

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. 1307 of 2021

Pranab Mazumder

Versus

Mousumi Das

For the petitioner

: Mr. Jayanta Narayan Chatterjee,
Mr. Debashis Banerjee,
Ms. Moumita Pandit,
Ms. Nandini Chatterjee,
Mr. Nazir Ahmed,
Ms. Jayashree Patra,
Ms. Sreeparna Ghosh,
Mr. S. Koley,
Ms. Chandrima Roy Karmakar,
Ms. Pritha Sinha

Hearing concluded on : 23/06/2022

Judgment on: 30/06/2022

Rai Chattopadhyay, J. :

- 1) Opposite party/wife took recourse under law for getting maintenance from the present petitioner by filing her case under Section 125 Cr.p.c in the court of Judicial Magistrate, 3rd Court at Sealdah, being registered as M. Case No.154 of 2019. The Ld. Trial Court by dint of the impugned order dated 01.4.2021 has directed the present

petitioner to pay a sum of Rs.12, 000/- per month towards interim maintenance to the present opposite party with affect form the date of the said order till disposal of the case pending before it. The said order of Ld. Trial Court dated 01.04.2021 is assailed in this criminal revision case.

- 2) The petitioner has put forth the grounds that the court has delivered the order as impugned in absolute non-consideration of the documents available before it, the court has failed to consider the necessary points of fact like capacity of the petitioner to pay maintenance etc. while passing the order as impugned, that the court has acted with non-application of mind, that the court has exercised jurisdiction which was not vested in it by law while delivering the order as impugned. It has further being submitted by referring to the annexed documents that the petitioner's income is variable, which is based on the incentives etc. He being an employee of the 'call centre', by referring to annexed P-3 it is submitted that the take home pay of the petitioner is only Rs.24, 000/- and odd. In such view of the fact the petitioner urges that the impugned order not only suffers from irregularity and impropriety but also is impossible to be executed. Petitioner has also submitted that during the on going pandemic period his income has substantially being curtailed.

- 3) It is found that the opposite party/wife has been served with the copy of the petition as per the courts direction vide order dated 22.06.2021. The service appears to be complete and sufficient and a 'good' service. However, none appears on behalf of the opposite party/wife in this case when the matter is called on.
- 4) On careful scrutiny of the impugned order it appears that at the stage of grant of interim relief in a proceeding under Section 125 Cr.p.c, when the court acted on the basis of the affidavit of the respective parties, the court came to the finding that the present petitioner being a salaried person earns Rs.25,000/- per month with an additional income of Rs.20, 000/- per month by working as broker. Petitioner's denial to such fact on affidavit has been ignored by the Ld. Trial Court but without any sufficient and cogent reasons. I find that petitioner is not however denying his income from salary at the rate of Rs.24,000/- and odd per month. Therefore, it is found prudent that at the stage of adjudication of quantum of maintenance in an interim form, the court should proceed on the basis of the records available and make endeavour to adjudicate the dispute finally and conclusively, on evidence, as expeditiously as possible.
- 5) Considering the facts and circumstances and on the discussion as made above I find it proper to set aside the impugned order dated 01.4.2021 so far as the direction of the court - ***that the present***

petitioner is to pay Rs.12,000/- per month as interim maintenance to the opposite party - is concerned. The said direction of the Ld. Trial Court is hereby modified to state that the petitioner in place and stead of Rs.12,000/- per month as directed shall pay an amount of Rs.8,000/- to the opposite party/wife as interim maintenance, with effect from the date of this order. The other directions regarding payment made in the order impugned remain as those are. Needless to say that failure by the petitioner to remit such amount of interim maintenance and as per the stipulated terms shall obviously render right upon the opposite party to take recourse under the appropriate provision of law.

- 6) With the observation and direction as above this revision case is disposed of.

(Rai Chattopadhyay, J.)