

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1256 of 2017

With

IA No. CRAN/2/2017 (Old No. CRAN/3720/2017)

Prasenjit Mukherjee

-vs.-

State of West Bengal and Ors.

For the Petitioner : Mr. Pratim Priya Dasgupta,

For the opposite party No.1 : Mr. Ayan Bhattacharjee,

Heard on : 21.06.2021, 23.06.2021, 24.06.2021,
25.06.2021 & 29.06.2021

Judgment on : 02.09.2021

Tirthankar Ghosh, J:-

The present revisional application has been filed in connection with Miscellaneous Case No. 202 of 2014 under Section 125 of the Code of Criminal Procedure, 1973 pending before the Learned Judicial Magistrate, 6th Court, Alipore along with the orders passed in connection with the said

proceedings, particularly the order dated 03.04.2014 passed by the said Court.

The background of the case is as follows:

The wife (opposite party no.2) herein filed an application under Section 125 of the Code of Criminal Procedure on or about 04.04.2014 being Misc. Case No. 202 of 2014. In connection with the said proceedings an application for interim maintenance was preferred by the opposite party, thereby praying for an interim maintenance of Rs.10,000/- per month to be paid during pendency of the case under Section 125 of the Code of Criminal Procedure. On or about 04.05.2015 the learned Judicial Magistrate, 6th Court, Alipore was pleased to allow the application for interim maintenance thereby directing the petitioner (husband) to pay sum of Rs.3,000/- per month from the date of the order till disposal of the case and fixed 02.07.2015 for evidence. On or about 05.05.2015 an application for dissolution of marriage under Section 13B of the Hindu Marriage Act, 1955 was preferred at the instance of the present petitioner as well as the opposite party no.2 being MAT Suit No. 124 of 2015. In paragraph 9 of the application under Section 13B of the Hindu Marriage Act it has been contended as follows:

“9. That the petitioners have mutually agreed and it has been amicably settled by and between the parties that the petitioner No.1 i.e. the husband shall once and for all pay a consideration amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) only to the petitioner

no.2 i.e. the wife as full and final settlement for past Present and future maintenance and this is unequivocally agreed in presence of the parents, well-wishers and friends of both the parties that henceforth the petitioner No.2 shall stated absolutely ceased, relinquished and forego from any claims and demands against the petitioner no.1 for her maintenance as well as in respect of any of his movable and immovable properties. The petitioner No.1 her already returned all the stridhan articles of the petitioner no.2 and the petitioner no.2 states that she shall have no claim in respect of the stridhan articles in future.”

Consequently, affidavit-in-chief of the petitioner (husband) as well as the opposite Party no.2 (wife) was filed before the learned Additional District and Sessions Judge, Chandannagore.

The learned Additional District and Sessions Judge, Chandannagore by an order dated 17.11.2015 was pleased to pass a decree on mutual consent thereby dissolving the marriage by a decree of divorce under Section 13B of Hindu Marriage Act, 1955. It is reflected in the examination-in-chief of the wife (opposite party no.2) in her cross-examination before the learned Additional District and Sessions Judge that she has received Rs.2,50,000/- in total from the petitioner Prasenjit Mukherjee as a lump-sum maintenance. Learned Judge while passing the decree has also recorded the same in the order no.4 dated 17.11.2015.

The present petitioner (husband) thereafter, preferred an application on 31.05.2016 under Section 127 of the Code of Criminal Procedure, inter

alia, contending that as a sum of Rs.2,50,000/- has been paid to the wife as full and final settlement for past, present and future maintenance claims which arise under the proceedings under Section 125 of the Code of Criminal Procedure should be set aside. The learned Magistrate on an appreciation of the materials observed that as the application under Section 13B of the Hindu Marriage Act did not contain any whisper regarding pendency of the application under Section 125 of the Code of Criminal Procedure before the said Court, there is no ground to consider the prayer of the husband and the proceedings under Section 125 of the Code of Criminal Procedure should continue and the husband was bound to pay a monthly maintenance to accommodate the wife. The learned Magistrate as such proceeded to dismiss the application under Section 127 of the Code of Criminal Procedure and fixed 04.07.2017 for evidence.

Mr. Dasgupta learned advocate appearing for the petitioner (husband) submits that once the wife made a declaration and accepted on oath before the Civil Court regarding the amount of maintenance she is subsequently debarred from making any claim under the provisions of Chapter IX of the Code of Criminal Procedure. In support of his contention learned Advocate for the petitioner relied upon the following judgments: Ruchi Agarwal -Vs.- Amit Kumar Agarwal and Ors, (2005) 3 SCC 299; an unreported judgment of this Hon'ble Court passed in CRR No. 3771 of 2014 in Subhankar Majumdar -Vs. - Banani Majumdar; Nirmal Kumar Jana -Vs. - The State, 2002 SCC OnLine Cal 102.

It would be pertinent before proceeding further to refer the conflicting judgments of this Court in similar factual background. In an un-reported judgment of this Hon'ble Court passed in CRR No. 3711 of 2014 in Subhankar Majumdar –Vs. – Banani Majumdar it has been held:

“In view of my above observation, the order dated September 2, 2014 passed by learned Judicial Magistrate, 5th Court, Barrackpore, in Misc. Case No.10/2014 is modified to the extent that the opposite party wife is not entitled to claim any maintenance from the petitioner husband under Section 125 of the Code of Criminal Procedure after December 18, 2013 on which date the decree mutual divorce was granted by the court. The execution of warrant of arrest pending against the petitioner husband in connection with Misc. Execution Case No.21 of 2014 is stayed for a period of 8 weeks on condition that the petitioner husband will deposit Rs.50,000/- as arrears of maintenance in favour of the opposite party wife before the court of learned Judicial Magistrate, 5th Court, Barrackpore within a period of eight weeks from the date of this order, in default of deposit of the amount within the stipulated period, the warrant of arrest will revive.”

Further reliance has been placed by the petitioner in Nirmal Kumar Jana –Vs. – The State, 2002 SCC OnLine Cal 102 it has been held :

“9. Now upon perusing the aforesaid decisions, cited on behalf of the present petitioner and the decisions as referred to above in the judgment of the learned lower Court, I am of the clear opinion that in the instant case when the compromise effected between the parties in relation to the maintenance case has not been set aside and varied as yet by any competent Court then in the absence of any specific condition, incorporated in the said compromise order, the same cannot be enforced by putting the said order into execution and accordingly, the execution proceeding started by the wife-petitioner on the strength

of the aforesaid compromise order cannot at all be allowed to be continued.

10. *I am, however, not unmindful with regard to the fact whether or not the wife/opposite party can claim maintenance afresh upon pleading any change in the circumstances but here in this case, I am not confronted with any such question.*

11. *So, upon assessing the entire materials available before this forum, I am plainly of the opinion that the wife-opposite party cannot put the order of maintenance of this case into execution for realisation of the same from the husband-petitioner since earlier by effecting compromise on their own she gave up her claim for future maintenance after receiving a lump sum amount of Rs. 9000/-.”*

On the contrary Mr. Bhattacharjee, learned advocate appearing for the wife (opposite party no.2) relied on a series of judgments to substantiate that even after a lump-sum amount has been received by the wife as maintenance under Section 13B of the Hindu Marriage Act, the wife is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure.

Mr. Bhattacharjee, relied on a series of judgments which are as follows: an unreported judgment of this Court in CRR 2445 of 2008 in Re. Smt. Sarathi Manna; Laxmikanta Panja –Vs. – Susoma Rani Panja & State, 2002 SCC OnLine Cal 377; Sadasivan Pillai –Vs. – Vijayalakshmi, 1987 CRI. L.J. 765; Manoka Chatterjee –Vs. – Swapan Chatterjee, 2001 SCC OnLine Cal 629; Nitya Nanda Ghorai –Vs. – Sneha Lata Deyee, 1960 SCC OnLine Cal 159 and Nagendrappa Natikar –Vs. – Neelamma, (2014) 14 SCC 452.

To that effect the learned advocate relies upon an un-reported judgment of this Court in CRR 2445 of 2008 in Re. Smt. Sarathi Manna it has been held :

“I am unable to accept such reasonings of the learned Additional Sessions Judge. Firstly, even if a salishnama executed by the wife and she had received certain amounts therefrom, the same cannot be said to foreclose her right to claim future maintenance in an appropriate case. Right to claim maintenance is a statutory right and it is settled law that there cannot be any estoppel on such claim. What is to be considered is whether in the facts of the case the quantum of money received by the wife under the terms of settlement is sufficient to maintain her. If that is not so, right to claim future maintenance survives and can be enforced by a deserted wife in accordance with law. In the facts of the case the order of maintenance was passed in 2007 whereas she had received a paltry sum of Rs. 40,000/- in 1997 and undoubtedly the same cannot be said to be sufficient to take care of her basic needs. In such factual backdrop, I am of the opinion that the order of maintenance granted by the learned Magistrate was wholly justified and ought not to have interfered with.”

In Laxmikanta Panja -Vs. - Susoma Rani Panja & State, 2002 SCC OnLine Cal 377 it has been observed :

“5. Having heard the submissions of the respective parties, I am of the view that no cause for interference have been made out in the present application. Firstly, it is correct as pointed out by the learned advocate for the O.P. that a compromise effected between the parties cannot have any binding effect upon any one. The decision sought by him (supra) is absolutely trite position and cannot be ignored. The apart by a necessary implication if the compromise petition is redundant that records of the original petition of Misc. Case No. 46/1993 under section 125 Cr. P.C. i.e., the main petition becomes redundant to be

looked into and as already the order has been put into execution, it is now only proper that the same reach its logical conclusion which have been pending since 1999 and already the ld. S.D.J.M. has fixed the same for hearing, I do not feel this court should interfere in the matter in the absence of any illegality. Accordingly, having found no merit in the revisional application, the same is dismissed.”

I have considered the submissions advanced by both the parties and found that there are conflicting views of this Court in respect of the maintainability of proceedings under Section 125 of the Code of Criminal Procedure after the Civil Court has dissolved the marriage under Section 13B of the Hindu Marriage Act wherein divorce was prayed for by way of mutual consent and one time maintenance was agreed between the parties.

In Rajnesh –Vs. – Neha and Anr reported in (2021) 2 SCC 324 the Hon’ble Supreme Court while considering the provision relating to maintenance in respect of the proceedings arising out of Section 125 of the Code of Criminal Procedure, under Hindu Adoption and Maintenance Act, under the provision of Protection of Women from Domestic Violence Act, 2005 and the Hindu Marriage Act, 1955 was pleased to pass the following directions in paragraph 127(a),128, 128.1, 128.2 and 128.3 which are set out below:

“127. (a) Issue of overlapping jurisdiction

128. *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is*

uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

128.1. *(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.*

128.2. *(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.*

128.3. *(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”*

Further in paragraph 57 of the aforesaid judgment the Hon’ble Supreme Court was pleased to rely upon Rakesh Malhotra –Vs. – Krishna Malhotra reported in (2020) 14 SCC 150 paragraph 11 and 12 of the said judgment which is extracted below:

“11. *Since Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the party concerned seeking modification, the logical sequitur would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the*

situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters, the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a competent court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.

12. *In the circumstances, we allow these appeals, set aside the view taken by the High Court and direct that the application preferred under Section 125 of the Code shall be treated and considered as one preferred under Section 25(2) of the Act. Since the matter pertains to grant of maintenance, we request the High Court to consider disposing of First Appeal No. 109 of 2013 along with all the pending applications as early as possible and preferably within six months from today.”*

On an examination of the controversy involved in the present case in the background of the law laid down in Rakesh Malhotra (supra) once it comes to the knowledge of the learned Magistrate that the marriage between the parties have been dissolved by a decree of divorce under the relevant provisions of Section 13B of the Hindu Marriage Act and it is found that the wife has received a lump-sum amount as onetime payment towards maintenance, what would be the procedure adopted in the following circumstances:

- (a) A fresh case under Section 125 of the Code of Criminal Procedure is filed.
- (b) The proceedings under Section 125 of the Code of Criminal Procedure was pending and the Civil Court has dissolved the marriage by decree of divorce and there was no information before the Civil Court regarding the pendency of the proceedings under Section 125 of the Code of Criminal Procedure.
- (c) Procedure/steps to be adopted by the learned Magistrate if the proceedings under Section 125 of the Code of Criminal Procedure and the proceedings under Section 13B of the Hindu Marriage Act (which has already been decided) are in different sub-divisions or different districts or different States.

As the aforesaid questions involve serious ramification so far as the proceedings under Section 125 of the Code of Criminal Procedure are concerned, I am of the view that the same is to be referred and settled by a Larger Bench (as there are conflicting judgments of this Court on the point).

Accordingly, the record of the case be placed before The Hon'ble The Chief Justice (Acting), High Court at Calcutta.

(Tirthankar Ghosh, J.)