

D/L 22
February 3,
2022
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C.R.R. No.1265 of 2018
(Via Video Conference)

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

Shyamali Mondal (Raptan)
Versus
Subhas Mondal & Anr.

Mr. Apurba Kumar Datta.
...for the petitioner.

Affidavit-of-service filed by the petitioner be kept with the
record.

I have perused the judgment and order passed by the
learned Judicial Magistrate (1st Class), 1st Additional Court,
Basirhat. The parameters considered by the learned Magistrate are
not acceptable to this Court for refusal of maintenance. This Court
could have detailed on the reasons, which are over there in the
judgment and order. However, as an abundant precaution this
Court restricts itself from commenting on the parameters or
yardstick so taken into account for refusing maintenance. The
factum of torture and demand of dowry and the reasons for not
staying with the husband are palpable on the face of the record.
Yet, the learned Magistrate has arrived at a conclusion that the lady
on her will was not residing with the husband. The reasons so
assigned should have been on the basis of foundation of the objects
and purpose for which Section 125 of the Code of Criminal
Procedure has been incorporated.

Accordingly, the judgment and order dated 25.01.2018 passed by the learned Magistrate (1st Class), 1st Additional Court, Basirhat in connection with Misc. Case No.310 of 2006 (TR No.652 of 2006) is set aside.

Learned Magistrate will issue notice to both the parties and fix date of hearing and re-appreciate the evidence for arriving at his independent conclusion.

Accordingly, CRR 1265 of 2018 is allowed.

Connected application, if any, is consequently disposed of.

The petitioner will be at liberty to draw the attention of the jurisdictional court by producing the server copy of this order for implementing the same in accordance with law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)