

25.01.2023

Item No.56
Ct.No.34
dc.

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

C.R.R. 1127 of 2021

**Jasimuddin Shak alias Jasimuddin Mondal
alias Jasimuddin Sekh
versus
Popi Begam & Anr.**

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

Mr. Bibaswan Bhattacharya,
Mr. Suman Chakraborty ... For the Petitioner.

Affidavit-of-service filed in Court today be kept on record.

Mr. Bhattacharya, learned advocate appearing for the petitioner has challenged the judgement and order dated 19.02.2021 passed by learned Additional District and Sessions Judge, Fast Track 4th Court, Barasat in Criminal Revision No. 163 of 2019 wherein the learned sessions court was pleased to affirm the order dated 30.05.2019 passed in M. Case No. 70/2018 under Section 125 of the Code of Criminal Procedure. The learned Judicial Magistrate, 1st Court, Barasat by the said order was pleased to award interim maintenance of Rs.5000/- per month to the wife and Rs.5000/- per month to the minor daughter aggregating to a sum of Rs.10,000/- per month.

Learned advocate for the petitioner has raised the issue that both the courts have failed to appreciate the earning capacity of the petitioner and has imposed amount by way of interim maintenance which is beyond the capacity of the petitioner who is working as a labour under the Municipality.

Learned advocate draws the attention of the Court to two enclosures relating to registration of his licence with the concerned labour union.

I have considered the submissions of the petitioner whose main grievance is regarding the quantum of maintenance so awarded by the learned Magistrate without taking into consideration his earnings. The learned revisional court being the sessions court also ignored and affirmed the order passed by the learned Magistrate. The present revisional application relates to the issue of interim maintenance. The main proceeding under Section 125 of the Code of Criminal Procedure is pending. In view of the contentions so advanced, I direct the learned Magistrate that in course of trial, if there is absurd difference of pleas between the husband/petitioner and the wife/opposite party relating to monthly earnings of the husband/petitioner herein, in that case the learned Magistrate would seek assistance from the police authorities for ascertaining the ownership of the property or the dominion over the property in respect of which rent is collected as has been contended in the order dated 30.05.2019. As it has been stated in the impugned order that the husband/petitioner is earning a rent of around Rs.1,00,000/-, the learned court in order to ascertain the same would seek assistance of the police authorities, ask them to submit a report regarding the genuineness of such contention and thereafter if required, decide the quantum of maintenance proposed to be awarded if at all.

So far as the other contentions of Mr. Bhattacharya, learned advocate for the petitioner are concerned regarding the minor daughter attaining majority or the property which has been subsequently sold by the wife which was for a huge sum and which do not warrant the invocation of powers under Section 125 of the Code of Criminal Procedure is concerned, such points were subsequent points which were not dealt with by the learned Magistrate in the order dated 30.05.2019. If the husband/petitioner contends by taking out appropriate application or during cross-examination of the witnesses, the learned Magistrate will dispose of the same in its true spirit and in accordance with the provisions of law.

Mr. Bhattacharya, learned advocate for the petitioner submits that in the meantime warrant of arrest has been issued. The said records are not before this Court. The petitioner is granted liberty to take out an application for canvassing such point.

With the aforesaid observations, the revisional application being CRR 1127 of 2021 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.)