

# 2021 SCeJ 931 (Cal.)

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HIGH COURT AT CALCUTTA

*Before: Justice Bibek Chaudhuri*

REHENNA KHATOON

*Versus*

JARGIS HOSSAIN

CRR 678 of 2018

24.06.2021

**(i) Criminal Procedure Code, 1974, Section 125 - Courts below refused to grant maintenance in favour of the petitioner wife on the ground that she unilaterally granted divorce to her husband and her conduct was not inspiring and she was not considered to be a destitute as she wilfully neglected her husband - Law is absolutely settled that even a divorced wife is entitled to get maintenance till her remarriage if she is unable to maintain herself - The impugned order does not suggest any finding as to whether the petitioner was able or unable to maintain herself or not independently - Order set aside. #2021 SCeJ 931 (Cal.)**

**(ii) Criminal Procedure Code, 1974, Section 399, 482 - This Court is not unaware of the fact that revisional jurisdiction of the Learned Sessions Court and that of this Court is concurrent and in spite of the wrath contained in Section 399 of the Code of Criminal Procedure, this Court under its inherent power can correct the wrong committed by the Trial Court as well as Revisional Court under its inherent power. #2021 SCeJ 931 (Cal.)[Para 6]**

For the Petitioner : Mr. Rajeshwar Chakraborty.

Judgment

Bibek Chaudhuri, J.

1. In spite of repeated service of notice of the instant revision, the opposite party prefers to remain absent. Therefore, the instant revision is taken up for hearing and disposal on merit on the basis of submission made by the Learned Advocate for the petitioner.

2. In this revision the petitioner being the wife of the opposite party has challenged an order dated 18th November, 2017 passed by the Learned Additional Sessions Judge, 5th

Court, Murshidabad affirming the Judgement and Order passed upon a proceeding under Section 125 of the Code of Criminal Procedure filed by the petitioner praying for maintenance for herself and her minor daughter which was registered as M. R. Case No. 131 of 2011.

3. Suffice it to say that M. R. Case No. 131 of 2011 was filed by the petitioner in the 1st Court of the Learned Judicial Magistrate, Berhampore, Murshidabad praying for maintenance for herself and her minor daughter under Section 125 of the Code. The Learned Magistrate refused the prayer for maintenance for the petitioner but allowed the said prayer for the minor daughter of the parties.

4. The petitioner challenged the said order by filing Criminal Revision No. 138 of 2015 which was heard and disposed of by the Learned Additional Sessions Judge, 5th Court, Murshidabad affirming the order passed by the Learned Judicial Magistrate.

5. I have heard the Learned Advocate for the petitioner and carefully perused the impugned order. The Learned Additional Sessions Judge rejected the prayer for maintenance of the petitioner on the following ground:-

“Section 125 of the Criminal Procedure Code mandates that a wife be entitled to receive maintenance from her husband, if husband having sufficient means neglects or refuses to maintain his wife. The divorced wife until her remarriage falls under the meaning of wife. But in case wife without any reason refuses to live with her husband, she is not entitled to receive maintenance. In the present case, the revisionist is a divorcee. As per observation of the Hon’ble Apex Court, divorcee is entitled to receive maintenance from her erstwhile husband until she got remarried. Here, the wife has on her own accord unilaterally granted divorce to her husband. The husband in his written objection has stated that the wife was found to be in objectionable situation with some third person by the villagers, though the same was not being substantiated by any corroborative witnesses. Learned Magistrate has observed that conduct of wife was not inspiring and she was not considered to be a destitute as wilful neglect on part of her husband so to maintain her was not being proved, for the same maintenance in her favour was denied. I do not find that any interference is required by this Court regarding such observation. This Court concurs with the observation of the Court below that the revisionist/wife who voluntarily granted talak is not entitled to claim maintenance from her husband as because I do not find any act of violence or cruelty that the opposite party has perpetrated upon the revisionist so to compel her to leave her matrimonial home. Moreover, she concealed the fact that she has granted talak. Thus, the revision to that respect is dismissed on contest”.

6. I have also perused the order passed by the Learned Judicial Magistrate, 1st Court at Berhampore in M. R. Case No. 131 of 2011. Both the Courts below refused to grant maintenance in favour of the petitioner on the ground that the petitioner unilaterally granted divorce to her husband and the conduct of the petitioner/wife was not inspiring and she was not considered to be a destitute as she wilfully neglected her husband. Therefore, the husband of the petitioner is not entitled to pay maintenance to the petitioner. This Court is not unaware of the fact that revisional jurisdiction of the Learned Sessions Court

and that of this Court is concurrent and in spite of the wrath contained in Section 399 of the Code of Criminal Procedure, this Court under its inherent power can correct the wrong committed by the Trial Court as well as Revisional Court under its inherent power. The Learned Trial Judge committed illegality when she held that a divorced wife is not entitled to get maintenance. The petitioner moved in revision for redressal of the said wrong but she was again wronged by the Learned Revisional Court on the ground that the petitioner was allegedly found in compromise situation with a third person by the opposite party and accordingly she was not dutiful to her husband.

7. Law is absolutely settled that even a divorced wife is entitled to get maintenance till her remarriage if she is unable to maintain herself. The impugned order does not suggest any finding as to whether the petitioner was able or unable to maintain herself or not independently.

8. In view of the above discussion, this Court is inclined to exercise its inherent power by setting aside the order passed by the Learned Additional Sessions Judge, 5th Court, Murshidabad in Criminal Revision No. 138 of 2015 so far as it relates to refusal of maintenance for the petitioner. Accordingly, the instant revision is allowed. The impugned order passed in Criminal Revision No. 138 of 2015 and M. R. Case No. 131 of 2011 so far as it relates to non payment of maintenance for the petitioner is set aside. The Learned Court below is directed to rehear M. R Case No. 131 of 2011 and passed a fresh order on the point as to whether the petitioner being a divorced wife is entitled to get maintenance under the facts and circumstances of the case.

9. Let a copy of this order be sent to the Learned Courts below for information and compliance.

10. The petitioner is at liberty to act upon the server copy of this order.

SS