

13.07.2021
 Ct No. 35
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C.R.R. 224 of 2020
(Via Video Conference)

Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

In re : Subir Bhowmik,

... Petitioner

Mr. Sabir Ahmed,
 Mr. Biswajit Tiwari,

... for the petitioner

Ms. Sukannya Bhattacharyya,
 Mr. Pratick Bose,

... for the State

Let the affidavit-of-service, filed by the petitioner in Court today, be kept with the record. It appears that despite repeated service, the opposite party No. 2 is reluctant to participate in the proceeding before this Court.

The petitioner has challenged an order of interim maintenance dated December 20, 2019, awarded by the learned Judicial Magistrate, 1st Court, Malda, in a proceeding under Section 125 of the Code of Criminal Procedure, 1973.

The learned Magistrate by the said order directed the petitioner to pay maintenance of Rs. 7,000/- per month for the opposite party No. 2 and Rs. 5,000/- per month for her minor son.

Mr. Sabir Ahmed, learned advocate for the petitioner submits that the learned Magistrate in the Court below has failed to take into consideration of the fact that the opposite party No. 2 has her own income and in support of such submission, he refers to the income tax returns of the opposite party no. 2 for the assessment years 2016-17, 2017-18 and 2018-19. It appears that the gross total income of the petitioner in the said assessment years were Rs. 419510/-, Rs. 422241/- and Rs. 297762/- respectively.

It has further been submitted that there was an agreement for full and final settlement of the claim of the opposite party no. 2, following which, the petitioner had transferred Rs. 30 lakh to the bank account of the opposite party no. 2. By filing a supplementary affidavit, the petitioner has annexed a computer print out in support of such payment.

From the impugned order, it appears that the learned Magistrate granted order of maintenance in favour of the opposite party no. 2 only on the ground that the petitioner being a husband, is duty bound to maintain his wife and child.

It does not appear that the learned Magistrate took into consideration the income of the opposite party no. 2 and erroneously came to a finding that she is unable to maintain herself.

In view of that, the impugned order dated December 20, 2019, is hereby set aside to the extent, it relates to payment of monthly maintenance of Rs. 7000/- to the opposite party No. 2 by the petitioner.

Direction to pay maintenance of Rs. 5,000/- per month for the minor son is, however, maintained.

The learned Magistrate in the Court below will take up the maintenance application and dispose it of finally in accordance with law, without being influenced by this order.

The revisional application being C.R.R. 224 of 2020 is, thus, disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance with all formalities.

(Kausik Chanda, J.)