

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 538 of 2021

Dipak Das
Vs.
Sharmila Das

For the Petitioner : Mr. Bhaskar Chandra Manna

Heard on: 25th February, 2021

Judgment on : 25th February, 2021

The Court:

Leave is granted to amend the cause title so far as the case number is concerned.

This is an application for quashing of a proceeding under Section 125 of the Code in M. Case No. 620 of 2018 pending before the learned Judicial Magistrate, 4th Court, Barrackpore, North 24 Parganas.

Learned counsel appearing on behalf of the petitioner submits as follows. The opposite party/wife is employed as a teacher at the Air Force School, Barrackpore, North 24

Parganas and is drawing a salary of more than Rs.40,000/- per month. As such, the proceeding under Section 125 of the Code is not maintainable at all. Learned Magistrate erred in passing the order dated 18.10.2019 directing the husband to pay a sum of Rs.5,000/- to the wife as monthly interim maintenance allowance. Reliance is placed, *inter alia*, on copies of documents pertaining to the PF deposits made by the opposite party.

I have heard the submissions of the learned counsel appearing on behalf of the petitioner and have perused the revision petition.

It appears from the order dated 18.10.2019 that the learned Magistrate had considered the income of the petitioner, as stated by him, in the impugned proceeding. While the wife stated that he earned Rs.60,000/- per month, the husband admitted that he earned Rs.40,000/- per month as a Hawilder. The wife was admittedly a working woman. However, a sum of Rs. 5,000/- was granted as interim maintenance allowance to the wife because the husband was an able-bodied man and it was his duty to maintenance.

Learned Magistrate passed a reasoned order granting interim maintenance to the wife.

It appears that the wife/opposite party did not deny that she was a working woman.

It is trite law that the husband has to maintain his wife and quite at the same standard that the wife would have enjoyed had she been able to stay at the husband's household. Therefore, it has to be ascertained in the main proceeding under Section 125 of the Code, considering the relative incomes of the husband and the wife, whether the wife was entitled to get any maintenance from the husband and if so, then at what rate. Simply because the wife is a working woman it does not debar a Court from awarding maintenance allowance to her to be paid by the husband.

In view of the above, I do not find any illegality either in the order dated 18.10.2019 or in the impugned proceeding.

Accordingly, the revisional application is dismissed.

However, the learned Magistrate shall conclude the hearing of the main application under Section 125 of the Code as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within a period of one year from the next date of hearing.

The learned Magistrate shall not be swayed made by any observation made by this Court in deciding the revisional application.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)