

***CRIMINAL REVISION***

-----  
**Present: The Hon'ble Justice S.P. Talukdar**

**Judgment on : 25.03.2010.**

**C.R.R. No. 2408 of 2008**

**Smt. Soma Mullick**

**Vs.**

**The State of West Bengal & Anr.**

**POINTS:**

Maintenance-----Petitioner refused to live with husband - ----No justifiable reason for refusal----Petitioner whether entitled to maintenance----- Section 125, Sections 397/401 read with Section 482 ,Code of Criminal Procedure,1973, Hindu Marriage Act, Section 13

**FACTS:**

Petition for divorce and maintenance under section 125 of The Criminal Procedure Code filed by the wife against husband. Large number of allegations made by wife against husband including mental torture. Magistrate finding prima facie case for granting maintenance. Case transferred to 2<sup>nd</sup> Court of Judicial Magistrate, Howrah. Petitioner filed application for divorce under section 13 Hindu Marriage Act and for alimony pendent lite under section 24 of The Hindu Marriage Act. Learned Magistrate by order dated 7<sup>th</sup> August,2007,directed alimony pendent lite @ Rs.3000/- per month and further amount of Rs.5000/- towards litigation costs.Husband files application under section 482 of The Criminal Procedure Code against the order of Magistrate. Exhibit evidence before magistrate showing no sufficient ground for petitioner to refuse to live with husband. The Learned Court found Petitioner left her matrimonial house in 1995 and took away all her personal belongings. However, court found document marked Exhibit –‘A’ wherein Petitioner did not intend to serve her relationship with her husband. Said document was not challenged by the Petitioner in course of evidence.

**HELD:**

There is no ground found for petitioner to live separately from husband. On the contrary Petitioner has refused to live with husband without any justifiable reason.

PARA---12

Our society is not free from gender discrimination. No doubt, the law enforcing agencies and those linked up with administration of justice are required to be properly sensitized. But even after giving a long rope, this Court fails to find any sufficient material so as to justify grant of any maintenance in favour of the present petitioner.

PARA---13

The impugned order does not seem to suffer from any impropriety or infirmity, which can justify interference by this Court. The direction for refund of the interim maintenance is too harsh and the said direction is set aside. The impugned order is only modified to the said extent.

PARA---14

#### **CASES CITED:**

**Mustafa Shamsuddin Shaikh Vs. Shamshad Begum Mustafa Shaikh & Ors., 1991 CRI. L. J. 1932**

**Smt. Atashi Sen Vs. Sri Jayanta Sen & Anr., 2001 C Cr LR (Cal) 387**

***Quinn v. Leathem* [1901] AC 495 at 506**

For the Petitioner : Mr. Sandipan Ganguly,  
Mr. Partha Pratim Sarkar.

For the Respondents : None appears

#### **THE COURT:**

1.The petitioner, Soma Mullick, by filing the instant application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, has prayed for setting aside of the order dated 8<sup>th</sup> April, 2008 passed by the learned 2<sup>nd</sup> Court of Judicial Magistrate, Howrah, in Misc. Case No. 186 of 2002.

2.The backdrop of the present case may briefly be stated as follows:-

The petitioner approached the learned Court of Magistrate with an application under Section 125 of Cr.P.C. claiming maintenance. In the said petition, it was submitted that the marriage was solemnized between the petitioner and the opposite party No. 2 in the house of her father at Andul on 27.7.1994 according to Hindu rites and customs. After marriage, the petitioner was taken to her matrimonial home but she was not accepted by opposite party No. 2, his mother and two married sisters. Apart from criticizing her parents and other relations, they also used to express their disgust regarding the quality of the ornaments as well as other articles given at the time of the marriage; they used to abuse the petitioner in filthy language.

The petitioner waited with the expectation that the complexion might gradually change in her favour. Opposite party No. 2 was totally indifferent to her and even did not allow the petitioner to share the same bed. The petitioner was denied access to her relatives and friends. All on a sudden, the petitioner was once taken to a doctor and was compelled to undergo abortion. When she conceived for the second time, O.P. No. 2 openly declared that he would not shoulder any responsibility. The petitioner was, thus, subjected to consistent neglect and humiliation. The petitioner was given a false impression that O.P. No. 2 had done M.Sc in Chemical Biology and was working as a Junior Scientific Officer in the Institute of Chemical Biology at Jadavpur drawing a salary of Rs. 17,000/- per month. It, however, transpired that he was a Junior Laboratory Assistant. O.P. No. 2 repeatedly threatened to divorce the petitioner and was subjected to cruelty in various forms. Being left with no option, she had to take shelter at her paternal home. Her husband never took any step for taking her back nor did he pay any maintenance.

3. The case was transferred to the learned 2<sup>nd</sup> Court of Judicial Magistrate, Howrah. After taking into consideration the evidence on record and other relevant facts and materials, learned Court by order dated 8<sup>th</sup> April, 2008 rejected the application for maintenance and directed the petitioner to refund the interim maintenance received by her.

4. The petitioner filed an application under Section 13 of the Hindu Marriage Act praying for a decree of divorce. The same was registered as Mat Suit No. 240 of 2002. She also filed an application under Section 24 of the Hindu Marriage Act in the said suit, thereby praying for alimony *pendente lite*. Learned Court by order dated 7<sup>th</sup> August, 2007 granted maintenance to the tune of Rs. 3,000/- per month and a further sum of Rs. 5,000/- as litigation cost.

5. Being aggrieved by and dissatisfied with the order dated 8<sup>th</sup> April, 2008 passed by the learned Magistrate, the petitioner approached the Court for redressal of his grievance.

6. Steps for service of notice and copy of the application upon the O.P. No. 2 were duly taken. None, however, appeared for the said O.P. No. 2. Mr. Ganguly, appearing as learned Counsel for the petitioner, sought to assail the order dated 8.4.2008 on the ground that the learned Court failed to appreciate the evidence on record in its proper perspective.

7. It appears from the materials on record that the parties before the learned Court examined themselves as witnesses in support of their respective claims. Learned Court, after analyzing the evidence on record, found it difficult to accept the allegation that the petitioner was subjected to torture, mental or physical, at her matrimonial home. It could be that disparity in the standard of life of the two families i.e., the family of the petitioner prior to her marriage and that of O.P. No. 2 could be at the root of the disputes and differences. But the same took the shape and form of antagonistic contradictions since there had been no fruitful reconciliation. Learned Court found that the present petitioner left her matrimonial home in 1995 and took away of her personal belongings. This had not been effectively denied by the petitioner. She even expressed her dissatisfaction in respect of the marriage and admittedly she had filed a suit for divorce seeking dissolution of marriage. Learned Court appears to have placed reliance on a document, being marked Exhibit A, while observing that the said

document could reflect the intention of the petitioner to sever her marital ties with O.P. No. 2. The said document had not even faced any challenge. Learned Court, thus, found that there could be no sufficient ground for the petitioner to live separately and away from O.P. No. 2. In absence of any reasonable ground justifying such separate stay, as held by learned Court, the petitioner certainly could not be entitled to get any maintenance from O.P. No. 2.

8. Mr. Ganguly, in course of his submission, referred to the decision of Division Bench of the Bombay High Court in the case between **Mustafa Shamsuddin Shaikh Vs. Shamshad Begum Mustafa Shaikh & Ors., as reported in 1991 CRI. L. J. 1932**. He referred to the observation made by the learned Bench that ‘a right to claim maintenance under the Code is not dependent upon who was right and who was wrong in the matrimonial disputes. The Magistrate is duty bound to award maintenance once it is found that the wife is unable to maintain herself and her husband has means but still neglects or refuses to maintain the wife.’

9. He further referred to an earlier decision of the learned Single Bench of this Court in the case between **Smt. Atashi Sen Vs. Sri Jayanta Sen & Anr., as reported in 2001 C Cr LR (Cal) 387**. Learned Court in the backdrop of the said case held that the husband also simply because he offered the wife to live with him, cannot escape from his liability to maintain his wife.

10. Apart from the fact that the factual matrix of the cases, as referred to, is significantly different from that of the present one, it may be mentioned that “every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found.” (Ref: *Quinn v. Leathem* [1901] AC 495 at 506).

11. Moreover, it is worth mentioning that none of the decisions as relied upon by Mr. Ganguly, seems to have effectively dealt with sub-section (4) of Section 125 of the Cr.P.C. The same reads :

“(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

12. In the present case, there is absolutely no material so as to establish that the petitioner has any sufficient reason to live separately. It rather shows that she had refused to live with her husband and that too, without any justifiable reason.

13. This Court quite well appreciates that our society is not free from gender discrimination. No doubt, the law enforcing agencies and those linked up with administration of justice are required to be properly sensitized. But even after giving a long rope, this Court fails to find

any sufficient material so as to justify grant of any maintenance in favour of the present petitioner.

14. The impugned order does not seem to suffer from any impropriety or infirmity, which can justify interference by this Court. But so far the direction for refund of the interim maintenance is concerned, I think it will be too harsh and the said direction is set aside. The impugned order is only modified to the said extent.

16. The present application being C.R.R. No. 2408 of 2008 stands accordingly disposed of.

17. Criminal department is directed to supply certified copy of this judgment, if applied for, as expeditiously as possible.

**(S.P. Talukdar, J**