

IN THE COURT OF SESSIONS JUDGE, GOALPARA.

Criminal Revision (C.M.) Case No. 41 of 2018.

Present: **Sri T.K.Bhattacharjee, A.J.S**
Sessions Judge,
Goalpara.

Smt. Pratima Koch Revisionist.

-Versus-

Sri Phonidhar Koch O.P.

Appearance:

For the Revisionist: Mr. Arun Kr. Ghosh, Ld. Advocate.

For the O.P.: Mr. Salimul Islam, Ld. Advocate.

Date of Hearing: 24.05.19; 29.05.19.

Date of Judgment: 10.06.2019.

J U D G M E N T

1. This revision has been preferred u/s 397/399 of the Cr.P.C. by the revisionist Smt. Pratima Koch against the judgment and order dated 13.06.18 that was passed u/s 125 of the Cr.P.C. by the Ld. Munsiff No. 1 cum JM 1st Class, Goalpara in connection with MCR Case No. 84/16 vide which the Ld. Court below was pleased to dismiss the prayer of the revisionist/ petitioner for maintenance.

2. The brief facts of the case is that the revisionist namely Smti. Pratima Koch, as the 1st party, filed an application before the Ld. Chief Judicial Magistrate, Goalpara u/s 125 of the Cr.P.C. with a prayer for granting maintenance @ Rs 20,000/- per month for herself and thereafter, MCR Case No. 84/16 was registered and transferred to court of Ld. Munsiff No. 1 cum JM 1st Class, Goalpara and subsequently, the Ld. Court below passed an order on 13.06.18 against the 1st party after recording evidence of both the sides and hearing the arguments of the Ld. Counsel of the petitioner vide which the prayer of the petitioner (revisionist) was dismissed.

3. Being highly aggrieved and dissatisfied with the aforesaid judgment and order dated 13.06.18 the present revision had been preferred on the grounds set forth in the memo of the revision. I have heard the arguments advanced by the Ld. Counsel of the revisionist and the Ld. Counsel for the O.P. and thereafter, the LCR that had been received in this context was also perused in order to determine the following:-

Point for determination:

4. Whether the impugned judgment and order dated 13.06.18 passed by the Ld. Lower court suffers from any impropriety, illegality etc. and is sustainable in law or requires any interference by this Court?

Discussion, Decision & Reasons:

5. In the course of hearing, the Ld. Counsel for the revisionist submitted that the judgment and order dated 13.06.18 was passed without application of judicial mind, without appreciation of the provisions of section 125 of Cr.P.C. etc. which gave rise to a miscarriage of justice and as such the impugned order is liable to be set aside.

6. On perusal of the entire materials available before me and also the impugned judgment and order dated 13.06.18, it is found that before passing the

impugned order the Ld. Lower Court was pleased to record the evidence of both the sides on the prayer of maintenance filed by the petitioner during which 2 witnesses were examined in support of the petitioner and 3 witnesses were examined in support of the opposite party and thereafter, after hearing the Ld. Counsel for the petitioner the Ld. Court below was pleased to dismiss the prayer of the petitioner on the ground that the petitioner has failed to show sufficient cause for living apart from the opposite party. The Ld. Court below had framed the following points for determination:

- i. Whether the petitioner is the wife of opposite party?
- ii. Whether the petitioner has sufficient ground for living apart from the opposite party?
- iii. Whether the petitioner is unable to maintain herself?
- iv. Whether the opposite party having sufficient means neglects or refuses to maintain the petitioner?
- v. Whether the petitioner is entitled to maintenance allowance from the opposite party and if so, what should be the proper amount per month?

and while deciding the point for determination no. (ii) as mentioned above the Ld. Court below observed that during the span of long 11 years the petitioner remained totally mum and no reasonable ground was given by the petitioner in this regard and as such the inordinate delay in filing the maintenance case could not be ignored. However, there is no limitation prescribed in the statute for the persons entitled to maintenance u/s 125 of the Cr.P.C. and on the other hand, the application for maintenance filed by the petitioner mentioned that the delay was caused in waiting hopefully for an amicable settlement of the matter and in my opinion, even a long separation between the spouses without acceptable material to show any genuine effort made on behalf of the husband to persuade his wife to live with him, may be sufficient to draw an inference of neglect and refusal to maintain. From the testimony of P.W.-1 it is found that according to her, she was driven away by her husband 11 years ago and according to the written statement of the O.P. it is found that, the petitioner left his house on 22-04-2006 and from

the testimony of the O.P. (D.W.-1) it is found that after the departure of the petitioner, the D.W.-1 started co-habitation with another woman through whom he got a child and thereafter, after the death of the said woman he married another woman named Lilamati. Even though the D.W.-1 stated in his evidence that his wife, the petitioner/ appellant eloped with a boy 3 times and on 22-04-2006 his wife eloped with one Sintu Keot and that subsequently, she eloped with the teacher of his son but these facts were not stated in the W/s filed by the D.W.-1 in which he simply made a bald statement stating that the petitioner left her matrimonial house on her own sweet will without any further elucidations. It may be mentioned in this context that the law is well settled that a wife whose husband is living with another woman is entitled to refuse to live with him and can claim maintenance and further, it is not necessary for the court to ascertain as to who was in the wrong and whether the wife was guilty of leaving the matrimonial house without any reason and even assuming that the wife is in the wrong while leaving the house, she cannot be deprived of maintenance when the husband contracts second marriage and that fact by itself entitles her to live separately and therefore, taking into consideration all the above materials, I am of the opinion that a husband's marriage with another woman would definitely constitute a sufficient ground for the wife's refusal to live with him and as such, I am unable to concur with the findings of the Ld. Lower court in coming to the conclusion that the petitioner has failed to show sufficient grounds for living apart from her husband / opposite party and therefore, I feel that the impugned order dated 13.06.18 is required to be interfered with by this court.

7. It may be mentioned here that, the case of the petitioner was dismissed by the impugned order dated 13-06-18 in MCR Case No. 84/16 as the point for determination no. (ii) was decided in the negative by the Ld. Lower court and the other points for determination that were framed by the said court were left undecided as the Ld. Court below was of the opinion that it was no longer necessary to make any discussion on the points for determination no. (iii), (iv) and (v) but nevertheless, in view of the above facts and circumstances the impugned

order dated 13-06-18 in MCR Case No. 84/16 is liable to be set aside and the matter is remanded back to the Ld. Lower court to determine all the points for determination in the light of the above observations and thereafter, pass a fresh judgment in accordance with law after giving a reasonable opportunity of hearing to both the parties.

8. With the above observations and directions the revision application stands allowed to the extent indicated above. However, no costs are imposed.

9. Send back the LCR with a copy of this judgment to the Ld. Lower court for appropriate action.

Given under my hand and the seal of this court on this the 10th day of June/19.

(T.K.Bhattacharjee)
Sessions Judge,
Goalpara.

Dictated & corrected by me:

Sessions Judge,
Goalpara.