

07.12.2023
Item No. 32
BR

CRR 2229 of 2016

In the matter of : Subal Saha

Nobody appears on behalf of either of the parties on call.

Even on second call no one represented on behalf of the petitioner. No accommodation sought for.

The case is pertains to year 2016. As such the matter is required to be disposed of on merit as the petitioner challenges the correctness ,illegality and propriety of the judgment and order dated 19.3.2016 passed by learned District and Sessions Judge, 1st Court, Krishnanagar, Nadia in connection with criminal motion No. 89 of 2015 thereby the learned Sessions Judge uphold the judgment and order dated 04.08.2015 passed by the

learned Judicial Magistrate , 6th Court, Krishnanangar in connection with MR Case No. 233(iv) of 2014 thereby Ld. Magistrate directed the petitioner to pay maintenance to the tune of Rs. 3,000/- per month for wife from the date of filing of the case under Section 125 of the Code of Criminal Procedure, 1973.

The genesis of the present case is relevant for disposal of the present case is as follows:

The opposite party/wife filed an application under Section 125 of the Code of Criminal Procedure being MR Case No. 233 (iv) /2013 before the learned Magistrate alleging that the husband deserted her. As such she prays for maintenance to the tune of Rs. 10,000/- per month for herself as the husband having a stationary shop and his income is Rs. 30,000/- per month.

It is further alleged that after their marriage she went to her matrimonial home to start conjugal life. However, after few days the husband/petitioner started inflicting physical and mental torture over a demand of Rs. 1,00,000/- and when opposite party failed to fulfill his demand . He poured kerosene oil upon the opposite party and tried to kill her on 28.8.2013. She was admitted to Krishnanagar Sadar Hospital and now she is residing in her parents' house.

Learned Magistrate after scanning of the evidence of both sides allowed monthly maintenance to the petitioner at the rate of Rs. 3,000/- per month according to English Calendar month. It shall be paid by 10th of every succeeding calendar month and further directed to make payment of arrear maintenance in ten equal monthly installments in addition to current maintenance.

Being aggrieved with the said judgment and order the petitioner filed a criminal revisional application under Sections 397/399 of the Cr. P. C. being criminal motion No. 89 of 2015 and after hearing both sides, the learned Sessions Judge dismissed the criminal revisional application on contest without any order as to costs. As such the present petitioner filed this application under Section 482 praying for setting aside the judgment and order dated 19.03.2016.

Upon perusal of the record as well as the impugned judgment, it is admitted fact that the petitioner and opposite party are the husband and wife. Due to torture physically and mentally she started residing separately in her parental house. Evidence reveals that the petitioner is the businessman and he has stationary shop. His earning was Rs. 30,000/- per month and she has no income to maintain

herself. Petitioner is able to maintain his wife irrespective of her status.

Accordingly, I do not find any jurisdictional error or illegality in passing monthly maintenance allowance of Rs. 3,000/- from the date of filing of the case against the husband, who is able bodied person to maintain his wife.

Accordingly, **CRR 2229 of 2016** is dismissed. Interim order, if any, stands vacated.

Let a copy of this order be sent to the learned trial Court for information.

Urgent xerox certified copy of this order, if applied for, be given to the learned advocate for the parties on usual undertakings.

(Ajay Kumar Gupta , J.)