

Supreme Court of India

Mahua Biswas (Smt) vs Swagata Biswas And Anr. on 17 November, 1997

Equivalent citations: JT 1998 (4) SC 252, (1998) 2 SCC 359

Bench: M Punchhi, M Srinivasan

ORDER

1. Leave granted.

2. The appellant-wife petitioned against the respondent-husband in the Court of the C.J.M., Howrah, under Section 125 of the CrPC (CrPC), claiming maintenance for herself at the rate of Rs 1500 per mensem and for her minor daughter @ Rs 1000 per mensem. Undeniably, maintenance at such rates could be claimed by her because of a State Amendment to Section 125 of the CrPC. The claim was refuted by the husband. It came to light that in a matrimonial dispute between the parties, the appellant-wife had been able to secure an interim maintenance order @ Rs 1000 per mensem for herself and an equivalent amount for her minor daughter. Taking that into account, the C.J.M. awarded token maintenance at the rate of Rs 100 per mensem to the appellant and a like amount to her minor daughter as such under the said section. Aggrieved, she moved the High Court in revision whereat it was noticed that the matrimonial case between the parties stood compromised and one of the terms was that she would go and live with her husband. According to the assertion of the husband-respondent, she had in terms thereof come to live with him but later the spouses fell apart. On that basis it was urged that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court by the impugned order agreed with the husband-respondent and set aside the orders of maintenance altogether, leaving the wife to approach again the criminal court for appropriate relief. This constitutes the subject-matter of the appeal here.

3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife's claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid upto 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court.

4. The appeal is, thus, allowed in the manner aforementioned.