

06.09.2022
Item No. 1
Ct. No. 236

CRR 3005 of 2010

**Emamul Sk.
Vs.
Roshnara Bibi & Anr.**

Mr. Mrityunjoy Chatterjee, Adv.,
Mr. Debapriya Majumder, Adv.,
Md. S. Biswas, Adv.

..... for the petitioner.

This application under Section 482 of the Cr.P.C. arising out of judgement and order passed by learned Additional Sessions Judge, Jangipur, Murshidabad in Criminal Revisional Case No. 84 of 2008. Affirming the judgement and order pronounced by learned Judicial Magistrate, 1st Court, Jangipur, Murshidabad in M.R. Case No. 8 of 2002 under Section 125 Cr.P.C.

Depicting herself as neglected wife of the petitioner Emamul Sk., Roshnara Bibi filed the petition under Section 125 Cr.P.C. seeking maintenance for herself and for her minor child contending, inter alia, that her marriage with Emamul Sk. was contracted on 24th February, 2002 and the same was duly consummated. She gave birth to 4 four children. Unfortunately two among the four children are surviving. She was blamed for the death of her two children. She was subjected to torture in her matrimonial home as she failed to fetch a

sum of Rs. 40,000/- from her poor father, which she was asked to do. As Roshnara Bibi failed to satisfy the demand of her husband she was driven out by her husband while she was carrying for seven months. Her son was kept in the custody of her husband. The petitioner wife further stated that her husband at the relevant point of time used to earn Rs. 6000/- to Rs. 7000/- per month but despite having means he refused to maintain his wife and child.

The husband contested the application by filing the written objection contending, inter alia, that he had given Talaq to his wife and paid the maintenance during Iddat period, and also paid dower. He claimed to earn Rs. 25/- to Rs. 30/- per day as daily labour and he prayed for dismissal of the application.

Learned Trial Court having considered the evidence on record was pleased to allow the petition granting a sum of Rs. 1100/- per month for the maintenance of the petitioner wife and Rs. 900/- per month for the maintenance of the minor daughter of the parties.

The husband challenged the said order of learned Trial Court before the Additional District Judge, Jangipur, Murshidabad by filing an application under Section 397/399/401 of the Cr.P.C. which was a registered as Criminal Revisional Case No. 84 of 2008.

Learned Additional Sessions Judge however, refused to interfere

with the order passed by learned Trial Court and disposed of the Criminal Revisional Case No. 84 of 2008.

Challenging the said order of learned Additional Sessions Judge, Jangipur, Murshidabad, Emamul Sk. filed this application under consideration.

Heard learned Advocate for the petitioner Mr. Mrityunjoy Chatterjee. None appears for the respondent.

Perused the impugned judgement passed both by learned Trial court and learned Additional Sessions Judge at Jangipur, Murshidabad.

From the attending facts of the case it is admitted that the petitioner Emamul Sk. is the husband of Roshnara Bibi and in absence of any evidence to show that Roshnara Bibi has income sufficient to maintain herself, the petitioner cannot disown the responsibility he incurred by marrying Roshnara Bibi. Being the father he is under obligation to maintain the child as well. Emamul Sk. took the plea that he had given Talaq to his wife which he failed to substantiate. Under Section 106 of the Evidence Act, Emamul Sk. has the onus to prove his income which is something within his special knowledge but he failed to discharge such onus by adducing cogent and convincing evidence. The amount of maintenance passed by

learned Trial Court to the tune of Rs. 2000/- for the child and her mother was neither penurious nor luxurious in the year, 2007 when the impugned order was passed.

I do not find any reason to interfere with the judgement passed by the learned Additional Sessions Judge in the Criminal Revision under consideration.

The Application is bereft of any merit and is dismissed but without cost.

(Siddhartha Roy Chowdhury, J.)