

CRIMINAL REVISION

Present: The Hon'ble Justice Ashim kumar Roy

Judgement on—26.04.2010

CRR No- 3157 of 2008

Susanta Naskar

Versus

The State & Ors

Points:

Maintenance- Scope of Second revision- In granting maintenance whether court has to consider the actual income or the capacity of the husband to earn- Second revision at the instance of the selfsame party whether permissible when order is not manifestly illegal and not brings out a situation which is completely an abuse of the Court.-Code of Criminal Procedure, 1973 Ss.397(3), 401

Facts:

The petitioner is the owner of a Spectacle Shop and he used to earn Rs.8000/-. A sum of Rs- 5000/- was awarded in favour of the opposite party no-2/ wife in connection with a proceeding under Section 125 of the Code of Criminal Procedure. Against the said order, the petitioner/ husband preferred a criminal revision before the Sessions Court and having lost there has moved this criminal revision.

Held--

In view of the specific statutory bar contained in Section 397 (3) of the Code of Criminal Procedure, the entertainment of the second revision at the instance of the self-same party is prohibited unless it is found that the order impugned is manifestly illegal and brings out a situation which is completely an abuse of the process of the Court.

Para 3

Even if it is proved that the husband has no income, still as the law uniformly held by the several High Court as well as by the Hon'ble Apex Court, the actual income of the husband is no consideration to decide the question of maintenance to be paid to the wife and it is the capacity of the husband to earn would be the right consideration.

Para 4

There is no doubt that the wife has also been able to prove the case of negligence by the husband to maintain her as well as the husband has the capacity to maintain herself. In such view of the matter, the order impugned sustained in first revision, does not deserve to be interfered with.

Para-5

For Petitioner –Mr Joy Sengupta

Mr Lakshmi Nath Bhattacharya

For O.P No—2 --- Mr Suranjan Mondal

Let the Power filed today in Court on behalf of the petitioner by Mr. Lakshmi Nath Bhattacharya, the learned advocate with the endorsement “No Objection” be kept on record.

A sum of Rs. 5,000/- was awarded in favour of the opposite party no. 2/wife in connection with a proceeding under Section 125 of the Code of Criminal Procedure. Against the said order, the petitioner/husband preferred a criminal revision before the Sessions Court and having lost there has moved this criminal revision.

2. Heard the learned Counsel appearing for the respective parties.
Perused the impugned order and the other materials on record.

3. Admittedly, this is a second revision. In view of the specific statutory bar contained in Section 397 (3) of the Code of Criminal Procedure, the entertainment of the second revision at the instance of the self-same party is prohibited unless it is found that the order impugned is manifestly illegal and

brings out a situation which is completely an abuse of the process of the Court.

4. This is a case where the marriage between the parties has not been disputed. However, it is the claim of the husband/petitioner that he is unemployed and was maintained by his father. On the other hand, it was the case of the wife/opposite party no. 2 that the petitioner is the owner of a Spectacle Shop "Nabadristi" and he used to earn Rs. 8,000/- per month. In support of such contention, the wife/opposite party no. 2 examined one person, who claimed that the petitioner/husband is the owner of the said shop and in

one occasion, he purchased a pair of spectacle from that shop. The said witness although was examined at length but nothing has been brought out to shatter his credibility. It may also be noted that according to the husband/petitioner, the residential house in question belonging to his as also the spectacle shop.

5. No doubt those said facts are within the special knowledge of the husband/petitioner, but nothing has been brought on records to sustain such contentions. Even if it is proved that the husband has no income, still as the law uniformly held by the several High Court as well as by the Hon'ble Apex Court, the actual income of the husband is no consideration to decide the question of

maintenance to be paid to the wife and it is the capacity of the husband to earn would be the right consideration. In this case, the wife/opposite party no. 2 has able to prove that she was driven out from her matrimonial home by the husband on her failure to fulfill the demand of dowry to be brought from her parents.

There is no doubt that the wife has also been able to prove the case of negligence by the husband to maintain her as well as the husband has the capacity to maintain herself. In such view of the matter, the order impugned sustained in first revision, does not deserve to be interfered with. This criminal revision has

no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

However, I think ends of justice will be sub-served if the quantum of maintenance be reduced to some extent.

Accordingly, it is directed that the amount of maintenance granted by the Court below and affirmed by the revisional Court be reduced to a sum of Rs. 4,000/- per month. The maintenance for this month must be sent to her within a week from this date and thereafter by 7th of each succeeding month and if there is any arrear, that must be liquidated in ten monthly equal instalments and be paid along with the current maintenance.

I make it clear that if there is any default in making the payment of maintenance, the Trial Court shall have the liberty to proceed against the petitioner for enforcement of the order of maintenance and recovery of the same without any further reference to this Court.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)