

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.No.11 Of 2024

Sri Debabrata Das

Son of Late Rabindra Das, aged 33 years,
Resident of village & PO-West Bhubanban,
P.S. West Agartala, Sub-Division-Agartala,
District- West Tripura.

.....**Petitioner**

Versus

1. Smt. Soma Sarkar,

Daughter of Sri Dharendra Chandra Sarkar,
Resident of West Noabadi, Amtali,
P.S. Bodhjunnagar, Sub-Division- Agartala,
District- West Tripura.

2. The State of Tripura

.....**Respondents**

For Petitioner(s)	:	Mr. S. Lodh, Adv, Mr. Subham Majumder, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	22.05.2024
Date of delivery of Judgment and Order	:	28.05.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Counsel Mr. S. Lodh assisted by
Learned Counsel, Mr. Subham Majumder, representing the
petitioner and also heard Learned P.P., Mr. Raju Datta,
representing the State-respondent. None appeared on behalf
of the respondent No.1.

02. This Criminal Revision is preferred challenging the
order dated 07.10.2023 passed in connection with case
No.Crl.Misc.(Int.)222 of 2022 arising out of Crl.Misc.221 of

2022 delivered by Learned Family Judge, Agartala, West Tripura.

03. In course of hearing, Learned Counsel for the petitioner submitted that the respondent-wife preferred one maintenance case before the Learned Family Court which was numbered as Crl.Misc.221 of 2022 and in the said case another prayer was submitted for granting interim maintenance and the same was numbered as Crl.Misc.(Int.)222 of 2022, but the Learned Family Judge, after hearing both the sides, at the time of passing order on 07.10.2023 allowed interim maintenance allowance to the respondent-wife at the rate of Rs.5,000/- per month with effect from 29.07.2022 i.e. from the date of filing of the case and out of that amount Rs.3,000/- was awarded for the wife-respondent and Rs.2,000/- for the minor daughter.

04. In this regard, Learned Counsel submitted that in the petition preferred by the respondent-wife, there was no claim for the alleged minor daughter by the respondent-wife, but unfortunately, the Learned Court below at the time of order also awarded maintenance in her favour. Learned Counsel further submitted that before the Learned Court the petitioner-husband did not admit his marriage with the respondent-wife and furthermore, that alleged minor daughter is not the offspring of the parties involved in the proceeding rather it was the daughter of one Rakesh Debnath i.e. the first husband of respondent-wife with whom

she got married on 17.02.2006 and during their wedlock, that minor daughter, Rudra Priya Debnath was begotten on 20.10.2011, who is presently aged about 10 years old.

05. So, accordingly to Learned Counsel, since the petitioner-husband has denied his marriage with the respondent-wife and the paternity of the minor daughter, so, Learned Court below without application of proper mind has passed the order, which is liable to be interfered with henceforth. He also referred the petition submitted by the respondent-wife before the Learned Family Court for granting interim maintenance and also the written objection submitted by the present petitioner-husband in the said proceeding.

06. Learned Counsel further submitted that nowhere in the said written objection it was admitted by the petitioner-husband that he got married with the respondent-wife rather he stated that he had some love affair with the respondent-wife but ignoring the said fact, Learned Court below has passed the order which is totally unwarranted in the eye of law. The notice of the Revision Petition was served upon the respondent-wife, but inspite of receipt of notice, she did not turn up, so, the Court took up the matter for hearing.

07. In course of hearing, Learned P.P. for the State-respondent submitted that he has no role in this matter and urged for disposal of this petition on merit.

08. I have perused the application filed by the petitioner as also the written objection filed by the petitioner-husband before the Learned Family Court. Since, the matter was interim in nature, so, without taking any evidence on record, the Learned Court below disposed of the same interim application by order dated 07.10.2023.

09. From the petition submitted by the respondent-wife before the Learned Family Court, it appears that in her application, she stated that her marriage earlier took place on 17.02.2006 with one Rakesh Debnath and out of their wedlock one female issue, namely, one Rudra Priya Debnath was born on 20.10.2011, who is presently 10 years old and residing with her mother. Thereafter, on 14.07.2015 said Rakesh Debnath expired and according to the respondent-wife, after that she got married to the petitioner-husband on 28.07.2021 according to customs and after that, some dispute cropped up, for which she filed a case against the present petitioner under Section 498(A) of IPC which is pending for investigation and it was also submitted that the petitioner-husband is a Government Employee under Fire Service Department and his monthly salary was Rs.40,000/-. Hence, she prayed for interim maintenance of Rs.10,000/-.

10. The petitioner-husband as O.P. in the said proceeding contested the same denying his marriage with the respondent-wife rather he admitted that he had some love affair with the respondent-wife and after some period,

he could know that the respondent-wife was a married woman and also had got a child. So, for making false statement he discontinued the relationship with the respondent-wife and for that the respondent-wife started blackmailing him and finally, she filed the case and he also denied all the allegations, levelled by the respondent-wife against him in the claim-petitioner including physical and mental torture and by the written objection, ultimately, he prayed for dismissal of the proceeding.

11. Learned Court below, after hearing both the sides awarded maintenance allowance of Rs.5,000/- per month with effect from 29.07.2022 and out of that amount Rs.3,000/- was awarded for the respondent-wife and Rs.2,000/- was awarded for the minor-daughter.

12. At the time of passing of the order, Learned Family Court relied with the following citation of our Hon'ble Apex Court in **Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Ant.** reported in **(2011) 1 SCC 141** and came to an observation that a man who lived with a woman for a long time and even though they may not have undergone legal necessitates of a valid marriage, should be made liable to pay the woman maintenance if he deserts her.

"Also the Hon'ble Supreme Court of India in its landmark judgment in the case of D. Velusamy Vs. D. Patchaiammal, reported in (2010) 10 SCC 469, recognized that a long term live-in relationship could be considered a valid marriage under certain circumstances. In this case Court laid

certain criteria to determine whether a relationship between two adults, who are not married, qualifies as a "relationship in the nature of marriage" and is within the ambit of domestic relationship under the Protection of Women from Domestic Violence Act, 2005. Also live-in relationship is not immoral or illegal {S.Shushboo V. Kanniammal & Anr (2010) 5 SCC 600}. The Court also held that women in live-in relationships are entitled to maintenance from their partners after separation. Subsequently in 2015, it has further expanded the rights of partners in live-in relationships are entitled to maintenance from their partners after separation. Subsequently in 2015, it has further expanded the rights of partners in live-in relationships in the case of Indra Sarma Vs. V.K.V. Sarma reported in (2013) 15 SCC 775 the Court held that women in long-term live-in relationships were entitled to maintenance from their partners after separation. The court also held that a woman in a live-in relationship is entitled to maintenance if the man deserts her or refuses to maintain her. Similarly, in the case of D.Velusamy Vs. D.Pathaiammal, the Apex Court also held that a live-in relationship can be presumed to be a valid marriage if the couple has lived together for a long time and there is evidence to show that they have held themselves out to society as being akin to spouses."

"Section 125 Cr.P.C., is enacted for social justice and specifically to protect women and children as also old and infirm poor parents within the constitution sweep of Art.15(3) reinforced by Art.39 of the Constitution. The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long they are unable to maintain themselves-Savitaben v State (2005) 3 SCC 636. Interim maintenance pending final disposal can be granted. The Magistrate may, however, insist upon an affidavit from the application stating the grounds in support of the claim of interim maintenance to satisfy himself that there is prima facie case for making such an order Of Course in an appropriate case an interim order for maintenance can be passed ex parte even before service of Notice upon the opposite party. Such an order is subject to modification or even cancellation if after hearing the opposite party if the allegations in the application or the affidavit are found not true. It is always open to the person against whom such an order is made to show that the order is unsustainable – AIR 1989 SC 987 (Hon'ble Supreme Court ruling).

Factors to be considered for grant of maintenance- the Hon'ble Supreme Court in the case of Ruby @ Pritipadma Pradhan v Debasish Pradhan 2014(ii) ILR

CUT 709, after taking note of its various decisions has held:

"Thus, after considering the above position of law, it is evident that the following principles emerge from the judgments available in the field:

(a) Maintenance depends upon the summation of all the facts of the situation involved in the particular case.

(b) For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded.

(C) Maintenance being such that the wife could live in reasonable comfort; considering her status and mode Of life which she was used to while living with her husband.

(d) During the pendency of the suit for maintenance/ which may take a considerable time to attain finality, the Wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit.

(e) Maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed.

(f) Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head.

(g) Maintenance must vary according to the position and status of a person. It does not only mean food and raiment.

(h) It is also seen that the amount fixed cannot be excessive of affecting the living condition of the other party."

13. Here in the case at hand, it is the admitted position that the petitioner-husband is a Government Employee serving in the Fire Service Department and draws Rs.40,000/- per month as salary and he is according to respondent-wife, was not paying any maintenance to her.

Even, the petitioner-husband inspite of receiving notice did not take part in the hearing.

14. So, Learned Court by the said order has disposed of interim application. So, after hearing Learning Counsel for the present petitioner-husband and after going through the relevant documents of the Learned Trial Court below, it appears that the main case is still pending for adjudication. It is not known to the Court that what would be the outcome of the main proceeding before the Learned Court below. However, it appears that, in the petition the respondent-wife did not submit anything in respect of the minor daughter but at the time of passing order, Learned Court below also granted maintenance in her favour, who is also not the biological daughter of the petitioner-husband, which in my considered view that Learned Court below has committed error in this regard.

15. So, considering the facts and circumstances of the case, it appears that the order passed by the Learned Court below needs to be modified. Since, the subject matter of their dispute is still pending in the Learned Family Court and we are dealing with the interim application, so, till disposal of the main application, the petitioner-husband shall continue to pay Rs.3,000/- to the respondent-wife in place of Rs.5,000/- with effect from 29.08.2022.

16. In the result, the Revision Petition filed by the petitioner-husband is partly allowed. The order dated

07.10.2023 in connection with case No.Crl.Misc.(Int.) 222 of 2022 is partly modified to the extent that the petitioner-husband, Debabrata Das shall pay Rs.3,000/- per month, if not paid, to the respondent-wife Smt. Soma Sarkar with effect from 29.07.2022 to till disposal of the main proceeding before the Learned Court below i.e. the case No.Crl.Misc.No.221 of 2022. With this observation, this Revision Petition is disposed of.

Send down the LCR along with a copy of this judgment/order.

Pending application(s), if any, also stands disposed of.

JUDGE



**MOUMITA
DATTA**

Purnita

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