

29.07.2022
S/L No.32
KS

C.R.R. 2258 of 2021

Shri Amar Ghorui
Vs.
Minor Krishna Ghorui & Anr.

Mr. Supriya Ranjan Ghosh
.....For the Petitioner
Mr. Dipanjan Datta
Mr. Atanu Basu
.....For the Opposite Parties

This revisional application filed under Section 401 read with Section 482 of the Code of Criminal Procedure is directed against the order dated 30.09.2021 passed by Learned Additional Chief Judicial Magistrate, Uluberia in Misc. Case No.236 of 2020 under Section 125 of the Code of Criminal Procedure, whereby an interim maintenance of Rs.6,000/- was allowed to wife/opposite party no.2 and Rs.5,000/- per month in favour of the minor son/opposite party no.1 of the petitioner.

Being aggrieved with the order of interim maintenance passed the petitioner has filed this revisional application contending, inter alia, that the impugned proceeding is wholly illegal, erroneous and improper. The Learned Magistrate did not consider the provision under Section 125 (4) of the Code of Criminal Procedure whereby the wife refusing to live with her husband without sufficient reasons is not entitled to receive any maintenance. It is also urged that Learned Trial

Court failed to consider that the prayer for maintenance has been made for wife 16 years after the marriage, having no specific allegation against the husband.

According to the petitioner he receives a monthly pension of Rs.14,289/- on account of his earlier service in the Armed Force and it would be hardship on the part of the petitioner to pay Rs.11,000/- per month on account of interim maintenance to his wife and son. Petitioner has accordingly prayed for setting aside of the impugned order.

Learned advocate for the opposite party members has raised strong objection. It is submitted that there is no dispute of the fact that opposite party no.2 is the legally married wife of the petitioner and she has given birth to the minor son, Krishna Ghorui out of their wedlock. According to learned advocate for the opposite party the petitioner has substantial earning from pension as well as his business at Chengail. Therefore, the order passed by Learned Magistrate needs no interference.

Considered the arguments advanced by learned advocates for the respective parties.

Perused the application for revision, impugned order and the application for maintenance filed before the Trial Court.

The admitted position in this case is that the opposite party no.2 is the legally married wife of the petitioner and opposite party no.1 is the minor son. There is no dispute regarding the fact that both the

opposite party members have no independent earning and the wife has spent 16 years of her married life in the matrimonial home. According to the case projected by the wife before Learned Trial Court is that since her marriage she was subjected to torture on demand of dowry and on several occasions her father had to accede to the dowry demands. Being unable to bear such treatments, the wife/opposite party no.2 left her matrimonial home on 11.07.2020 and is residing in her father's house since then.

Learned advocates for both the parties fairly submitted that there were attempts to bring about a compromise between the petitioner and the opposite parties and the wife returned to her husband's house on two occasions. Be that as it may, the wife/opposite party no.2 is presently residing separately and is unable to maintain herself. The husband is poised in a better financial state being Ex – Army Staff. He is getting monthly pension and is an able bodied person who can work for gain. Since the present petitioner is the husband and the father of minor, the law cast a duty upon him to take adequate care and maintain his dependent wife and minor son unable to maintain themselves.

Learned Magistrate has carefully considered the demand of maintenance made by the wife and the means of the husband. She has carefully struck of a balance between the need of the wife and son and ability of the husband/petitioner and also in a realistic manner as considered the ever-increasing price of essential commodities necessary for maintaining a proper livelihood.

In such view of the matter, I consider that the grant of interim maintenance allowed to the opposite party nos.1 and 2 per month is not an excessive amount. If the petitioner has any difficulty to pay such reasonable amount, he has to make an extra effort for earning.

I do not find any illegality, irregularity or impropriety in the impugned order.

Accordingly, the revisional application is considered and dismissed on merit.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to Learned Additional Chief Judicial Magistrate, Uluberia, Howrah with a direction to expedite hearing of the main application for maintenance on the basis of evidence and affidavit of assets to be filed by both the parties supported by documents.

All parties should act on the server copy downloaded from the official website of this Hon'ble Court.

(Ananda Kumar Mukherjee, J.)