

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 763 of 2020

Ashmita Bhattacharjee (Bidya)

Vs.

Sayantan Bhattacharjee

For the Petitioner : Mr. Debasis Kar,
Mr. Husen Mustafi,
Mr. Subojit Chowdhury,
Ms. Varsha Agarwalla.

Heard on : 03.02.2021

Judgement on : 03.02.2021

Jay Sengupta, J. :

1. This is an application challenging the insufficiency of interim maintenance allowance awarded by the learned Judicial Magistrate, 4th Court, Barrackpore in M. Case No.781 of 2019.
2. It appears that from the affidavit of service dated 18th January, 2021 that a copy of the application along with a notice could be served on the husband/opposite party on 16.01.2021.

3. Despite service, no one appears on behalf of the husband/opposite party.
4. Learned Counsel appearing on behalf of the petitioner submits as follows.

The petitioner/wife had filed an application under Section 125 of the Code claiming monthly maintenance allowance from the husband/opposite party at the rate of Rs.45,000/- (rupees forty five thousand only). She had also filed an application for interim maintenance allowance claiming Rs.35,000/- (rupees thirty five thousand only) per month. The marriage between the couple was registered on 5th July, 2018 and the social marriage took place on 15th December, 2018. After the couple started living as husband and wife, the husband/opposite party and the other in-laws inflicted both mental and physical torture upon her. The husband was a habitual drunkard and had affairs with several other women. The husband and the in-laws started creating pressure on the petitioner to bring more money from her parents. Finally, the petitioner was driven out of her matrimonial home on 17th June, 2019. The petitioner was constrained to lodge a criminal case being Titagarh Police Station Case No.411 of 2019 dated 20.07.2019 under Sections 313, 406 and 498A read with Section 120B of the Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. A charge sheet was submitted in the said proceeding. Since the day she was driven out of her matrimonial home, the petitioner had been living in her parent's house. On the other hand, the opposite party/husband was a highly qualified person. He had B.Tech degree and was working as a Deputy Manager, Human

Resource at Max Life Insurance. He earned a salary of Rs.80,000/- (rupees eighty thousand only) per month from her job and was also running a wholesale business of Air Conditioning under the name and style of 'Cool Wave' from where he earned Rs.50,000/- (rupees fifty thousand only) per month. Besides, the husband was having landed properties. In view of the above, the learned Magistrate erred in granting a paltry sum of Rs.5,000/- (rupees five thousand only) as monthly interim maintenance allowance for the wife and that too from the date of order instead of being from the date of application.

5. I have heard the submissions of the learned Counsels appearing on behalf of the parties and have perused the revision petition.
6. Despite service, the opposite party/husband chose not to appear before this Court.
7. Even from the copy of the written objection of the husband filed before the learned Trial Court, as annexed in the revision petition, it appears that the husband/opposite party admitted that he was having a B.Tech degree and that he was a person of high status. Although, he denied that he was a Deputy Manager, Human Resources at Max Life Insurance and was out of employment, he did not make it clear about what he was earning when he

was purportedly employed. No specific denial is present in the written objection about the alleged business that he was running.

8. It is also true that the husband/opposite party did not challenge the award of maintenance allowance.
9. It is abundantly clear from the petition filed under Section 125 of the Code, the written objection filed in the said proceeding and from the impugned order that the petitioner/wife is liable to be maintained by the husband/opposite party.
10. It may be germane to mention that the petitioner had also raised the issue of cruelty inflicted upon her by the husband and the opposite parties in a criminal case started by her.
11. On the question of the quantum of interim maintenance allowance to be awarded to the petitioner in this case, it is clear from the written objection filed by the husband that he had a B.Tech degree and was a man of high social status. He is an able-bodied man and a well qualified one who could get a decent job if he wanted. It is his choice whether he would resign from a job. It does not give any consolation to her deserted wife to know that her husband was preparing for IAS or IPS examination when he has refused to maintain her. Besides, nothing had been specifically stated or for that

matter, denied about the business that the husband was allegedly running, as per the wife.

12. In the facts and circumstances of the case, I find that a sum of Rs.5000/- (rupees five thousand only) is far too less a sum to be awarded as monthly interim maintenance allowance for the petitioner/wife. Accordingly, I direct that the opposite party/husband shall pay interim maintenance allowance to the petitioner/wife at the rate of Rs.10,000/- (rupees ten thousand only) per month.
13. In ***Rajnish Vs. Neha and Another*** [(2020) SCC Online 903], the Hon'ble Apex Court held that maintenance allowance should be paid to the wife from the date of application and not from the date of an order. Accordingly, I direct that the opposite party shall pay such sum per month as an interim maintenance allowance from the date of application of the petitioner filed before the learned Trial Court.
14. The learned Trial Court is requested to concluded the impugned proceeding under Section 125 of the Code as expeditiously as possible without granting any unnecessary adjourned to any of the parties and without being swayed by any observation made by this Court while deciding this revisional application.
15. With these observations, the revisional application is disposed of.

16. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)

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