

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 1190 of 2017

Shreepurna Lahiri & Anr.

Versus

Kallol Chatterjee

For the petitioners : Mr. Sanat Kr. Das
Mr. Sujan Chatterjee
Mr. Satadru Lahiri
.....Advocates

Heard lastly on : 13.07.2022

Judgment on : 29.07.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 24.03.2017 passed by the Learned Judicial Magistrate, 2nd Court, Malda in Case No. 205M/2015 under Section 125 of the Code of Criminal Procedure.

2. The petitioners are the wife and the minor daughter of the opposite party. The petitioner no. 1 and the opposite party got married in the year 2005. The marriage was solemnized under the Special Marriage Act. A

female child, being the petitioner no. 2, was born of such wedlock. The opposite party and the other in-laws allegedly subjected the petitioner no. 1 to physical and mental cruelty for dowry demand and finally on 05.10.2012, she and her child were purportedly driven out from the matrimonial home. The petitioner no. 1 filed the criminal case against the opposite party, *inter alia*, under Section 498A of the Penal Code. On 06.06.2015, the petitioner no. 1 filed an application under Section 125 of the Code claiming maintenance allowances at the rate of Rs. 20,000/- per month for herself and Rs. 15,000/- per month for her minor child. She claimed that the husband was earning about Rs. 1 lakh per month from his service while she had no independent income. Although, the application was filed in 2015, even after filing of written objection and fixing several dates, the issue of interim maintenance was not decided. The petitioner filed an application under Section 483 of the Code before this Court. By an order dated 24.03.2017 passed in CRR No. 120 of 2017, this Court directed the matter to be disposed of within thirty days from the said date. It was only after this that the impugned order was passed by the learned Trial Court. On 05.03.2019, as an interim measure, this Court directed the opposite party to pay a sum of Rs. 10,000/- per month to the wife for maintenance of the child. Thereafter, on 06.04.2022, the petitioner no. 1 withdrew this application so far as she was concerned as she had got married to another person in the meantime.

3. The matter came up for hearing before this Court on several occasions. Initially, the opposite party was represented by a learned Advocate. In fact, an opposition was also filed by the opposite party. After

conclusion of hearing on 05.03.2019, the learned counsel for the opposite party prayed for liberty to file a supplementary affidavit. The same was granted. But, no such supplementary affidavit was ever filed. It appears that on that date i.e., on 05.03.2019, certain questions arose regarding non-disclosure of income by the husband opposite party and about certain claims, he had made regarding his wife's income. After this, several dates were fixed. But, after a point no one came to represent the opposite party. Several notices were sent, by post and through the aegis of the State. All efforts, to get the opposite party on board, fell flat. Accordingly, the matter was heard ex parte.

4. Learned counsel, appearing on behalf of the petitioners, submitted as follows. The learned Magistrate erred in refusing interim maintenance in favour of the petitioners merely on the ground that the claims of the adverse parties about their incomes were not substantiated. The prime object of awarding interim maintenance was to prevent vagrancy of women and children. Bald claims of the husband about wife's income could not come in the way of this beneficial piece of legislation which came within the ambit of Article 15 of our Constitution. For argument's sake, even if it was presumed that a wife was earning something nominal, she could not be denied maintenance. In fact, she was entitled to the same standard of living that she would enjoy if she been able to live in the husband's household. By any stretch of imagination, the minor child could not be denied interim maintenance even for a moment.

5. The prime contentions of the husband opposite party, as would be evident from his opposition, are as under. The opposite party had never

neglected to maintain his wife and child. He disputed his income as alleged by the wife. His further case was that the wife was having a business and was earning about Rs. 2.77 lakhs per year as per her income tax return of 2011-2012. She also had a rent income from a flat.

6. I heard the learned counsel appearing on behalf of the petitioners and perused the revision petition and the affidavits filed.

7. As the petitioner no. 1 has withdrawn her claim for maintenance allowance, the only question left to be answered is the question of award of interim maintenance allowance for the minor child.

8. First, it is very unfortunate that the learned trial Court did not decide the issue of interim maintenance till March 2017 although the application for maintenance was filed in 2015. The issue was finally decided after an interference by this Court to expedite the proceeding at the behest of the wife. Regardless of whether the direction by this Court had any role to play with it, the learned Trial Court decided to deny both the wife and the child any maintenance on a rather superfluous ground that the parties could not satisfactorily prove their claims regarding income.

9. Secondly, it was nobody's case that the marriage did not take place between the parties. Nor was it a case where the husband was challenging the paternity of the child. The husband was evidently an able bodied man capable of earning a decent income. Yet, not a single farthing was granted as interim maintenance allowance for the wife and the child.

10. It appears that the learned trial Court was completely oblivious of the fact that the provisions of Chapter IX of the Code of Criminal Procedure were meant to avoid destitution and vagrancy of the ones affected. These

provisions came within the sweep of Article 15 of the Constitution of India. Therefore, any interpretation of or giving effect to any provision contained in Chapter IX of the Code would have to be done in consonance with the same.

11. In *Rajathi vs. C. Ganeshan*, (1999) 6 SCC 326 the Hon'ble Apex Court had held that a *prima facie* view has to be taken in deciding applications of maintenance allowance under Section 125 of the Code and the Court is not supposed to go into a meticulous analysis of disputed facts. In case of interim maintenance allowance, the standard is quite obviously even less than that.

12. I do not find any worthwhile reason to deny the child maintenance allowance in the facts and circumstances of the present case.

13. The petitioner no. 1 had made out a case for staying away from the matrimonial home. In fact, she was allegedly driven out from there. She alleged cruelty by the former husband and the other in-laws for which she had filed a criminal case. She further claimed that the opposite party was earning Rs. 1 lakh per month. On the other hand, she and her minor child were living at the mercy of her father. The child was a student of a reputed school.

14. Although the husband had sufficient opportunity to disclose his income and to contest the case by placing facts supporting his contentions, he has chosen to do none. In any event, he cannot shy away from maintaining his minor child.

15. Till the exact income of the opposite party could be ascertained, a bare minimum sum has to be awarded to the child keeping in mind their

ostensible standard of living including the fact that the child is a student of a prominent school.

16. In view of the above, especially after taking into consideration the apparent standard of living of the parties and the rising price indices, I set aside the impugned order and I direct the opposite party to pay maintenance allowance to the petitioner no. 1 for the minor child at the rate of Rs. 10,000/- per month, payable from the date of order. If any arrears have fallen due in respect of the direction passed by this Court on 05.03.2019, an appropriate execution providing can be initiated for the same.

17. The learned trial Court is further requested to conclude the proceeding as expeditiously as possible.

18. The observations made herein were only for deciding the revision and the learned trial Court shall not be swayed by them while deciding finally the application for maintenance allowance under Section 125 of the Code.

19. With these observations, the revisional application is disposed of.

20. 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