence denied all the allegations made by the wife and stated that his monthly income is not Rs.15000/- per month but his monthly income varies from Rs.2000/- to Rs.2500/- per month. He is not a computer engineer but he works as a mechanic of repairing computers. It is true that in cross examination he admitted that he possess a mobile phone, land phone and visiting card. The address mentioned in the visiting card is his residential address. He stated that in order to

HL
2-5-07

prove his income he did not file any document in Court and would not be able to produce cash memo or any return. He stated that he, his elder brother went to his father-in-law's house to take his wife back but she did not come back. Another witness was examined as OPW 2 namely, Diptesh Kumar Basak who supported the evidence of OPW 1.

On a careful consideration of evidence of both parties it is clear that the wife is not at all willing to go to her husband's house. From evidence it is clear that without any just cause the O.P. wife is residing in her parents house. The story of physical and mental torture on her is not at all believable and it is clear that during her tenure of stay in matrimonial home for four years she visited Puri with her husband thrice, and that was, once before the birth of their child and twice after the birth of the child. If there was any demand of dowry and torture on her demanding dowry during her stay of four years in matrimonial home she would have definitely lodged complaint/FIR either in Court or at police station. Though in the application under Section 125 of the Cr. P. C. she alleged that she was not allowed to mix with any other or to go outside the matrimonial home, it is clear from her evidence that on 17.4.05 she talked with her father over telephone from one S.T.D. booth and for that reason on the next day i.e. on 18.4.05 her father came to matrimonial home and thereafter she went away to her father's house. It proves that there was no restriction on her to come out of matrimonial home and she had also the liberty to talk with her father over telephone. Both P.W. 1 and P.W. 2 stated about serious and grave situation on 17.4.05 but, the father did not come to her matrimonial home on 17.4.05 and he came to his daughter's matrimonial home only on 18.4.05. It clearly establishes that on

RR
25/2/18

17.4.05 there was no such serious or grave situation in the matrimonial home of O.P. wife, and had there been any such grave situation her father would have rushed to her matrimonial home on 17.4.05 during night after receiving the telephone. The evidence of the husband that his wife went away taking her ornaments and money also establishes that she was not driven out of matrimonial home in single cloth.

On consideration of the evidence and the circumstances I am of opinion that it is the wife who left the matrimonial home on her own and is staying in her father's house without any just cause. Section 125 (4) of the Cr. P. C. clearly lays down that no wife shall be entitled to receive an allowance for the maintenance from her husband if she without any sufficient reason refuses to live with her husband. The evidence and the circumstances clearly prove that the wife is living in her father's house without any sufficient cause. It is also clear that the husband made several attempts to take back her but, she did not come back to matrimonial home and in open court she clearly stated that she would never go to her husband's house. Considering the entire situation, circumstances and evidence, I am constrained to observe that there was no negligence on the part of the husband to maintain her. It is the wife who is not at all interested to come back to her husband's house. In this case in view of the provisions of Section 125(4) of the Cr. P. C., the O.P. wife is not entitled to claim any maintenance for herself. In this connection, the decisions cited by Mr. Chatterjee namely, Gita Das @ Sangita Das V. Tapas Das (supra) and Kumar Sankar Chakraborty V. Juthika Chakraborty (supra) are apposite. The learned Magistrate failed to

25/12/7

appreciate the evidence and circumstances and erred in law in awarding maintenance in favour of the O.P. wife.

Though there was no neglect on the part of the husband in respect his duty to the wife, the petitioner is bound to pay maintenance to the minor son. It is clear from evidence that the husband petitioner did not send any money or maintenance in favour of the minor son including the wife. It has been held that the wife is not entitled to claim any maintenance as she is residing in her father's house without any just cause. Being a father, the petitioner cannot deny his duty, responsibility and obligation to look after his minor son, and here he was negligent in maintaining his son as he did not pay any money or maintenance to his minor son. In evidence he admitted that he is unable to produce any paper to show that he is paying fees of school for the son or other educational costs. Accordingly, the petitioner-husband is bound to pay the maintenance in favour of his son and I am of opinion that the order of maintenance granted by the learned Magistrate for the minor son was correct and proper and the said order requires no interference. The order of the learned Magistrate granting maintenance @ Rs.700/- per month in favour of the minor son requires modification as said amount was insufficient for a school going son. Considering market price of essential commodities I direct that the petitioner shall pay maintenance at the rate of Rs.1000/- per month to his minor son with effect from date of the application under Section 125 of the Cr.P.C. and payment of maintenance of each month shall be made within 10th of the next month according to English calendar. Arrear to be paid in ten monthly instalments along with current monthly maintenance amount. Payment of maintenance, if any, in terms of

RS. 1000/-
2013/14

direction of this Court dated 12.6.06 shall stand adjusted against the amount of maintenance granted in favour of minor son of petitioner including arrears.

The revisional application is accordingly allowed in part. The order of the learned ACJM dated 10.4.06 granting maintenance in favour of the O.P. wife is set aside and the next part of the order granting maintenance in favour of the minor son of the O.P. wife is modified to the manner and extent as indicated above.

All interim orders passed earlier stand vacated.

Criminal Section is directed to forward a copy of this order to the learned ACJM, Barrackpore for information and necessary action.

P.N. Sinha, J.
(P.N. Sinha, J.)

for
25/2/07