

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A_

Criminal Revision Petition.90 of 2013

Smt. Anita Das,
W/o Sri Subhash Ch. Das,
of vill & P.O -Joykatpur, P.S. Belonia,
Dist. South Tripura.

..... *Petitioner.*

-Vs -

Sri Subhash Ch. Das,
S/o Sri Bharat Ch. Das,
of Vill - Rajnagar, P.S. P. R. Bari,
District - South Tripura.

..... *Respondent.*

B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	: Ms. R Purkayastha, Advocate.
For the respondent	: Mr. Sankar Deb, Sr. Advocate, Mr. S Dutta, Advocate.
Date of hearing	: 28.11.2014.
Date of judgment	: 30.01.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

This criminal revision petition is directed against the judgment dated 12th August, 2013 delivered by the learned Additional Sessions Judge, Belonia, South Tripura whereby he allowed the revision petition of the husband and held that the wife (*petitioner herein*) was not entitled to maintenance. Aggrieved by this order the wife has filed the present petition.

2. The undisputed facts are that the parties were married to each other in the year 1993. One son and one daughter were born out of this wedlock.

3. According to the wife, for about two years the relationship between the husband and wife was cordial. Thereafter, the husband started misbehaving with the wife and started putting pressure upon her to bring a sum of Rs.1,00,000/- from her father. According to the wife, her father with a view to maintaining the matrimonial harmony purchased some land at Rajnagar and constructed a house for her and her husband. According to the wife, in the year 2010 the petitioner-husband assaulted her in the presence of their children and left the said house and did not provide any maintenance to them. According to the wife, the husband is a teacher earning Rs.26,000/- per month. She claimed maintenance of Rs.15,000/- for herself and her two children.

4. This petition was contested by the husband. He denied the allegations made by the wife. His version is that the house was constructed by him after taking a loan from the Bank. It is further alleged that after the daughter of the parties passed her Madhyamik examination, she was admitted in Belonia Vidhyapith School. With a view to help the prosecution of studies by the daughter the wife started residing along with the daughter as a tenant in the house of one Mr. Dilip Dey, Advocate. The petitioner-husband continued to reside at Rajnagar with his son but visited Belonia off and on.

According to the husband, one Pintu Das who was working as a tutor developed intimate relationship with the wife. According to the husband, his son passed Class-V and therefore, he along with the son also came to live in the house at Belonia in January, 2011. However, the wife left the rented house leaving the petitioner-husband and both the children at Belonia with the husband. She started residing alone at Rajnagar.

5. According to the husband, he was paying maintenance to the wife but one day in July, 2011 when he went to his house at Rajnagar he found his wife and Pintu Das in a compromising position. His wife apologized for this act. The petitioner informed the Pradhan. In the meantime, the owner of the house, which was taken by them on rent, asked them to vacate the house. So, the husband arranged another house near Vidyapith School. The husband stated that he was ready to pay maintenance for the children but not to his wife since she was living in adultery. The wife examined three witnesses including herself and her daughter. The husband examined five witnesses including himself.

6. The learned trial Court came to the conclusion that the husband had placed on record certain material to show that the wife was living in adultery. He held that three occasions of adultery have been proved on record; firstly, when the petitioner himself found the wife and Pintu Das in a compromising position; secondly, when Ms. Shilpi Das OPW.3 found the wife half naked in a compromising

position with Pintu Das and thirdly, that Pintu Das used to visit the rented room at Belonia on many occasions and stayed there along with the wife. The trial Court relying upon the judgment of the Gauhati High Court in *Md. Abdul Sattar Vs. State of Assam and Ors.*, (2009) 2 GLR 628 came to the conclusion that though the three acts of adultery may have been proved, it cannot be said that the wife was living in adultery. He held that '*living in adultery*' is one thing and committing '*act of adultery*' is another thing. Therefore, he directed the husband to pay maintenance of Rs.2,500/- to the petitioner and his minor son. No maintenance was granted to the daughter since she had become a major. The husband filed a criminal revision before the learned Additional Sessions Judge, Belonia, who held that the husband had successfully proved the adultery of his wife with Pintu Das and had proved that she was living in adultery. So, she was not entitled to maintenance. As far as the son is concerned, the order of maintenance was upheld. This order is under challenge before this Court.

7. Ms. R Purkayastha, learned counsel for the petitioner-wife, submitted that under Section 125(4) of the Code of Criminal Procedure (Cr.P.C), a wife is disentitled from claiming maintenance from her husband under Section 125 only if it is shown that she is living in adultery or if without any sufficient reason she refuses to live with her husband or if they are living separately by mutual consent. Ms. Purkaystha has urged that both the Courts below have

wrongly come to the conclusion that three incidents of adultery were proved on record. In the alternative, she submits that one or two sporadic instances of adultery cannot be termed to be living in adultery and even if it is held that the wife had indulged in an adulterous act on one or two occasions, she is not disentitled from claiming maintenance. On the other hand, Sri Sankar Deb, learned senior counsel appearing for the husband, submits that this is not a case of a single act of adultery but is a case where the wife has on a numerous occasions been found to be having adulterous relationship with one person and it is the wife who has refused to join the company of the husband.

8. Section 125(4) of the Cr.P.C reads as follows :

“(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

The only issue is what is the meaning of the phrase “living in adultery”.

9. Ms. Purkayastha has placed reliance on the judgment of the Madras High Court in *Narayan Nair vs. Kathiyahini*, [1983] 1

MLJ(Cri) 115. In that case the husband had examined himself and had stated that one day he had found his wife in bed with one neighbour. The main witness was the daughter of the parties who claimed to have seen the incident. The Court held that the alleged act of adultery had taken place in the year 1970 and evidence was recorded after 10 years in the year 1980. The starving maintenance awarded to the wife was only Rs.60/- per month. This was a case relating to a single act of adultery and the Madras High Court held as follows :

“9. Apart from the alleged incident in 1970, there is no proof that the wife continues to be unchaste. In such case, the wife is entitled to what is called “Starving maintenance”. It may also be stated in this connection that even when the husband came to know of this incident on the very same date, he had not taken any steps for divorce or for judicial separation for more than a decade. Of course, the husband would say that when this incident was found out, the wife voluntarily went away from his house abandoning him and his children. As against this, the wife would say that she was driven out from the house. The fact remains that the husband had not taken any steps to revoke that marriage or at least send a notice to that effect. The marriage, therefore, subsists and the single act of adultery which took place sometime in 1970 will not be a ground for refusing maintenance.

11. The result of my discussion is that even if the alleged single act of adultery committed in 1970 is held to be proved, that does not come under the provisions of section 18(3) of the Hindu Adoptions and Maintenance Act. Even on merits, it is only past adultery which took place long ago. Therefore, she will be entitled to starving maintenance from her husband, who had not chosen to annul the marriage on the ground of the alleged adultery.”

It would also be pertinent to mention that in this case the maintenance was claimed under the Hindu Adoptions and Maintenance Act.

10. Strong reliance has been placed by Ms. Purkayastha on the judgment of the Gauhati High Court in *Md. Abdul Sattar vs. State of Assam and others*, (2009) 2 GLR 628 wherein the learned single Judge held as follows :

“7. A bare reading of the provisions of section 125(4) makes it morethan transparent that a husband has no obligation to maintain his wife if she is living in adultery. The expression ‘if she is living in adultery’ conveys present continuous tense. That is to say, a wife disentitles herself from receiving maintenance from her husband only during the period, when she lives in adultery. When she does not live in adultery, or when she ceases to live in adultery, even if she had lived in adultery in the past, the husband cannot refuse to maintain her on the ground that she had, in the past lived in adultery.

8. What crystallizes from the above discussion is that section 125 absolves a husband from the liability of maintaining his wife only when the wife lives in adultery or when, without sufficient reason, refuses to live with her husband or when she is living separately from her husband by mutual consent. Hence, when the wife ceases to live in adultery, the husband cannot say that since she had lived in an adulterous relation with a man in the past, she is not entitled to receive maintenance from her husband, even though she has ceased to live in adultery. In the case at hand, even if the second party had lived in adultery, the fact remains that according to the evidence on record, she has been presently living admittedly, with her parents and has no surviving ties with her abductor or paramour, as the case may be. In such circumstances, the present petitioner, as husband of the opposite party, was liable to maintain her, particularly, when the opposite party does not, admittedly, have any independent source of

livelihood and she is dependent for her sustenance on her parents. It is no defence to the obligation of payment of maintenance to a wife by her husband if the wife has ceased to live in adultery even if she had maintained, in the past, adulterous relationship with another man.”

11. With due respect, I am unable to wholly agree with the aforesaid judgment. No doubt Section 125(4) uses the phrase “*living in adultery*”. Living in adultery will obviously mean not an isolated incident of adultery but a continuous state of affairs where the wife is living in adultery. However, I am unable to agree with that portion of the judgment which says that the wife is disentitled from receiving maintenance from her husband only during the period when she lives in adultery but if she, thereafter, ceases to live in adultery she can again claim maintenance. The reasoning given by the learned single Judge is that the expression “*living in adultery*” conveys present continuous tense. I am of the view that this interpretation is not correct.

12. No doubt, one or two rare mistakes by the wife may not amount to living in adultery but where, if on one occasion, the wife is found living in adultery and it is proved that there is a continuous relationship between her and her paramour then merely because she thereafter ceases to live in adultery would not entitle her to claim maintenance. If the judgment of the learned single Judge in the aforesaid case is literally followed then a woman may live in adultery. After her relation with one paramour ends she can claim maintenance from her husband. Thereafter, she can resume her

relationship with her paramour or start a new relationship and by the time the husband files an application for stopping the maintenance she can again stop the illicit relationship. This is not the purpose of the Section. The purpose of Section 125(4) is that a wife who is living in adultery or has lived in adultery for a sufficiently long period is not entitled to maintenance. Though, one or two sporadic acts of adultery may not constitute living in adultery, whether the relationship in a particular case amounts to living in adultery or not will depend on the facts and circumstances of each case to be decided on the basis of the evidence.

13. According to the wife, who appeared as PW.1, she never committed any adultery and stayed in the rented house near Vidyapith School, Belonia earlier in the house of Advocate, Dilip Dey and later in the house of Satish Bhowmik. The daughter appeared in the witness box as PW.2 and stated that her father took a room on rent in the house of Dilip Dey, Advocate when she was admitted in Class-XI at Vidhyapith School. She also states that when her brother passed Class-V and joined Vidhyapith School he also stayed in the same house. She has denied the fact that Pintu Das used to visit her rented house or that her mother had an illicit relationship with Pintu Das.

14. On the other hand, according to the husband, on 25.7.2011 at about 8.00 p.m. when he went to his house to provide some household articles he found that door of the main room was

opened and inside the kitchen he found the wife in a half-naked condition. She was in a compromising position with Pintu Das who ran away through the window. He, thereafter, took up the matter with Sri Shyamal Das village headman/respected person. On the next day, he along with Shyamal Das and Atul Debnath again went to the house and tried to make the wife understand but she stated that she could not live without Pintu and would continue to live with him. He further states that he was informed by the wife of Advocate Dilip Dey that Pintu used to visit the house in his absence frequently and, therefore, she asked him to vacate the accommodation in the house of the Advocate.

15. Gita Dey, wife of Advocate Dilip Dey stated that the petitioner-wife with her family had taken a room on rent in their house for one year. She states that she found Pintu Das in the house on the occasion of their daughter's birthday. The husband was not present and the wife introduced Pintu Das as the son of her eldest brother-in-law. When she informed the husband that one Pintu Das his nephew had come on the daughter's birthday the husband informed her that he had no nephew by the name of Pintu Das. She has stated that Pintu Das used to visit the rented house frequently and used to stay for the night in the house in the absence of the husband.

16. PW.3 is a relative of both the parties. According to him, on the 5th Day of Chaitra when he entered the house he had found

the wife along with one Pintu Das in a half-naked condition. PW.4 Babul Das is also a nephew of the parties. He also states that when he visited the house he found the wife lying on bed along with Pintu Das. Shyamal Das, has appeared as OPW.5 and he has stated that the husband complained to him about the illicit relationship of the wife with Pintu Das. Next day he along with Atul Debnath went and asked the wife to improve her behavior but she refused to end her relationship with Pintu Das.

17. Both the Courts below on the basis of this evidence have come to the conclusion that these acts of adultery are proved. This is not a case of a single act of adultery but is a case of living in adultery. It is the same paramour Pintu Das who on number of occasions has been found in a compromising position with the wife. This clearly proves that she has a long standing relationship with Pintu Das which would amount to living in adultery. Furthermore, the evidence of the wife or the daughter does not in any manner show that the husband threw her out of the house and it is more than obvious that she is living away from the house of the husband for her own choice and not because of any act of the husband.

18. In view of the discussion, I find no merit in the petition which is accordingly dismissed. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu