

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2190 of 2022

**Tupur Mallik nee Shaw
Vs.
Somnath Mallick**

Mr. Abhra Mukherjee
Mr. Sauradeep Dutta
...for the petitioner

Mr. Emon Bhattacharya
Ms. Pooja Sah
...for the opposite party

Item No.10

Heard & Judgment on: 28.07.2022

Bibek Chaudhuri, J.

The applicant in a proceeding under Section 125 of the Code of Criminal Procedure which has been registered as Miscellaneous Case

No.26 of 2021 before the learned Principal Judge, Family Court, Calcutta has approached this Court under its revisional jurisdiction challenging legality, validity and propriety of an order dated 19th April, 2022 passed by the learned Principal Judge, Family Court, Calcutta refusing the prayer of the petitioner for interim maintenance.

From the averment made in the instant revision and having heard the learned advocates for the petitioner and the opposite party/husband this Court has derived the following undisputed factual circumstances:-

- (i) The petitioner is the legally married wife of the opposite party.
- (ii) Their marriage was solemnized on 5th May, 2001.
- (iii) In the said wedlock the petitioner gave birth to a female child who is now aged about 20 years.
- (iv) After 20 years of living conjugal life the petitioner and her daughter left the matrimonial home on the allegation that she was subjected to physical and mental cruelty on illegal demand of dowry which made her life miserable and she was compelled to leave the association of the opposite party along with her daughter.

On the basis of such factual background as well as the averment made by the petitioner in her application under Section 125 of the Code of Criminal Procedure she also filed an application praying for interim maintenance at the rate of 40,000/- per month. By passing the order impugned the learned Judge in the trial Court refused to grant interim order of maintenance allowance in favour of the petitioner citing the following ground:-

"The allegations of dowry and cruelty to extract dowry are too stale to merit serious consideration. It is difficult to believe that a man with a grown up and marriageable daughter would now after about 20 years of his marriage would think of subjecting his wife to dowry cruelty. He would be more anxious and worried in finding of a proper groom for his daughter and arranging for her dowry."

It is submitted by the learned advocate for the petitioner that at the interim stage without recording any evidence the learned Judge in the trial Court held that the petitioner prayed for interim maintenance narrating a false and concocted story of cruelty against her husband. The learned trial Judge disbelieved the allegation of cruelty upon the petitioner observing, inter alia, that after 20 years of marital life the opposite party cannot be said to be a perpetrator of cruelty on demand of dowry because at this stage the opposite party would think

for making arrangement for dowry payment in the marriage of her daughter.

The above observation itself is contrary to law because both paying and receiving dowry are criminal offences under Dowry Prohibition Act. This Court fails to follow how the learned Judge in the trial Court made such observation when there is no material on record that the opposite party was trying to make arrangement for the marriage of her daughter and the groom has demanded dowry.

The above observation is unfortunate, if not callous and it is not borne out of record.

The learned trial Judge adorning chair of the Principal Judge of the Family Court was appointed as the learned Judge of the said Court after completion of a long tenure in judicial service and after being superannuated. Therefore, this Court does not think it necessary to remind the learned Judge that while considering an application for interim maintenance in a proceeding under Section 125 of the Code of Criminal Procedure, the Court will prima facie see whether the petitioner has been staying away from her matrimonial home; secondly whether the petitioner is being paid monetary relief by her husband during her stay away from her matrimonial home and whether the petitioner has any independent source of income or not to maintain herself.

The issue as to whether the opposite party has refused or neglected the petitioner to maintain her is a question of fact which can only be decided after recording evidence of the parties. Therefore, at the initial stage of the proceeding, an application for interim maintenance filed by the wife/petitioner shall be allowed if the Court finds that the petitioner is living away from her husband and she has no source of income to maintain herself. The learned Judge by passing the impugned order disbelieved the petitioner's case that the petitioner was compelled to leave the association of her husband on the ground of cruelty. Such issue being a disputed question of fact can only be decided at the time of final hearing of the case on the basis of evidence on record.

Therefore, this Court finds that the impugned order dated 19th April, 2022 is patently illegal and liable to be set aside.

The learned trial Judge is requested to decide the application for interim maintenance filed by the petitioner in the light of the observation made hereinabove in this order. The learned trial Judge is also requested to consider the affidavit of assets filed by the opposite party and make an endeavour to reconcile the statement of the opposite party in the affidavit of assets. It is open for the learned advocates for the parties to agitate all issues pertaining to the points

which are necessary to dispose of an application for interim maintenance in the trial Court.

The learned trial Judge is requested to dispose of the application for interim maintenance by passing a reasoned order within 15th September, 2022.

The revisional application is, thus, disposed of.

(Bibek Chaudhuri, J.)