

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3558 of 2019

Smt. Minakshi Bhowmik nee Naskar

-vs-

Purandar Bhowmik

For the Petitioner : Mr. Asit Baran Raut
Mr. Tuhin Subhra Raut
Ms. Ishita Raut

For the Opposite party : Mr. Ranjan Kali

Heard on : 19.7.2022

Judgment on : 22.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been filed for setting aside the order dated 24th June, 2019 passed by the learned Additional Chief Judicial Magistrate, First Court at Baruipur, South 24 Parganas in a proceeding under section 125 of the code of criminal procedure being Miscellaneous Case No.267 of 2015. By the impugned order, the learned trial court was pleased to grant interim maintenance to the petitioner herein at the rate of Rs.1,500/- per month in favour of petitioner herein from the date of the order, that is, 24.06.2019.

2. The petitioner herein Smt. Minakshi Bhowmik nee Naskar filed an application under Section 125 of the Code of Criminal Procedure being Miscellaneous Case No.267 of 2015 before the learned Additional Chief Judicial Magistrate at Baruipur against the opposite party Purandar Bhowmik. In the said proceeding, the petitioner Minakshi filed an application for interim maintenance contending that she was married with the opposite party Purandar on 10.01.2001 according to the Hindu Rites and Customs and the said marriage was registered under the Hindu Marriage Act on 10.01.2001. After marriage, the petitioner-wife started to live with the opposite party at her matrimonial home but thereafter the petitioner gradually realized that the conduct of her husband is suspicious and on inquiry, she came to know that the opposite party took huge quantity of loans from the nearby shop owners and on being asked, he could not justify properly for taking such huge loans. Practically, the family expenditure was maintained from the earning of private tuition of the present petitioner. The opposite party in the meantime had developed an illicit relationship with a married lady, namely, Rama Hajra. In the year 2010, the opposite party was appointed as a school teacher in Binpur Noda Primary School and his starting salary was of Rs.15,000/- per month and he is still continuing with the job but the opposite party does not bother to maintain his wife. Except monthly salary, he also earns as a teacher of art and painting and his monthly income is approximately Rs.35,000/- at the time of filing said *ad interim* maintenance application. On 07.10.2010, the opposite party had driven the petitioner from her matrimonial home and finding no

other alternative, she had taken shelter at her father's house. Accordingly, the petitioner prayed for monthly maintenance of Rs.15,000/- per month pending the hearing of the main application under Section 125 of the Code of Criminal Procedure.

3. The opposite party-husband filed objection against the petitioner's prayer for ad interim maintenance. The opposite party-husband has not denied or disputed the fact of marriage but he denied other allegations made in the maintenance application. Even in the objection petition, the opposite party denied that he refused or neglected to maintain his wife and he also denied that his total earning per month was Rs.35,000/-. According to opposite party at the time of marriage, the petitioner had sufficient income from private tuition but at that time the opposite party was jobless. The objector further stated that the petitioner without any rhyme or reason left her matrimonial home on 17.01.2013 and on 20.01.2013, the petitioner lodged a false complaint to the Binpur Police Station against the opposite party and his parents stating false and baseless allegations. The opposite party further submitted that the petitioner is a qualified lady and now working at the office of the Child Development Officer, Sonarpur ICDS Project, South 24 Parganas under Government of West Bengal, having a handsome salary of Rs.5,000/- per month and she has also earning from tuition. On the contrary, the opposite party, being a primary school teacher, earns Rs.19,000/- per month but he has to deposit Rs.12,605/- per month to Binpur-I Circle Primary Teachers' Co-operative Society Ltd. for repayment of loans, which he took for the treatment

of his mother, who was suffering from cancer and after payment of loan, the opposite party receives only Rs.6,400/-, out of which he has to look after his old-aged ailing parents who are now aged about 84 years and 74 years and suffering from various age-old ailments and the mother of the opposite party is suffering from cancer. The petitioner has her own income and she is not entitled to get maintenance. Accordingly, prayed for dismissal of the maintenance proceeding.

4. Learned trial court considered the submissions of both the parties and observed that the marriage between the parties is not denied or disputed though parties are residing separately. Learned trial court appreciated that opposite party/husband has to repay his loan amount and he is getting only Rs. 7000/- to Rs. 8000/- per month and on the contrary, the petitioner/wife is an employee in ICDC and also keeping in mind that the opposite party/husband has liabilities to repay the loan, learned trial court awarded interim maintenance of Rs. 1,500/- per month from the date of the order, against which wife/petitioner filed this Revisional Application.

5. During pendency of this revisional application opposite party/husband filed affidavit-in-opposition and petitioner/wife filed affidavit-in-reply. In the affidavit-in-opposition filed by the opposite party/husband, it has been contended that it is incorrect to say that the petitioner/wife is unable to maintain herself or unable to meet her daily requirement. At the time of marriage, the petitioner was a housewife but subsequently, she got an employment in the ICDS project and became a worker in the year 2007 and

since then she has been working and she is in uninterrupted service for 15 years without any break. On the contrary, the opposite party/husband has to look after day to day requirements of his mother and he has to bear all expenses towards the treatment of his mother who is suffering from cancer. The opposite party/husband further contended that he is a heart patient and recently he was hospitalised for heart disease and he underwent knee operation also in a hospital and presently due to aforesaid ailments, he is not physically fit and under lot of medication and care. He has to bear his medical expenses as well as medical expenses of his mother who is a cancer patient. It is not correct to say that the petitioner/wife is working as Anganwari worker in a temporary post as alleged and as such impugned order passed by the learned Judicial Magistrate is appropriate and reasoned order and said order has been passed, taking into consideration, the entire factual matrix of the case and also the materials on record and accordingly he prayed for dismissal of the revisional application.

6. The petitioner/wife filed an affidavit-in-reply and in her reply, she averred on oath, that she is a casual worker under integrated child development scheme project as Anganwari worker, which is purely a temporary job and her salary is determined on the basis of “no work no pay” and for last few years, she has been facing tremendous inconvenience and hardship to perform her said job regularly as she is suffering from ovarian cancer since 2017 and though she is earning a total sum of money to the tune of Rs. 8000/- per month approximately by way of honorarium but with such meagre

income she is facing hardship and tremendous difficulties. As a cancer patient, she has to undertake constant medical treatment and supervision for which a substantial amount of Rs. 10,000/- per month is needed in addition to suffer day to day expenses which are required to be defrayed for maintaining daily life. Moreover, mother of the petitioner/wife is also suffering from different age related disease and is living on constant medical supervision. Moreover she has no other male earning member in her family. She has categorically denied that she had left her matrimonial home at her sweet will. She further stated that the father of the opposite party/husband is a pension holder, getting huge quantum of money per month by way of pension. Furthermore, the petitioner sought for information under Right to Information Act and the concerned authority through a letter dated 8th October, 2021 informed the petitioner/wife that the opposite party/husband as on October 2021, was drawing a handsome amount of Rs. 37,905/- towards his net pay after deduction of GPF, P Tax and other taxes. She further contended that due to her serious life threatening disease, she has become irregular at her work and as her nature of job is on “no work no pay basis”, so presently, she does not have fixed income to maintain herself. She further contended that the learned Additional Judicial Magistrate at Baruipur has erred in law and also in fact, in coming to the conclusion that the opposite party/husband has to incur huge expenses towards medical treatment of himself and his mother and he has to repay loan of Rs, 7000/- to Rs, 8000/- per month with the meagre amount earned by him, without considering the facts and circumstances of the instant case. If

the Magistrate considered the present hike of the price of the essential commodities and amenities, he could not have fixed a meagre amount of Rs.1,500/- per month towards alimony pendente lite which amount practically is not only insufficient but also absurd to live on it. On the contrary, income of the opposite party/husband per month from salary and from other sources reached Rs. 55 thousand per month at present.

7. Learned advocate for the petitioner, in this context, relied upon the case laws in ***Chaturbhuj Vs. Sita Bai*** reported in **(2008) 2 SCC 316**, ***Shamima Farooqui Vs. Shahid Khan*** reported in **(2015) 5 SCC 705**, ***Bhuwan Mohan Singh vs. Meena and Others*** reported in **(2015) 6 SCC 353**. On the contrary, the opposite party/husband relied upon a case reported in **AIR 1975 SC 83 (Shri Bhagwan Dutt Vs. Smt. Kamla Devi and anr.)**

8. Learned advocate for the opposite party/husband Mr. Ranjan Kali submits that admittedly the petitioner is earning Rs. 8,000/- per month and as such separate income and means of the wife can be taken into account in determining the amount of maintenance and learned Magistrate after considering the income of the opposite party/husband and the income of petitioner/wife and also the liabilities of both the parties, was justified in determining quantum of maintenance. He further submits that there is rider in Section 125 of the Code of Criminal Procedure which says that the wife is entitled to get maintenance if she is unable to maintain herself. Here, the petitioner/wife admittedly have earning from her continuous employment

under a Government department and as such the revisional application is not maintainable in the eye of law.

9. Mr. Kali further submits that there is nothing in the Section to show that in determining maintenance, the learned Magistrate should take into consideration only the income of the husband and not the income of the wife. The concerned object of the Code clearly provides for taking into consideration the change of circumstances and this change of circumstances must include financial circumstances and as such invoking inherent power by the High Court under Section 482 of the Code of Criminal Procedure in the present context does not arise.

10. In reply, the learned advocate for the petitioner Asit Baran Raut submits that providing basic requirements such as medical treatment to the spouse is a moral obligation of the husband and it cannot be deferred till final adjudication of the maintenance proceeding because Section 125 of the Code is a beneficial legislation in favour of the wife and statute should be read to give true meaning and effect to the aims and objects of the act and to dispense justice

11. In this context Mr. Raut has relied upon paragraph-14 of the **Shamima Farooqui vs. Shahid Khan case** which runs as follows:-

“14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a

woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

12. Considered submissions made by both the parties. At the outset, I would like to recollect, the observation of the Supreme Court in ***Badshah vs Sou. Urmila Badshah Godse & Anr. (2014) 1 SCC 188*** wherein Apex Court held that provisions of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice and dignity of the individual. While dealing with cases under the provision of section 125 of the code of criminal procedure, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

13. In the present context Mr. Kali supported the impugned order on the ground that petitioners earns Rs, 8000/- per month and that opposite party has to incur huge medical expenditure for his treatment as well as treatment of his mother. It is not in dispute that opposite party's monthly net pay as in October, 2021 is 37,905/-. On the contrary petitioner specifically averred on

oath that she is a casual worker and her salary determined on “no work no pay” basis and she is suffering from ovarian cancer and as such she has become irregular in attending work and she has to incur considerable medical expenditure as she has to stay under constant medical care.

14. The words “unable to maintain herself” as appearing in section 125 of the code to be judged in the touchstone as to whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In ***Shri Bhagwan Dutt Vs. Smt. Kamla Devi and another*** reported in **(AIR 1975 SC 83)** it was held, as the Magistrate is required to exercise that discretion in a just manner, the income of the wife, also must be put in the scales of justice as against the means of the husband. The object of those provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious but is modestly consistent with the status of the family. The need and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.(emphasis added).

15. Here the need of the wife /petitioner and the words “ unable to maintain herself” will have to be judged, consistent with the status and earning of opposite party/husband who is a school teacher and earning gross salary of about Rs, 40,000/- per month. Both the parties have of course some commitments but here the Magistrate failed to find out what is required by

wife towards *ad interim* maintenance to maintain modest standard of living as wife of opposite party.

16. Accordingly, as per law, the wife petitioner is entitled to lead a life in a similar manner as she would have led in the house of her husband and here the status and strata of the husband comes into play and that is where the legal obligation of husband becomes a prominent one. So long as the wife is entitled to get maintenance within the parameters of Section 125 of the Code it has to be adequate so that she can live with dignity as she lived in her matrimonial home.

17. In the case of **Chaturbhuj Vs. Sita Bai**, the Apex Court, reiterating the legal principle laid down in Section 125 of the Code, had held at paragraph-6 which reads as under:-

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].”

18. In view of the aforesaid facts and circumstances of the case and that Opposite party/husband is admittedly earning an amount of Rs.40,175/- as gross amount and Rs. 37,905/- as net amount per month as on 7.10.2021 and

that wife though earning some amount as a casual worker on “no work no pay basis” but she is a cancer patient, I think that justice would be sub-served if an amount of Rs.6,000/- towards *ad interim* maintenance is passed so that she can lead a life nearly similar status and strata as she could have led in the house of her husband.

19. In view of above, the revisional application being CRR 3558 of 2019 is disposed of by modifying the order dated 24.6.2019 passed in M-267 of 2015 that the opposite party/husband would pay interim maintenance to the petitioner @ Rs. 6,000 per month from the date of the order i.e. 24.6.2019. The interim maintenance shall be payable within 10th of every English Calendar month following the month for which the same shall be due. The arrear amount of maintenance shall be paid by six monthly instalments by 31st January, 2023. Since the proceeding is pending from 2015 the learned Magistrate is requested to expedite the final hearing of the maintenance proceeding as expeditiously as possible preferably within a period of ten months from the date of the receipt of the order.

20. However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)