

12.09.2022

Item No.64

Ct.No.2

dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 212 of 2022

**Saurav Karmakar
versus
State of West Bengal & Anr.**

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

Mr. Sayan De,
Ms. Esha Acharya,
Mr. Kaustav Shome

... For the Petitioner.

The petitioner has challenged the order dated 21.04.2021 passed by learned Judicial Magistrate, 2nd Court, Sadar, Cooch Behar in Misc. Case No. 20 of 2022 dated 10.02.2020 under Section 125 of the Code of Criminal Procedure wherein the learned court was pleased to award interim maintenance of Rs.10,000/- in favour of wife/opposite party no.2.

Mr. De, learned advocate appearing for the petitioner submits that the amount which has been awarded by the learned Magistrate is not commensurate with the earnings of the present petitioner. Learned advocate also adds that the petitioner has other expenses to incur which includes the treatment and exhaustive payment in respect thereof for his mother.

I have considered the reasons so assigned by the learned Magistrate on such document relating to the treatment of the mother of the petitioner which was not

placed before the learned Magistrate when the order of interim maintenance was passed. Having regard to the fact that the subject-matter of award so passed by the learned Magistrate relates to interim maintenance during the pendency of final disposal of the application under Section 125 of the Code of Criminal Procedure wherein the parties would be at liberty to adduce their evidence before the learned trial court both regarding the maintainability of Section 125 of the Code of Criminal Procedure as well as the capacity to pay the amount which is or is to be awarded by the learned court in the proceedings under the provisions of maintenance, I am of the opinion no re-assessment is required presently.

Be that as it may, the learned Magistrate is directed to consider the evidence of relevant materials produced in support of the petitioner's contention regarding the factum of different expenses because of medical treatment of his mother which is to be incurred by the petitioner. After considering the same, the learned trial court would arrive at its final opinion. As such, no interference is called for at this stage.

With the aforesaid directions, the revisional application being CRR 212 of 2022 is disposed of.

All pending connected applications, if any, are consequently disposed of.

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

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

(Tirthankar Ghosh, J.)