

In the matter of : Srikanta Tantubay

....Petitioner.

Mr. Soumik Ganguly

Mr. Sourat Nandy

....for the petitioner

Mr. Dipanjan Dutt

...for the O.P. no. 2 & 3

Mr. Bidyut Kumar Roy

Ms. Rita Dutta

....for the State

Being aggrieved by the order dated 28th February, 2019 passed by the learned District Judge, Bankura wherein learned District Judge was pleased to allow the revisional application in part and thereby modified the impugned order passed by the learned Judicial Magistrate, 4th Court, Bankura in Misc. case no. 131 of 2017, present application under section 482 of the code of criminal procedure has been preferred. By the modified order, learned Sessions Judge was pleased to direct the husband/petitioner herein to pay interim maintenance of Rs. 5000/- to the opposite party No. 2 /wife and Rs. 5000/- to the opposite party No. 3/child.

Both opposite party No. 2& 3 herein filed an application for interim maintenance before learned Chief Judicial Magistrate, Bankura contending that the petitioner had no income of her own and it has become very difficult to maintain herself and her son. Accordingly, she prayed for monthly interim maintenance of Rs. 15,000/- for herself, Rs 7000/- for her son and Rs. 25,000/- towards litigation cost. In the said maintenance proceeding being Misc. case no. 131 of 2017, the petitioner

herein filed a written objection and contended that after one and half years of marriage, they started to reside in a rented house in Bankura. There the wife /opposite party no. 2 acquainted with one Jhantu Bag and the said Jhantu Bag used to come to their house and engaged himself in sexual intercourse with the opposite party no. 2 and for development of such illicit relationship, the petitioner and the said opposite party left the said tented house and came to village Agaya near matrimonial home of opposite party no. 2. Subsequently, the opposite party no. 2 again got involved in another illicit relationship with one Guddu @ Sandip Singh and subsequently on 27.6.2017, said Guddu @ Sandip Singh abducted the petitioner no. 1 and her minor son from the house of the petitioner. The petitioner made written complaint at Chhatna Police Station and a specific case was also started under Section 363A/366 of the Indian Penal Code against said Guddu @ Sandip Singh and during investigation the statement of the opposite party no. 2 was recorded under Section 164 of Code of Criminal Procedure and the opposite party no. 2 herein admitted before the Magistrate that she left her matrimonial home at her own volition and met with said Guddu @ Sandip Singh and thereafter along with the son she went to Madurai with said Guddu @ Sandip Singh and were residing with Guddu @ Sandip Singh in a rented house and subsequently she returned at Bankura with the help of police of Chatna Police Station and since then the petitioner opposite party no. 2 herein is living with said Guddu @ Sandip Singh as husband and wife.

Accordingly, the petitioner herein contended that in the said proceeding under Section 125 of the Code of Criminal

Procedure before the Magistrate, that opposite party no. 2/ wife who is living in adultery and without any reason, has refused to live with petitioner herein is not entitled to get any amount of maintenance or interim maintenance from the petitioner.

Learned Magistrate disposed of the said prayer for interim maintenance filed by both the petitioner not. 1/wife and the petitioner no. 2/son with the following observation:-

“now in so far as regards the allegation of petitioner/wife living in adultery is concerned, it is pertinent to mention that through the ld. Sessions Judge has observed that there had been illicit relationship between the accused person therein Guddu @ Sandip Singh and Sukla Tantubay, petitioner herein, with due consideration to the same, it can not be undermined that the same was on the basis of the entire process of trial, whereby the evidences and the statement u/s 164 of the Cr.PC had been corroborated and contradicted to prove or disprove the allegation u/s 363/366 of I.P.C. To draw conclusion therefrom and to infer that the petitioner/wife is living in adultery and hence not entitled to interim maintenance cannot be deciphered as this is a case under 125 of Cr.P.C. at a stage where no evidence has been taken leading to corroboration or contradiction to prove that the petitioner is living in adultery, which in fact would imply more specifically than an illicit relationship as envisaged in the I.P.C.

Section 125 of Cr.P.C. was enacted to achieve a social purpose. Its objective is to prevent vagrancy and destitution. In this case the petitioner and her minor child is entitled to interim maintenance as the marriage and the paternity of the child has not been disputed. The O.P./husband on the other hand is a Govt. employee and thus having sufficient means appears to have neglected to maintain his wife and child.

Thus at this stage of the case where there is no scope delving into the evidence, the other points raised by either of the parties are to be considered on conclusion of the trial. Thus the prayer for interim maintenance is allowed for both the petitioner and her minor child in part.

Hence it is.

Ordered

The O.P. is hereby directed to pay a sum of Rs. 1000/- to his wife and Rs. 1000/- to his minor son as interim maintenance from the date of this order and to be paid within the 15th day of each succeeding month until further orders.

To 16.08.18 for evidence and payment.

Let a copy of this order sheet be given free of cost to the petitioner.”

It appears that against said observation made by the learned Magistrate vide order dated 7.8.2018 in connection with Misc. Case 131 of 2017, the petitioner herein/husband did not prefer any revisional application. The revisional application

before the District Judge was preferred by opposite party/wife and opposite party/son as revisionists in criminal revision no. 28 of 2018. Accordingly, the observation of the learned Magistrate in support of granting *ad interim* maintenance to opposite party no. 2 at this interlocutory stage remains unchallenged in this revisional application.

Accordingly, the said observation of the Magistrate which was passed in keeping the object in mind in respect of Section 125 of the Code of Criminal Procedure to achieve social purpose and to prevent vagrancy and destitution of a helpless woman is not denied or disputed by petitioner in this revisional application.

Learned Revisional court while disposing revisional application no. 28 of 2018 also made the following observation:

“but against the said order, the O.P./husband did not file any revisional application or did not move any higher court. Therefore, it can be said that the O.P. has accepted the said order of the Ld. Judicial Magistrate. If that be so, then the O.P./husband cannot challenge indirectly the impugned order by saying that the petitioner/wife leading an adulterous life, cannot get maintenance from the O.P./husband. All the points of alleged adultery including certified copies of several connected documents were placed before the Ld. Judicial Magistrate and after perusal and consideration of the same, the Ld. Trial court allowed the prayer of interim maintenance allowance of the petitioners. Against such order, the O.P./husband did not move any higher forum nor file any cross revisional application and therefore, the O.P./husband is bound by the impugned order.

The impugned order was challenged by the petitioners on the sole ground that the quantum of allowance is too meagre to meet the needs of the petitioners. The petitioner no. 2 is a student and he requires a good sum of money.”

Learned advocate for the opposite party referred a Supreme Court judgment passed in ***Padal Venkata Reddy vs. Kovvuri Satyanarayana Reddy and others*** reported in **(2011) 12 SCC 437** and contended that inherent power under Section 482 can be invoked only when no other remedy is available to the litigant and High Court will not enter into any finding of facts

particularly when the matter has been concluded by concurrent finding of facts of two the court below. Let me reproduce the relevant paragraphs of the aforesaid judgment:

“12. *In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.”*

“13. *It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State [2000 Cri LJ 315 (Del)] and B.S. Joshi v. State of Haryana [(2003) 4 SCC 675 : 2003 SCC (Cri) 848]). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.”*

Having considered the facts and circumstances of the case and that the petitioner has not challenged the observation made by the learned Magistrate while passing the order granting interim maintenance, in favour of opposite party no. 2/ wife, the high Court in exercising its power under section 482 should not interfere as the petitioner has failed to ventilate his grievance before the appropriate forum, and the issue raised by petitioner herein has been considered at the interlocutory stage by concurrent finding of facts of the two courts.

In view of the above, the revisional application being CRR 801 of 2019 is dismissed. However, learned Magistrate is directed to dispose of the maintenance application being Misc. Case 131 of 2017 as expeditiously as possible preferably within a

period of ten months from the date of the order. It should be made clear that this court has not entered into the merits of the petitioner's contention that the wife/opposite party is living adultery or for that purpose, she is not entitled to get maintenance. All these questions regarding the question of living in adultery by the opposite party no. 2 and for that purpose, entitlement for getting maintenance by the opposite party no. 2 / wife shall be kept open before the trial court for the final disposal of the said Misc. Case no. 131 of 2017 and the petitioner herein will be at liberty to agitate all these points and opposite party no. 2 will be at liberty to object at the appropriate stage of proceeding.

Urgent photostat certified copy of this judgment, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)