

12.04.2023
Ct. No.34
S/L Nos.45 & 46
KS

C.R.R. 577 of 2021
Swapan Kisku
Vs.
Namita Kisku Tudu & Anr.
With
C.R.R. 596 of 2022
Smt. Namita Kisku Tudu & Anr.
-Vs.-
Swapan Kisku & Anr.

Mr. Subham Kanti Bhakat
.....For the Petitioner (C.R.R. 577 of 2021)
Mr. Pawan Kumar Gupta
Mr. Sougata Mitra
Ms. Sofia Nesar
Mr. Santanu Sett
Mr. Abhijit Bose
....For the Petitioners (C.R.R. 596 of 2022)

Both the revisional applications being, C.R.R. 577 of 2021 and C.R.R. 596 of 2022 are disposed of by a common judgment and order since both the revisional applications arise out of the judgment and order dated 29.01.2021 passed in Misc. Case No.01/2018 (T.R. No.59/18) under Section 125 of the Code of Criminal Procedure. The learned Magistrate on an assessment of the evidence adduced before him was pleased to award maintenance of Rs.5,000/- to the wife and Rs.4,000/- to the minor daughter. The foundation of such maintenance award was on the basis of that the husband happens to be a primary school teacher and was earning enough for maintaining his wife and the child to the extent as decided by the learned Magistrate so far as the quantum is concerned. In another forum the husband/petitioner complained that

the wife on her own accord refused to stay at the matrimonial home and, as such, she is not entitled to any maintenance. Rebutting such contention Mr. Gupta, learned advocate appearing on behalf of the wife submits that the wife was abused after the baby girl child was born and there were enough reasons for the lady after suffering mental torture for not staying at the matrimonial home.

Learned advocate appearing for the wife submits that there were additional circumstances created which compelled her to leave the matrimonial home and to rely on a stray document or an observation that she left the matrimonial home on her own accord would go against the evidence adduced before the learned Magistrate. Be that as it may, if the husband as expressed by the learned advocate appearing for the petitioner is willing to take back the wife, it is for the husband to approach the appropriate civil forum for exercising his right. This Court while dealing with the provisions of Section 125 of the Code of Criminal Procedure will not entertain such plea.

Learned advocate appearing for the husband has also contended that the amount which is left after the maintenance amount is transferred to the wife and the child is not sufficient for the husband to maintain himself in view of the expenses which he has to bear at his working place as also for his ailing parents.

I have considered the contentions advanced by the husband namely, Swapan Kisku as also the wife, Namita Kisku Tudu. On an appreciation of the same, I am of the opinion that the judgment and

order so passed by the learned Judicial Magistrate, Purulia in Misc. Case No.01/2018 do not call for any interference. However, there are additional circumstances which are being brought to the notice of this Court and which were never the subject-matter of evidence before the learned Magistrate in course of trial of the proceedings. In case an application under Section 127 of the Code of Criminal Procedure is filed either by the husband or the wife explaining the circumstances which changed in course of time, the learned Magistrate would take the same into consideration as also the evidence in support of the same and would be at liberty to pass his orders as he thinks fit and proper.

With this above observation, the revisional applications being, C.R.R. 577 of 2021 and C.R.R. 596 of 2022 are disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)