

17.06.2021
Item no.30
Ct. No.34
CHC

**C.R.R. No.600 of 2010
(Through Video Conference)**

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

AND

In the matter of:- Ashis Ghosh

... petitioner

Mr. Achin Jana

...for the petitioner

Records reflect that by order dated 23.06.2009, learned Judicial Magistrate, 5th Court, Howrah was pleased to allow maintenance by way of an *ex parte* order in favour of the wife to the tune of Rs.4,000/- per month.

The husband on or about 04.12.2009 preferred an application under Section 126 of the Code of Criminal Procedure thereby praying for setting aside the *ex parte* order passed on 23.06.2009 and allow him to contest by adducing evidence in the case.

I have perused the order passed by the learned Magistrate wherein it has been observed:

“Hence, there is no further scope to consider the ex parte order vacating petition filed by the O.P. at this stage.”

I find that the application so preferred by the present petitioner before the learned Magistrate *inter alia*, contend amongst others that he was bedridden, heart patient and handicapped and aged about 62 years. To that effect, the

husband/petitioner intended to produce evidence. In view of the observations made by the learned Judicial Magistrate, 5th Court, Howrah in his order dated 04.12.2009, I am of the view that the proviso clause to Section 126 of the Code of Criminal Procedure was totally ignored by the learned Magistrate and the learned Magistrate should have afforded scope in view of the contentions advanced by the petitioner. Needless to say that as an ad interim measure the learned court would have asked the husband to continue the payment as earlier directed. In view of the aforesaid order dated 04.12.2009 passed by the learned Judicial Magistrate, 5th Court, Howrah in Misc.Case No.134 of 2005 is set aside.

Learned Magistrate would reconsider the same after serving notice to both the parties within a period of three months from the date of communication of this order.

Accordingly, CRR 600 of 2010 is allowed and all connected applications are disposed of.

Department is directed to communicate this order to the learned court below.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)