

D/L 148
March 9,
2022
Bpg.

C.R.R. No.1791 of 2020

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Tamal Krishna Ghosh
Versus
State of West Bengal & Anr.

Mr. Satyendra Agarwal,
Mr. Animesh Paul,
Mr. Goutam Malik.
...for the petitioner.

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar.
...for the opposite party no.2/wife.

The grievance of the petitioner relates to an order dated
26.02.2020 passed in Misc. Case No.394 of 2018 by the learned
Additional Chief Judicial Magistrate, Basirhat.

Learned advocate appearing for the petitioner/husband
submits that there is no child of the couple and in spite of that the
learned Magistrate has awarded a sum of Rs.4,000/- per month as
maintenance to the wife and the child.

Learned advocate appearing for the opposite party
no.2/wife submits that in the application under Section 125 of the
Code of Criminal Procedure or in the subsequent application for
interim maintenance, there was no prayer advanced by the
applicant also in respect of claim of any child. This was erroneously
recorded in the order dated 26.02.2020 passed by the learned
Magistrate while awarding the interim maintenance.

In view of the aforesaid, I find there has been a gross mistake while passing the order dated 26.02.2020. Accordingly, the said order is set aside.

It has been brought to the notice of this Court that the evidence of the case is in progress. The learned Magistrate is directed to reconsider the application for interim maintenance within a period of 30 days from date. The learned Magistrate would record his reasoning and the quantum to be awarded by way of an interim measure during the pendency of the main application under Section 125 of the Code of Criminal Procedure.

The parties are directed to appear before the learned ACJM, Basirhat on 21st March, 2022 at 10.30 a.m. The learned Magistrate will thereafter fix the date and pass a fresh order within two weeks thereof, if required, a fresh audience may be given to each of the parties.

With the aforesaid observations, CRR 1791 of 2020 is disposed of.

Learned Registrar (Judicial Service), High Court, Calcutta is directed to communicate this order to the learned ACJM, Basirhat for his appropriate action in terms of the aforesaid order.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)