

**IN THE HIGH COURT AT CALCUTTA**  
**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 2899 of 2019**

**Jiaul Alam @ Md. Jiaul Alam**

**Vs.**

**Ivana Sarkar & Anr.**

**For the Petitioner** : Mr. Shibaji Kumar Das

**For Opposite Party No. 1** : None

**For the State** : None

Heard on : 17.11.2022

Judgment on : 23.11.2022

**Shampa Dutt (Paul), J.:**

The Revisional application is against the judgment and order dated August 03, 2019 passed by the Learned Additional District and Session Judge, 4<sup>th</sup> Court, Malda dismissing Criminal Revision No. 09/2019 filed against the Judgment and order of the Learned Magistrate, 3<sup>rd</sup> Court, Malda, allowing the petition under Section 125 CrPC filed by the opposite party No.1/wife and granting her a monthly maintenance of Rs.7000/- to be paid by the Revisionist/ husband herein.

Admittedly the marriage between the parties was solemnised on 24.11.2001 according to Muslim Shariat Law. Though the marriage was consummated no child was born,

The opposite party then citing torture filed a case under Section 498A/323 IPC read with Section 3 and 4 of the Dowry Prohibition Act and also a petition under Section 125 CrPC in which the Learned Magistrate granted maintenance and the Learned Session Judge affirmed the said order.

Hence this Appeal.

On hearing the parties and considering the materials on record including the judgment under Appeal the admitted facts before this court are :-

- a) The Revisionist/husband earns a sum of Rs. 23,000 per month from his permanent job as a clerk (as held by the Sessions Judge) But in

the last line of para 1 of pg 4 of the Judgment under appeal, it has been clearly noted that the husband/Revisionist has himself stated that he earns Rs. 32,687/- per month.

- b) The opposite party no. 1 (wife) earns a sum of Rs. 13.000/- per month from her job as a Para-teacher under the District Project officer, Sarva Shiksha Mission, Malda. (RTI reply dated 12/9/2018)
- c) The RTI reply includes the information that she is employed since 11.11.2006.
- d) In 2013, the Revisionist/husband got married again with the consent of the opposite party no.1 (Wife) as she was not able to conceive.

Considering these **admitted facts** and relying on the judgment of the Supreme Court in **Criminal Appeal No. 1080 of 2008, Minakshi Gaur Vs Chitranjan Gaur and Anr. (AIR 2009 Sc 1377)** wherein the Court held :-

*“According to the case of the appellant, her husband, who Respondent No. 1 herein, is a graduate in Engineering and his income Rupees twenty thousand. In the counter affidavit filed before this Court, the fact that the income of the husband is Rupees twenty thousand per month has not been denied. However, it has been asserted that wife’s returned income is Rs. 98,820/- per annum, which shows that she was earning even less than Rupees nine thousand per month. Both the wife and husband are residing at Agra. **In our view, it is not possible for the wife to maintain herself in the town of Agra with the income of less than Rupees nine thousand per month. The husband, who is earning at least Rupees Twenty thousand per month, as stated by the appellant in this appeal and not controverted, is***

***liable to pay some amount of maintenance to the wife so that she may be able to maintain herself. In the facts and circumstances of the case, we are of the view that it would be just and expedient to direct the husband to pay Rupee five thousand per month to the wife by way of maintenance from the date of filing of the petition under Section 125 Cr.PC.”***

It is found that the facts in the present case are very similar to the facts in the case before the Supreme Court in **Minaskshi Gaur –Vs- Chitranjan Gaur & Anr, Supra.**

Herein the Revisionist/husband has admitted that he earns Rs. 32,687 per month. The RTI Reply filed by the Revisionist shows that the opposite party (Wife) shows that she earns Rs. 13,000/- per month.

The Session Judge’s finding is different :-

Revisionist/Husband – Rs 23,000 per month.

Opposite party/wife – Rs 7.204/- per month approximately.

**The opposite party also gave her consent to the petitioner to marry again as she could not conceive. (though Medical reports are not before the court to show as to who actually had medical problems relating to fertility).**

A Husband is duty bound to look after the welfare of his wife (where she is entitled), even in the absence of regular income. He has to earn by legitimate means to maintain his family.

Here the husband earns a much higher amount (Rs. 32,687/-) than the wife (Rs. 13000/-). He has the responsibility to bear the basic expenses for her daily livelihood. The Opposite party no. 1 is still the wife of the petitioner, even though he has married for the second time (with consent).

The petitioner/husband in this case is thus liable to pay **some amount of maintenance** to the opposite party/wife, so that she may be able to maintain herself decently and live her life with dignity and self respect.

Thus, this court is of the view that it would be just and expedient to direct the husband to pay a sum of **Rupees five thousand per month** to the opposite party /wife by way of maintenance from the date of filing the petition under Section 125 CrPC.

Accordingly the judgment and order dated 03.08.2019, passed by the Learned Additional District and Session Judge, 4<sup>th</sup> Court, Malda in Criminal Revision No. 09/2019 and the order dated 24.01.2018 passed by the Learned Judicial Magistrate, 3<sup>rd</sup> Court, Malda in Case no. 211M/2014 are hereby modified to the extent that the petitioner/husband will pay a sum of Rs. 5000/- per month to the opposite party/wife from the date of filing of the application under Section 125 CrPC. Remaining portion of the order/orders remains unchanged.

**CRR 2899 of 2019** is allowed to the said **extent and disposed of**.

All connected Applications stand disposed of.

Let a copy of this judgment (along with the Lower Court records of the respective Courts), be sent to the Court of the Learned Additional District Judge, 4<sup>th</sup> Court, Malda and Learned Judicial Magistrate, 3<sup>rd</sup> Court, Malda for Compliance.

Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(Shampa Dutt (Paul), J.)**