

13.09.2021
tkm/ct 29
sl no. 2

**C.R.R. No. 248 of 2010
(Via video conference)**

In Re : Abdul Khalek Molla

.....petitioner

Mr. Rana Mukherjee
Mr. Pravas Bhattacharya

..... for the State

The matter is fixed today for hearing as “Contested Application”.

Mr. Rana Mukherjee Ld A.P.P and Mr. Pravas Bhattacharya, learned advocates appear for the State. Concerned authority is requested to regularize their appointment in the matter.

On repeated call, none appears for the petitioner.

Affidavit of service upon the opposite party no. 1 is not found in the case record.

This revisional application has been preferred by the petitioner/brother of the husband against the opposite party no. 1 challenging the order dated 21.10.2009 passed by the 1st Court of learned Judicial Magistrate, Tamruk, Purba Medinipur in Misc Case no. 108 of 2009 under section 125 Cr.P.C whereby the husband was directed to pay Rs. 500/- per month to the opposite party no. 1 as interim maintenance and to pay Rs. 400/- per month for the minor daughter of opposite party no. 1.

It is contended that Jalil Molla, husband of opposite party no. 1, the younger brother of the petitioner, is mentally challenged. Opposite party no. 1 filed a case under section 125 Cr.P.C against

the mentally challenged brother of the petitioner and the said case was decided ex parte on 21.10.2009. The present petitioner approached the court of learned Magistrate praying for vacating the ex parte order.

It is the case of the petitioner that the order dated 21.10.2009 and 26.6.2009 passed by the learned Magistrate should be vacated.

Upon considering the gamut of the entire case, the impugned order passed by the learned Magistrate and taking into account that none appear for the petitioner, I am not inclined to interfere with the order passed by the learned Magistrate allowing the interim maintenance to opposite party no. 1. However, if the petitioner wants to establish that the husband of the opposite party no. 1 is incapable of providing any maintenance due to his alleged mental disorder, he is at liberty to appear before the trial court and seek alteration of the order of maintenance in accordance with law under section 127 of the Criminal Procedure Code.

Accordingly, criminal revision under sections 401 and 482 CR.P.C is dismissed on merit.

Interim order of stay, if any, stands vacated.

Let copy of this order be sent to the 1st court of learned Judicial Magistrate, Tamluk, Purba Medinipur for information.

Urgent photostat certified copy of this order be given to the parties upon compliance of requisite formalities.

(Ananda Kumar Mukherjee, J.)