

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL REV. PETN NO.16 OF 2015

Petitioner :

Dr. Avijit Roy,
Son of Sri Amrita Lal Roy,
Resident of Chouldari,
South Andaman,
Andaman & Nicobar Island,
P.S & P.O. Port Blair.

By Advocates :

Mr. N. Adhikari, Advocate.
Mr. P.K. Ghosh, Advocate.

Respondent :

- 1. Smt. Tania Kar,**
Wife of Dr. Avijit Roy,
Resident of 37/1 Thakurpalli Road,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.

By Advocates :

Mr. B. Dutta, Advocate.
Mr. K.K. Pathak, Sr. Advocate.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **05.8.2015**

Whether fit for reporting : **NO**

JUDGMENT & ORDER(ORAL)

This petition under Section 19(4) of the Family Courts Act, 1954 read with Section 401 of the Code of Criminal Procedure is directed against the order dated 12.2.2015 passed by the learned Family Judge, West Tripura, Agartala in case No. Civil Mise. 116 of 2009 whereby he rejected the prayer made by the petitioner

(hereinafter referred to as the husband) requesting that the employer of the respondent (hereinafter referred to as the wife) be directed to submit documents relating to her employment and emoluments.

(2) This petition arises out of proceedings initiated by the wife for grant of maintenance under Section 125 of the Cr.P.C. The said petition was filed on 16.4.2009. Initially an order was passed whereby the husband was directed to pay Rs.12,000/- per month as interim maintenance on 15.7.2009. Thereafter, this order was modified by the Agartala Bench of the Gauhati High Court in Criminal Revision Petition No.81 of 2009 filed by the wife and in terms of the order passed by the High Court, the wife and the child are getting Rs.20,000/- per month as interim maintenance. It appears that efforts were made to reconcile the matter on various occasions but to no avail.

(3) The petition remained pending for more than 5(five) years and from the record I find that on a large number of occasions the wife was absent and was not present for her examination. The wife was finally examined on 03.11.2014 more than 5 years after the petition was filed. Thereafter, the husband had to produce his evidence and the first date was given on 16.1.2015 on which date request was made by the husband for adjournment and the case was adjourned for 12.2.2015 for recording the evidence of the husband and his witnesses. On 12.2.2015, an application was filed by the husband in which it was stated that the husband had downloaded the Curriculum Vitae (C.V)

of the wife from the website of 'Timesjob.com' and in the said C.V the emoluments of the wife are shown to be 4.25 lacs per annum. She was also alleged to be an employee of ICICI Bank in ICICI Prudential and therefore, the husband prayed that the learned Family Court should issue notice to the Human Resource Manager, ICICI Prudential Life Insurance, 1st Floor- ICICI Prulife Towers, 1089 Appa Saheb Maratha Marg, Prabhadevi, Opposite Tata Motors, Mumbai-400025 and others to intimate whether the wife was employed by then and to give details about her emoluments.

This petition has been rejected by the learned trial Court by passing the following order :

“12.2.2015 Both sides are present.

Some documents are filed by the OP along with a list of documents.

Ld. Counsel of both sides are present.

Heard both sides on the petition filed by the OP on 04/12/2014, praying for directing the employers of the petitioner Tania Kar to submit documents relating to her service.

Perused the prayer and the case record.

I find that a similar type of prayer has already been turned down by this court vide order Dt. 10/05/2013 and at the same, considering the fact that the case is running since 2009 and the petition filed by the OP at this stage if entertained may cause further delay specially when the parties are to produce their own evidence at their own accord and as such I am constrained to reject the prayer at this stage of trial.

The OP is examined and cross-examined today as OPW-1. No other witness for the OP is present. The evidence of the Op is closed.

To 07-03-15 for argument.”

(4) Learned counsel for the wife raised 3(three) preliminary submissions. According to him, since the earlier petition had been dismissed on 10.5.2013 which was also on similar grounds the second petition on the same is not

maintainable. The second ground is that after the order was passed rejecting the prayer made by the husband he still got himself examined and thereafter, his evidence was closed and, therefore, he cannot be now heard to urge that his application was not properly considered. It is lastly submitted that in the criminal revision there is no challenge to the order closing the evidence of the petitioner.

(5) At the cost of repetition it may be stated that these are proceedings arising out of a petition filed by the wife under Section 125 of the Cr.P.C where the wife and the child are entitled to maintenance if unable to maintain themselves. The child would be entitled to maintenance from the husband even if the wife is earning but before passing any final order fixing the maintenance the Court must have clear knowledge as to what is the income, if any, of the wife. According to the wife, she is unemployed but according to the husband she is not only employed but is earning a handsome salary of 4.25 lacs per annum if not denied. The wife is admittedly not residing in Agartala. She is residing at Mumbai. This is apparent from the request for adjournments made also wherein it is mentioned that she could not come from Mumbai. The husband has asked the wife to produce the source of her income, if any, at Mumbai. This, in my opinion, is necessary to effectively decide a petition under Section 125 of Cr.P.C.

(6) Coming to the objection with regard to the earlier order passed in 2013, it may be mentioned that this order was

passed even before the wife had appeared in the witness box and the order of 10th May, 2013 clearly shows that the petition filed by the husband with a prayer that ICICI Prudential, S.G.B Road Agartala be directed to produce necessary documents relating to the salary of the wife was rejected on the ground that there was not a scrap of paper in support of the averments made in the application. In the present application the husband has filed a number of papers including the C.V. which has been downloaded from the website of Timesjob.com. The wife has not filed any reply or objection stating that this is not her C.V on the internet. Therefore, I see no reason why the Magistrate could not have passed a fresh order after taking into consideration the additional material brought before him.

(7) With regard to the second preliminary objection that the husband should not have examined himself, all I can say is that this objection is totally misconceived and deserves to be rejected straightway. A party can make a request to the Court that it wants certain evidence to be recorded. If the case is fixed for evidence of that party the natural consequence is that the statement of the party has to be recorded. The party cannot commit contempt of Court by stating that it will not get its statement recorded just because an order has been passed. There is no consent of the husband to the order being passed rejecting the prayer of the party to lead more evidence. Lastly, the closure of the evidence is by the Court and not by the party and this closure has been challenged in proceedings before this

Court. Therefore, I do not find merit in any of the preliminary objections.

(8) In view of the above discussion, the petition filed by the husband is allowed. First of all, the wife is directed to file an affidavit in Court stating whether she is employed with ICICI or any other organization not and if she is employed she will place on record the salary certificate giving her total emoluments of salary, allowances and the tax deducted. In case the wife does not file such affidavit within 2(two) months from today, the husband can apprise the Family Court about the place where the wife is working. It is stated that now the wife is working with ICICI Bank at Mumbai. Therefore, learned Judge Family Court shall issue notice both to the ICICI Branch at Agartala as well as to the Branch at Mumbai and the Branch Managers shall be directed to file the complete details of the salary drawn by the wife, if she is/was employed by the ICICI as maintained by the ICICI Prudential Life Insurance, 1st Floor- ICICI Prulife Towers, 1089 Appa Saheb Maratha Marg, Prabhadevi, Opposite Tata Motors, Mumbai-400025 as maintained by the ICICI. Thereafter, the Court shall decide the matter on merits.

The petition is disposed of.

Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh