

CRR 1110 of 2020
With
IA No. CRAN/1/2020 (Old No. CRAN 4041/2020)

Mrs. Piyali Dhar (Basu)
Vs.

Mr. Sourabh Dhar

Mr. Jayanta Samanta
Ms. Sneha Das

.....For the Petitioner

The petitioner undertakes to affirm and stamp the petition as per the Rules within 48 hours of resumption of normal functioning of the court. The petition is taken up through videoconference on the basis of such undertaking.

The impugned order dated 13th December, 2019 passed by the learned Judicial Magistrate, 4th Court, Barrackpore, North 24 Parganas in Misc. Case No. 374 of 2019 under Section 125 of the Code of Criminal Procedure granting interim maintenance @ Rs. 2,000/- per month is the subject of challenge in this revisional application.

The affidavit of service furnished by the petitioner be kept on record. The service report is supported by a track report, collected from the office website of the Postal Authority. Even after service, nobody appears for the opposite party.

Learned advocate for the petitioner/wife submits that the learned court below has mechanically disposed of the prayer for interim maintenance without duly appreciating the earning

capacity of the opposite party/husband, who earns more than 1 lakh rupees per month as a Physiotherapist. Admittedly the petitioner is the married wife of the opposite party/wife. For the divergence of opinion, the petitioner/wife is stated to have received torture, neglect and refusal from opposite party/husband, while enjoying conjugal life staying in the matrimonial home together. Ultimately the petitioner has been driven out from her matrimonial home and she has been passing her days in an extreme financial crisis, as the petitioner has no income of her own to maintain herself.

Upon perusal of the impugned order, it appears that the opposite party/husband has produced some documents during hearing of the petition for interim maintenance, and in connection with the documents produced by the opposite party, the learned court below observed that the documents had to be proved at the relevant stage in accordance with law.

The prayer for interim maintenance is granted to a neglected and estranged wife so that she may not put to face starvation. The proceedings under Section 125 Cr. P. C. involves some stages for giving the fruits of the proceeding and during the interim stage, the petitioner is granted some subsistence allowance in the form of interim maintenance upon due consideration of the financial capacity of the parties.

The principal point raised in this case by the learned advocate appearing for the petitioner is that the amount granting @ Rs.2,000/- per month as interim maintenance allowance is

disproportionate with the income of the opposite party/husband. Learned advocate for the petitioner proposes for a direction upon the court below to consider the every aspects pertaining to the financial capacity of the parties, while quantifying the maintenance allowance to a neglected wife under Section 125 Cr. P. C.

As it has already been observed that the interim maintenance is some sort of financial assistance pending final decision of the proceedings under Section 125 Cr. P. C, so that the petitioner/wife is not put to face any financial distress therefore the petitioner/wife is not remediless at the moment. The learned Magistrate of Court below is under obligation to ascertain the quantum of maintenance allowance after looking into the evidence to be adduced by either of the parties to this case. Alternatively, quantification of maintenance allowance has to be done most judiciously. Petitioner is given liberty to adduce evidence before the court below at the relevant stage, and if necessary to go for necessary cross-examination of the evidence including the documentary evidence to be adduced by the opposite party in this case. A direction is thus necessary directing the court below to ascertain and quantify the maintenance allowance after looking into the evidence adduced by the parties and giving opportunity of hearing to the parties of this case. This would not, however, debar the petitioner from filing any petition for modification of interim maintenance allowance, subject to production of sufficient documents.

The aforesaid order will not prejudice in any way to either of the parties to this case.

With this directions, and observations the revisional application and the connected application stand disposed of.

The learned court below is further directed to expedite the trial without granting any unnecessary adjournment to either of the parties after normal functioning of the court is resumed.

(Subhasis Dasgupta, J.)