

DISTRICT : DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Criminal Revision No. 09 OF 2017

(This revision petition has been filed praying for setting aside the impugned judgment and order dated 16-12-2016, passed in Misc. case No. 77 of 2016, under Section 125 Cr.P.C., by the learned Judicial Magistrate First Class, Dhubri, Shri B. Kshetri)

Abdul Malek

...Petitioner

Versus

Musstt. Jahinur Bibi

... Opposite Party

Petition filed on : 06-02-2017

Arguments heard on : 07-09-2017

Judgment delivered on : 16-09-2017

Advocates who appeared in this case

Shri Manzur Mustafa Ahmed, Advocate for the Petitioner

Shri A. L. Bairagi, Advocate for the Opposite Party.

J U D G M E N T

1. This revision petition has been filed under Section 397 Cr.P.C. by the petitioner/opposite party Abdul Malek (herein after referred to as "the opposite party"), praying for setting aside the impugned judgment and order dated 16-12-2016, passed by the learned Judicial Magistrate, First Class, Dhubri, Shri B. Kshetri in Misc. case No. 77 of 2016, under Section 125 Cr.P.C., whereby the learned Magistrate has directed the opposite party to pay maintenance allowances @ Rs.2,000/- per month to the opposite

party/petitioner Musstt. Jahinur Bibi (hereinafter referred to as "the petitioner") and @ Rs.2,000/- per month to the petitioner's minor daughter, from the date of filing of the petition.

2. The said Misc. case No. 77 of 2016 was filed by the petitioner under Section 125 Cr.P.C., praying for granting her maintenance allowance @ Rs.6,000/- per month for herself and @ Rs.4,000/- per month for her minor daughter from the opposite party, who happens to be her husband. The case of the petitioner in brief is that her marriage with the opposite party was solemnized on 19-02-2014 as per the Islamic rites. After the marriage, the opposite party subjected her to torture demanding dowry and on account of her failure to meet his unlawful demand for dowry, the opposite party severely assaulted her and drove her out of the matrimonial home. Left with no alternative, she took shelter in her parental home. On 21-05-2015, she gave birth to a daughter at her parental home. The opposite party never came to meet her and also never paid any maintenance allowance to her. She has no source of income and has been finding it difficult to maintain herself and her minor daughter. The opposite party is an able bodied person. He has got some agricultural land and also owns a shop at Balajan market. From all sources, the opposite party earns about Rs.40,000/- per month. Therefore, the petitioner has filed the said Misc. Case No. 77 of 2016, under Section 125 Cr.P.C., praying for granting her maintenance allowances @ Rs.6,000/- per month for herself and @ Rs.4,000/- per month for her minor daughter from the opposite party.

3. The opposite party has contested the case by filing a written statement. In his written statement, the opposite party has taken all the routine pleas, denied the case of the petitioner and has prayed for dismissal of the maintenance petition. On merit, he averred that he never subjected the petitioner to torture demanding dowry. He has further stated that the petitioner has been living separately from him of her own accord, without any justifiable reason. He has further stated that he does not have any agricultural land and also does not have any shop at Balajan market. He is a daily wage worker. His income is not Rs.40,000/- per month. He has his parents, brothers and sisters and has to look after them. Therefore, he has stated that he is not in a position to pay any maintenance allowance to the petitioner and her

minor daughter. Therefore, he has prayed for dismissal of the maintenance petition.

4. The learned Magistrate formulated the following points for determination:

- (1) Whether the petitioner is wilfully living separately from the 1st party?
- (2) Whether the petitioner and her child were neglected by O/P in spite of having sufficient means for maintain them?
- (3) If so, what should be the quantum of the maintenance?

5. During the course of hearing, both the parties examined only themselves as their witness.

6. After appreciating the evidence, the learned Magistrate passed the impugned judgment and order dated 16-12-2016 directing the opposite party to pay maintenance allowances @ Rs.2,000/- per month to the petitioner and @ Rs.2,000/- per month her minor daughter from the date of filing of the petition.

7. Aggrieved, the opposite party filed this revision petition on the followings amongst other grounds:

I. That the learned Magistrate has erred in law and fact in passing the impugned judgment and order and hence, the impugned judgment and order is liable to be set aside and quashed.

II. That the learned Magistrate has passed the impugned judgment and order without applying judicial mind and hence, the impugned judgment and order is liable to be set aside and quashed.

III. That the learned Chief Judicial Magistrate did not appreciate the evidence in its proper perspective and has arrived at an erroneous decision.

IV. That the maintenance allowance awarded is too high and is beyond the paying capacity of the opposite party.

V. That awarding maintenance allowance from the date of filing of the petition is not justified.

VI. That the petitioner deserted him and has deprived him from the love and affection of his minor daughter and hence, she is not entitled to receive separate maintenance allowance for the maintenance of her minor daughter.

VII. That the petitioner has no ground to live separately from him.

8. Now the question that requires to be answered in this revision petition is whether the impugned judgment and order dated 16-12-2016 passed by the learned Magistrate in Misc. Case No. 77 of 2016 is incorrect, illegal and improper and hence, is liable to be set aside and quashed?

9. I have carefully examined the impugned judgment and order dated 16-12-2016, the evidence on record and after hearing the arguments advanced by the learned counsels for both the sides, give my decision as follows:-

10. The learned counsel for the opposite party vehemently argued that the learned Magistrate has erred in law and facts in passing the impugned judgment and order in as much as the learned Magistrate did not appreciate the evidence in its proper perspective and has arrived at an erroneous decision. Therefore, he has submitted that the impugned judgment and order is liable to be set aside and quashed.

11. Per contra, the learned counsel for the petitioner has submitted that applying judicial mind and relying on the evidence on record, the learned Magistrate has rightly passed the impugned judgment and order. Therefore, he has submitted that the revision petition may be dismissed and the impugned judgment and order may be upheld.

12. The factual matrix of the case has been set out in detail by the learned trial court in the impugned judgment. It is, therefore, not necessary to recapitulate the same all over again except to the extent it is necessary to do so for the disposal of the revision petition.

13. As can be seen from the above discussion, admittedly the petitioner is the lawfully married wife of the opposite party and the opposite party is also the father of the minor daughter of the petitioner. The grievance of the opposite party is that the amount of maintenance allowance awarded by the learned trial court is too high and is beyond his paying capacity. His further grievance is that the learned trial court should not have awarded any maintenance allowance for the maintenance of the minor daughter of the petitioner and the maintenance allowance should not have been awarded from the date of filing of the petition. He has alleged that the petitioner has been living separately from him of her own accord, without any justifiable reason. Therefore, he has submitted that the petitioner is not entitled to any maintenance allowance from him. He has further stated that he has his

parents, brothers and sisters and he has to look after them. Therefore, he is not in a position to pay any maintenance allowance to the petitioner and her minor daughter. Therefore, let us now discuss whether the said contentions of the opposite party are tenable in the eye of law.

14. The maintenance allowance @ Rs.2,000/- per month awarded to the petitioner cannot be held to be on the higher side in these days of ever increasing general price index. The learned trial court has also rightly awarded maintenance allowance @ Rs.2,000/- per month to the petitioner for the maintenance of her minor daughter as the father's liability to maintain his minor child does not cease merely because of the fact that the child has been living with the mother on account of natural love and affections. Therefore, the learned trial court has rightly awarded the maintenance allowances @ Rs.2,000/- per month to the petitioner and @ Rs.2,000/- per month to the minor daughter of the petitioner. Further, the order to pay the maintenance allowance from the date of filing of the petition is also not illegal. In fact, maintenance allowance should be directed to be paid from the date of filing of the petition and not from the date of order. Further, the maintenance allowances @ Rs.2,000/- each, to the petitioner and her minor daughter awarded by the learned trial court is on the lower side. The said amount will be required by them for their survival in these days of ever increasing general price index and with the said amount, they will not be able to live a decent life.

15. Further, the contention of the opposite party that the petitioner has been living separately without any justifiable reason is not correct. Because, the petitioner has deposed that the opposite party has subjected her to torture demanding dowry and on account of her failure to meet his unlawful demand for dowry, he has driven her out of the matrimonial home. Left with no alternative, she took shelter in her parental home and in her parental home; she has given birth to the daughter. Had the opposite party not driven out the petitioner from the matrimonial home, he would definitely have brought her back after the birth of the child. But, he did not do so. Therefore, it must be held that the petitioner has left the matrimonial home under compelling circumstances and not of her own accord. Hence, the petitioner is entitled to maintenance allowance for the maintenance of herself and her minor daughter from the opposite party.

16. The further contention of the opposite party that he is a daily wage worker and his daily income is Rs.200/-, he does not have any grocery shop, he has his parents, brothers and sisters and has to look after them and hence, he is not in a position to pay any maintenance allowance to the petitioner and her minor daughter is not tenable in the eye of law. Even assuming, while denying that the opposite party is a daily wage worker, then also his monthly income will be about Rs.12,000/- as, now a day, a daily wage worker earns about Rs. 400/- per day and not about Rs. 200/- per day. Therefore, if 1/3 of the income of the opposite party is held to be required for his personal expenses, 1/3 for meeting his social obligations, the petitioner and her minor daughter are entitled to receive the remaining 1/3, i.e., Rs.4,000/- per month, as maintenance allowance. Therefore, as the learned trial Court has awarded maintenance allowance @ Rs.2,000/- per month each, to the petitioner and to her minor daughter, in total Rs.4,000/- per month, the same is reasonable and is within the paying capacity of the opposite party.

17. In the case of **BHUWAN MOHAN SINGH Vs. MEENA, reported in AIR 2014 SC 2875, (2015) 6 SCC 353** the Hon'ble Supreme Court has held that:

"Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto

dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

18. Again in the case of **Kirtikant D. Vadodaria Vs. State of Gujarat and Another**, reported in (1996) 4 SCC 479, the Hon'ble Supreme Court has ruled that :

While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.

19. Therefore, the learned court below has rightly passed the impugned order. In view of the above, the impugned judgment and order dated 16-12-2016 is neither illegal, nor incorrect, nor improper and hence, the revision petition is liable to be rejected.

ORDER

20. In the result, considering the entire facts and circumstances of the case, the revision petition is rejected.

21. The impugned judgment and order dated 16-12-2016, passed in Misc. case No. 77 of 2016, under Section 125 Cr.P.C., by the learned Judicial Magistrate First Class, Dhubri, Shri B. Kshetri is correct and proper and is hereby affirmed

22. Return the LCR along with a copy of this judgment to the learned court below, immediately.

23. Signed, sealed and delivered in the open Court on this the 16th day of September, 2017, at Dhubri.

(A.Chakravarty)
Sessions Judge, Dhubri

Dictated & corrected by me.

(A.Chakravarty)
Sessions judge, Dhubri