

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Criminal Appellate Jurisdiction  
Appellate Side

Present:  
The Hon'ble Justice Jay Sengupta

CRR 2828 of 2019

Smt. Srejany Samaddar (Das)  
Vs.  
Sri Kuntal Samaddar & Anr.

For the Petitioner : Mr. Amitabha Ghosh  
Sk. Sujauddin

For the O.P. No. 1 : Mr. Indrajit Dey  
Mr. Debanjan Mukherjee

Heard on: : 4<sup>th</sup> February 2021

Judgment on : : 4<sup>th</sup> February 2021

**The Court:**

This is an application challenging an order dated 29.08.2019 passed by the learned Sessions Judge, Barasat, North 24 Parganas in Criminal Revision No. C. R. 68 of 2019.

Affidavit of service filed by the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner wife was driven out of her matrimonial home when she was in the family way. The husband is employed in a pharmaceutical company and earns about Rs.50,000/- per month.

She filed an application under section 125 of the Code claiming maintenance for herself and was awarded a sum of Rs. 3500/- as an interim measure. In the meantime, a child was born and is aged about 3 ½ years at present. After necessary modifications, the learned Magistrate was pleased to award Rs.3500/- to the wife and Rs.2000/- to the minor child as interim maintenance allowances payable per month. Being aggrieved by this, the husband / opposite party preferred a revision before the learned Sessions Court. The revisional application was accompany with an application for condonation of delay. Without even condoning the delay in preferring the revision, by the impugned order, the learned Sessions Court reduced the total interim maintenance allowance payable to the mother and the minor child from Rs.5500/- per month to Rs.2500/- per month.

Learned counsel appearing on behalf of the opposite party no. 1/husband submits as follows. The income of the husband is disputed. There is no harm in keeping the application under section 5 pending and passing an interim order as an exigent measure. Since the matter is pending before the learned Sessions Judge, no interference may be made with the interim order.

I have heard the submission of the learned advocates for the parties and have perused the revision petition.

Without even going into the question of whether an interim order can be passed in a revisional application without condoning the

delay first, it is apparent from the impugned order that no reason whatsoever was recorded in scaling down the interim maintenance allowances payable to the mother and the minor child from Rs. 5500/- per month to Rs.2500/- per month. Such an order cannot be sustained in the eye of law.

Accordingly, I set aside the impugned order.

I request the learned revisional Court to conclude the hearing of the revisional application and the application for condonation of delay at the earliest, preferably within two months from the next date of hearing.

During the pendency of the said revisional application, the petitioner shall continue to pay interim maintenance allowances at the rates fixed by the learned trial Court.

With these observations, the revisional application and the connected application are disposed of.

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

**(Jay Sengupta,J.)**