

CRR 918 of 2015

In the matter of:- **Ramkumar Dhanuk**

.....Petitioner.

Versus

Sujata Dhanuk & Ors

.....Opposite parties.

None appears on behalf of the petitioner as well as opposite parties.

The petitioner in the present revisional application has challenged the judgment and order dated 04.08.2014 passed by the learned Judicial Magistrate, 1st Court, Diamond Harbour, 24-Parganas(South) in M Case No. M 607 of 2011.

The factual matrix of the case is that the opposite party no. 1-wife in the proceeding under Section 125 of the Code of Criminal Procedure before the Judicial Magistrate, 1st Court, Diamond Harbour being M607 of 2011 prayed for maintenance for herself. Upon consideration of materials on record, the trial court directed the petitioner to pay Rs. 1,000/- per month as maintenance to the opposite party no. 1-wife from the date of filing of the application i.e. 22.12.2011. Being aggrieved by and dissatisfied with the said judgment and order, the petitioner has filed the present revisional application.

On going through the contentions of the petitioner made in the revisional application it appears that the quantum of maintenance allowed by the trial court in favour of the opposite party no.1-wife has been challenged on two fold grounds. *Firstly*, that the opposite party no.1-wife has

sufficient income of her own to the tune of Rs. 8,000/- to Rs. 10,000/- as professional dancer whereas on the contrary, the petitioner has meagre monthly income of Rs. 1,000/-. *Secondly*, that the mother of the petitioner is seriously ill and aged and the petitioner incurs huge medical expenses per month for her treatment.

As far as the first ground is concerned, from the impugned judgment, this court finds that in cross-examination opposite party no.1-wife has admitted that she is professional dancer. Be that as it may, there are no proofs that she out of such profession has sufficient income to maintain herself. On the other hand, although the petitioner contended before the trial court that he earns Rs. 1,000/- per month but he failed to produce any documentary evidence in the course of the proceeding. Although in the present revisional application the petitioner has annexed one income certificate issued by Councillor, Diamond Harbour Municipality (Annexure A/2 at page no.15) yet he failed to prove any such document before the trial court. Thus it appears that the aforesaid document has been procured for the sake of this revisional application. The burden of disclosing and proving the quantum of his income is on the husband but he has failed to discharge such burden. Hence the ground that the petitioner has no sufficient means is unfounded.

With regard to the second ground, it is found that the petitioner did not adduce any sort of cogent evidence to

establish that he incurs a huge expense towards the treatment of his mother. Therefore, such ground also fall short of merit.

The object of the provisions of Section 125 of the Code of Criminal Procedure is to prevent vagrancy and destitution. The petitioner is able bodied and capable of earning and it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

In the light of the above discussion, this court finds that the impugned judgment and order under challenge does not call for any interference and accordingly, the same is affirmed.

The petitioner has also assailed the order of issuance of DW on 18.11.2014 and issuance of warrant of arrest on 27.01.2015 in M Execution case no. 207 of 2014. Although, the petitioner has challenged the aforesaid orders on the ground that those has been issued without giving the petitioner opportunity of appearance but from the order No.1 dated 15.9.2014, it appears that notice was duly issued to the petitioner and after a considerable period the orders were made by the Executing court. Accordingly, such order does not call for interference.

In view of the above discussion, the present revisional application being **CRR 918 of 2015** is dismissed.

All connected applications, if any, stands disposed of.

The interim orders, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J.)