



**IN THE COURT OF SESSIONS JUDGE :::::::::: BAKSA AT MUSHALPUR**

Present : Shri C. Das,  
Sessions Judge  
Baksa, Mushalpur

(Revision against the order dated 28.6.18 passed by learned Judicial Magistrate,  
First Class, Baksa at Mushalpur in MR Case No.52m/2018 u/s 125 CrPC.)

**JUDGMENT IN CRIMINAL REVISION No.17/2018**

Sri Mahan Chandra Baro  
.... Petitioner

versus-

Smti. Juli Rani Boro  
.... Opposite Party

**Appearance :**

For the petitioner : Mr. Barman, K. Ali, J. Ali, Advocates

For the opp.party : Mr. P. K. Sarma, Advocate

Date of hearing : 14/12/18, 25/1/19

Date of judgment : 25/1/19

**JUDGMENT**

1. The revision petition is filed u/s 397/399 of Code of Criminal Procedure ( in short; the CrPC.) by the revision petitioner against the order dated 28.6.18 passed in MR Case No.52m/18 u/s 125 CrPC., by learned Judicial Magistrate, First Class, Baksa at Mushalpur and whereby, learned trial court rejected the petition no.262 of the revision petitioner, seeking to examine post-masters of Mushalpur, Barama, Nalbari and Guwahati post offices as his defence witnesses.

2. The case of the revision petitioner briefly, is that he is the second party of MR Case No.52/18 and he filed a petition no.262/18 to summon the

  
**SESSIONS Judge  
Baksa**

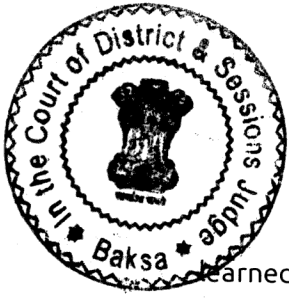


witnesses as defence witnesses viz ; post-masters of Mushalpur, Barama, Nalbari and Guwahati before the learned trial court for just decision of the case. But the learned trial court rejected the prayer of the revision petitioner vide impugned order dated 28.6.18.

3. Being highly aggrieved by the impugned order so passed by the learned trial court, the revision petitioner prefers this revision petition on the grounds as : for that learned trial court passed the impugned order by committing gross illegality and impropriety which prejudiced the revision petitioner and for that the impugned order of learned trial court is based upon erroneous view of law and facts and for that the impugned order of learned trial court is contrary to the provision of existing law and for that learned trial court misinterpreted the provision of law by passing the illegal impugned order leading to miscarriage of justice and for that the impugned order of the learned trial court is manifestly unjust and unreasonable based on erroneous law and facts on record of the case and for that learned trial court committed gross mistake while passing the impugned order without perusing the written statement of the revision petitioner in the case wherein the revision petitioner/ second party clearly mentioned that the opposite party/ first party had shown threatening with dire consequences even the fear of death by evil elements of the society compelled the revision petitioner/ second party to give a huge amount of money to the first party which she kept in various post offices in different places' viz ; Barama, Mushalpur, Nalbari and Guwahati etc., and the spirit of proceeding u/s 125 CrPC is that if any person having sufficient means, neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child unable to maintain himself/ herself, allows to the maintenance of those persons by the court and for that the revision petitioner/ second party clearly stated in his written statement that the first party/ opposite party has sufficient means to maintain herself by taking the money from him by threatening him to death and as such, learned trial court should have given a chance to the revision petitioner to examine the witnesses mentioned in the petition no.262 and for that the impugned order is not interlocutory order but it is final order in respect of the revision petitioner/ second party as because he is deprived of for adducing the evidence of more reliable and vital witnesses viz; the post-masters of various post offices which was mentioned also, in his written statement of the case and for that in view of matter, it is a fit case to allow the revision petitioner to adduce his evidence in defence.

  
**Sessions Judge**  
**Baksa**

4. I have heard learned counsel for the revision petitioner as well as,



learned counsel appearing for the opposite party and perused the impugned order with the case record. It was decided in presence of the both parties' counsel that since the impugned order is challenged in this revision and the same is made available on record, the original case is not necessary to call for to avoid disturbance to continuity of trial of the proceeding of the case u/s 125 CrPC., before learned trial court.

**POINT FOR DETERMINATION :**

5. Whether learned trial court committed gross impropriety or illegality in passing the impugned order ;

**DECISION AND REASONS THEREFORE :**

6. Learned counsel for the revision petitioner assailing the impugned order, submitted that inspite of the fact that there was specific plea of the revision petitioner/ second party in his written statement that the first party/ opposite party by threatening him of fear of death, received huge amount of money from him which she kept in various post offices of Assam, learned trial court refused to allow him to examine the post-masters of such post offices viz ; Mushalpur, Barama, Nalbari and Guwahati and as result, the revision petitioner suffered gross miscarriage of justice. He submitted further that such witnesses are essential for the revision petitioner to prove that there was no negligence or refusal on his part to maintain the opposite party and the proceeding u/s 125 CrPC was filed without any reason. Therefore, he urged for setting aside the impugned order by allowing the revision petitioner to examine the post-masters of various post offices of Assam as his defence witnesses.

7. Per contra, learned counsel for opposite party submitted that there is no illegality committed by learned trial court in passing the impugned order inasmuch as, what is necessary to look upon u/s 125 CrPC proceeding is whether the wife or children what ever may be, is unable to maintain themselves or not and if there was negligence or refusal of the husband, having sufficient means, to provide maintenance to them or not. If these facts are well proved, there is no need to prove other irrelevant facts to delay the proceeding. He further submitted that there is no need to examine post-masters of various post offices of Assam to prove the fact that how much money is kept in the post offices by the first party/ opposite party. But there is no prove that if such money is kept in the post offices,

  
Sessions Judge  
Baksa



is not established that it was given by the revision petitioner out of threatening of the opposite party. Moreover, the impugned order is interlocutory in nature and as such, the revision petition is liable to be dismissed.

8. After hearing the above submissions from both sides, it is necessary to go through the materials on record of the original case. It is needless to say that the proceeding was filed u/s 125 CrPC., by the opposite party. It appears that there is no dispute that the opposite party is wife of the petitioner and both of them live separately. There is no difference in the Bar that the standard of proof in the proceeding u/s 125 CrPC is much lower than other case. It does not require to follow the rules of Evidence Act strictly like other criminal cases while proving a fact there under. Normally a destitute woman resort to such proceeding to get maintenance when she and her child are unable to maintain themselves from the husband who inspite of having sufficient means, remains unperturbed to provide basis needs of such woman and children to run their daily life requirements. However, there are conditions under the law when such maintenance can be refused to such woman and children but it does not require discussing the same therein.

9. In the present case in hand, the petitioner filed a petition, seeking to examine post-masters of various post-offices to prove that there was huge deposit in the name of the opposite party made at the instance of the petitioner. But the said petition was rejected by learned trial court on the ground that no cogent reason has been mentioned and the documents relied by the petitioner does not disclose that he deposited such amount in the name of the opposite party. If the documents relied by the petitioner does not support the plea of the petitioner itself, where is need to examine the post-masters of various post-offices. Even if such post-masters are brought before the court, they would not server the purpose for which they are examined. Therefore, learned trial court right expressed the above view. The impugned order is found to be interlocutory in nature. Accordingly, it is found the impugned order of learned trial court does not suffer from any impropriety or illegality which does not warrant for interference by this court.

10. Hence, this revision petition has no merit. Accordingly, it is dismissed. However, the learned trial court may give an opportunity to the petitioner to prove his case on other aspects of the case as required by the law. Send a copy of order to the learned trial court immediately for its perusal.

  
**Sessions Judge  
Baksa**



11. Given under the hand and seal of this court on this 25<sup>th</sup> day of January 2019.

Dictated and corrected by :

C. Das,

Sessions Judge,  
Sessions Judge  
Baksa, Mughalpur  
Baksa

Sessions Judge,  
Sessions Judge  
Baksa, Mughalpur  
Baksa

Typed by :

P. Deka, Com. Typist