

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3215 of 2018

Silpi Mallick @ Shilpi Mallick (Ghosh)

-vs-

Suvendu Mallick

For the Petitioners : Mr. Srijib Chakraborty
Mr. Sunny Nandy

For the opposite Party : Mr. Surendra Kr. Sharma

Heard on : 02.08.2022

Judgment on : 10.08.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved with the order dated 13.09.2018 passed by the learned Additional District and Sessions Judge, 1st Court, Serampore, Hooghly, in Criminal Motion No. 209 of 2017, directing the opposite party to pay interim maintenance to the tune of Rs. 8000/- per month to the petitioner thereby modifying the order dated 27.07.2017 passed by the Learned Additional Chief Judicial Magistrate, Serampore, Hooghly in connection with Miscellaneous Case No. 113/2015 under Section 125 of the Code of Criminal Procedure inter alia directing the opposite to pay Rs. 12000/- per month towards the interim maintenance of the petitioner.

2. Petitioner's contention is that petitioner was married with the opposite party and their marriage was solemnized in the year 2013 according to Hindu rites and customs. Subsequently the relationship became strained and various litigations are cropped up in between the parties.

3. Pursuant to the lodging of Serampore P.S. Case No. 51/2015 dated 27.01.2015 under section 498 A of the I.P.C., the opposite party herein moved an application for anticipatory bail before the Hon'ble High Court Calcutta, and at the time of disposal of the said application opposite party herein, had offered to pay Rs. 10,000/- per month to the petitioner towards her maintenance. Furthermore petitioner filed Misc. Case No. 29/2015 under the provisions of Protection of Woman from Domestic Violation Act, 2005, wherein the opposite party is also directed to pay Rs. 10,000/- per month under section 23 of the said Act by the Learned Additional District & Sessions Judge, First Court Serampore, Hooghly vide order dated 25.07.2016.

4. In spite of all specific directions made by the court, opposite party herein failed to comply with the same and for which the petitioner had to file the execution proceedings to receive her lawful claims. Opposite party subsequently filed Mat Suit No. 587/2015 with a prayer for decree of divorce on the ground of nullity and in that case also opposite party was directed to pay sum of Rs. 10,000/- per month towards alimony pendente lite by the Learned Additional District & Sessions Judge First Court, Serampore, Hooghly vide order dated 07.05.2016. Again the petitioner filed present application under section 125 of the Code of Criminal Procedure before the learned ACJM,

Serampore, Hooghly being Misc case no. 113/2015 *inter alia* praying for a sum of Rs. 30,000/- per month towards monthly maintenance and another application was filed praying for interim maintenance to the tune of Rs. 30,000/- per month till the disposal of the case.

5. The aforesaid proceeding under section 125 Cr.P.C. was taken up for hearing by the learned ACJM, Serampore, Hooghly and vide order dated 27.07.2017 learned Magistrate was pleased to direct the opposite party herein to pay sum of Rs. 12,000/- to the petitioner towards monthly interim maintenance.

6. Being aggrieved by the said order, the opposite party herein filed revisional application before the court of learned Additional District & Sessions Judge, Serampore, Hooghly.

7. It is further submitted by petitioner that learned Revisional Court in absolute non application of judicial mind, was pleased to modify the order passed by the learned ACJM, Serampore, Hooghly and vide order dated 13.09.2018 the learned Revisional Court reduced the amount of monthly interim maintenance payable to the petitioner from Rs. 12,000/- to Rs. 8,000/- per month in connection with said proceedings under section 125 of Cr.P.C.

8. Mr. Srijib Chakraborty learned Advocate on behalf of the petitioner submits that learned court below has passed the impugned order mechanically without applying judicial mind and he failed to appreciate that the opposite party herein is a doctor by profession and earned a sum of Rs. 1 Lakh per

month. On the contrary the petitioner is unable to maintain herself and is in need of maintenance so as to live with dignity and not mere existence, as envisaged in the constitution of the country.

9. Mr. Chakraborty further submits that learned revisional court ought to have considered fraudulent nature of the opposite party which is evident from his reluctance to comply with the direction of the court in paying maintenance month by month. He further submits that provisions of section 125 of the Cr.P.C. is measuring as the social justice falling within the constitutional sweep of Article 15(3) and Article 39 and object of the beneficial legislation is to compell the man to perform his moral obligation to maintain his wife.

10. Mr. Chakraborty further submits that the well settled principle of law is that among the several proceedings between husband and wife the husband is required to pay the highest amount of maintenance awarded in a proceeding but the learned Revisional Court made mistake in assuming that as opposite party is paying Rs. 10, 000/- as per order of the Hon'ble High Court so he reduced the maintenance amount from Rs. 12,000/- to Rs. 8,000/- which is not sustainable in the eye of law.

11. Mr. Sharma appearing on behalf of the opposite party submits that the petitioner lodged an FIR alleging that the opposite party herein is a fake doctor and as such Serampore P.S. Case No. 536/2015 (G.R. Case No. 2198/2015) was initiated against the opposite party herein and the opposite party was arrested and he was in custody for more than one month. Because of the criminal proceedings and detention in jail custody for more than one month,

the medical practice of opposite party has come to an end and opposite party herein at present working as health advisor to earn his livelihood and income of the opposite party is not secured at present.

12. Mr.Sharma further submits after marrying the petitioner herein, the opposite party has to face more than fifty cases and as such opposite party has to bear huge litigation cost for those cases and his income is not stable and he earns hardly Rs. 10,000/-to 20,000/- per month. Accordingly the order passed by learned Revisional Court is justified and does not call for any interference.

13. I have perused the affidavit filed by both the parties. The marriage between the parties has not been disputed and it is also not in dispute that the petitioner is unable to maintain herself. Opposite party/husband by filing affidavit has submitted his statement of bank account and also the income tax return submitted by him during the year of 2021-2022 and 2022-2023 and it appears from the statement that during assessment year 2022-2023, the total annual income of the petitioner was Rs. 3,38,560/-. From the bank account it appears that as on 29.06.2022, Rs. 31,386/- is lying as balance in his bank account.

14. Petitioner contended that she has to pay water tax and also electric bill along with arrear charges beside the cost of her daily bare necessities.

15. Having considered facts and circumstances of the case and without going into merits of the contention as raised by the parties through there affidavit and considering the fact that the present order impugned relates to an interim arrangement only and also considering the fact that annual income of opposite

party as shown in Income Tax return for the assessment year 2022-2023, is Rs. 3,38,560/- as gross income for the entire year and that an order granting interim maintenance is subject to a final adjudication on the main petition and the interim maintenance granted during the pendency of the proceedings is only, provisional maintenance, subject to final determination to be made on the conclusion of the proceeding, I find nothing to interfere with the order impugned. It should be made clear that petitioner /wife can make claim for maintenance under different statutes, but it will be inequitable to direct the husband to pay maintenance under each of the proceedings independent of the relief granted in previous proceeding. Accordingly interim maintenance granted to petitioner in previous proceeding deserves to be adjusted in the present proceeding.

16. CRR 3215 of 2018 is accordingly dismissed.

17. The most unfortunate part of the present proceeding is that wife/petitioner filed maintenance application in the year 2015 and it is pending between the parties for a period of seven years. It is to be kept in mind that proceeding under section 125 Cr.P.C are of a summary in nature and primary justification for their inclusion in the code of Criminal Procedure is that the remedy provide is speedy. Therefore, learned ACJM, Serampore, Hooghly is requested to make expeditious disposal of substantive application being Misc case No. 113/2015 under section 125 of the Cr.P.C. finally, preferably within a period of 6 (six) months from the date of the receipt of the order .

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)