

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 3211 Of 2019

Subhankar Ghosh

Versus

Mousumi Fulmali

Petitioner in person : Mr. Subhankar Ghosh

For the Opposite Party : Mr. Somnath Banerjee
 Mr. Pronojit Roy

Heard on : 26.02.2021

Judgment on : 30.04.2021

JAY SENGUPTA, J:

1. This is an application challenging an order dated 30.07.2019 passed by the Learned Judicial Magistrate, 1st Court, Rampurhat, Birbhum, thereby granting interim maintenance to the opposite party at the rate of Rs. 3,000/- per month.

2. From the affidavits of service filed on behalf of the petitioner, it appears that service could be effected on the private opposite party as well as on the learned counsel of the private opposite party conducting her case before the learned Trial Court. However, the private opposite party chose not to represent herself before this Court despite notice.

3. The petitioner appearing in person submitted as follows. The petitioner was a law student. Earlier, he was working at the Axis Bank on probation. However, he lost his job because of proceeding under Section 498A of the Penal Code initiated by the private opposite party. The petitioner's case is that the opposite party no. 1 was already in the family way when she got married to the petitioner suppressing such fact. In view of this, the petitioner filed a matrimonial suit under Section 25 of the Special Marriage Act praying for a decree declaring the marriage as null and void. The same was pending adjudication. However, although in the present proceeding, the opposite party had alleged sexual incapacity of the petitioner, in the civil proceeding, she complained about extra marital affairs of the petitioner. Reliance was placed on *Chaturbhujh vs. Sita Bai*, (2008) 2 SCC 316 and it was submitted that the wife was to prove her case for getting maintenance under Section 125 of the Code, especially to show that the husband had sufficient means.

4. From the impugned order it appears that the case of the opposite party herein was as follows. The couple got married on 03.02.2017. At the time of marriage, her father gave Rs. 80,000/- in cash, gold ornaments and other valuable gifts to the present petitioner as dowry. Thereafter, the petitioner again demanded additional dowry and started to inflict mental and physical torture upon her for the same. The petitioner threatened her with dire consequences when the present opposite party requested him to undergo treatment for his inability to indulge in physical relation. Lastly on 29.05.2017, the opposite party was driven out by the petitioner from his

house. The petitioner was working at the Axis Bank with the salary of about Rs. 30,000/- per month.

5. I have heard the submission of the petitioner appearing in person and have perused the revision petition and the impugned order dated 30.07.2019 passed by the learned Trial Court.

6. First, the order passed by the learned Trial Court appears to be a reasoned one.

7. Although, the petitioner had prayed for declaration of the marriage as null and void, as of now, there is nothing on record to show that the marriage does not subsist.

8. The petitioner is an able bodied man, a graduate and a student of law. Admittedly, he was once working at the Axis Bank on probation. Therefore, the petitioner cannot shy away from his responsibility to maintain his wife. The grounds taken up by the petitioner may come good at a subsequent stage. However, at present, the opposite party has alleged that she was tortured and driven out by the petitioner from his house. That is why she had to pray for maintenance under Section 125 of the Code from the petitioner.

9. The decision in *Chaturbhujh* (supra) is clearly distinguishable from the present facts. Unlike in *Chaturbhujh* (supra), here the question is about grant of interim maintenance. No evidence had been recorded till then.

10. On the other hand, in the case of *Rajathi vs. C. Ganesan*, (1999) 6 SCC 326 the Hon'ble Apex Court held that "Rather, in a case under Section

125 of the Code, trial Court is to take a *prima facie* view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail.”

11. For deciding the question of grant of interim maintenance under Section 125 of the Code, the rigors are, quite logically, much less.

12. In view of the foregoing facts, it is indubitably clear that the opposite party is entitled to get interim maintenance allowance from the petitioner.

13. Taking into consideration the facts that the marriage between the couple is admitted, albeit under challenge, the petitioner is an able bodied man and a qualified one too and considering the standings of the respective parties and the rising price indices, it is quite obvious that the sum of Rs. 3,000/- per month, which comes to about Rs. 100/- per day, as interim maintenance allowance under Section 125 of the Code, cannot be regarded as high.

14. In view of the above, I do not find any merit in this application.

15. Accordingly, the revisional application is dismissed.

16. However, there shall be no order as to costs.

17. The learned Trial Court 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. The parties shall be at liberty to raise all their respective contentions in the said proceeding and the learned Trial Court shall decide the said application

without being swayed by any observation made by this Court in this revision.

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

(Jay Sengupta, J)

P. Adak