

07.12.2023

Sl.No. 21

Ct. 32

Amalranjan

CRR 2182 of 2015

Sri Somnath Paramanik

Vs.

Smt. Sima Paramanik

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner. No accommodation sought for. This matter relates to the year 2015. As such this matter is required to be disposed of on merit.

The petitioner has filed this application challenging the judgment and order dated 20.04.2015 passed by the learned Judicial Magistrate, 1st Class, Raghunathpur awarding the maintenance allowance of Rs. 5,000/- per month from the date of the order i.e., 20.4.2015 in connection with M. Case no. 43 of 2010 (T.R 161/10).

The opposite party being the wife of the petitioner filed an application under Section 125 of the Criminal Procedure Code before the learned Judicial Magistrate, 1st Class, Raghunathpur for maintenance on the ground that she was tortured mentally and physically in the middle of February, 2010. She was taken by her father and subsequently on 2nd week of April, 2010 she was also taken back to the matrimonial home to stay with her husband. She was not allowed to stay in matrimonial home and now she resides with her parents in parental house.

It was alleged by the opposite party/wife that the petitioner/husband earned about Rs. 25,000/- to 30,000/- per month from his business and landed property. As there is no income to maintain herself. She prayed for a sum of Rs. 5,000/- per month for her maintenance. But without considering the real facts and actual income of the husband, learned Magistrate allowed the application whimsically and capriciously directed to pay Rs. 5,000/- per month as her maintenance allowance. Hence, this application.

Petitioner and the opposite party were the husband and wife. Their marriage was took place as per Hindu Rites and Customs but subsequently their marriage was divorced under Section 13(b) of the Hindu Marriage Act on mutual consent before the learned District Judge, Purulia being Matrimonial Suit No. 131 of 2008.

In the said application for maintenance the opposite party /wife suppressed the materials of fact about the divorce on mutual consent as such earlier the said application was rejected by the learned Magistrate on the ground of suppression of fact and others.

The said impugned order was challenged by the opposite party /wife by way of filing revisional application before the learned District and Sessions Judge, Purulia and after hearing the parties, the said revisional application being Criminal Revision No. 48/12 was allowed and impugned judgment has been set aside and remanded back the case before the learned Judicial Magistrate with a direction to

decide the case afresh on the materials available on record and after giving an opportunity of hearing to the parties but without considering materials on record the learned Magistrate passed the impugned order.

As such the impugned order passed by the learned Magistrate dated 20.04.2015 is liable to be set aside.

Considering the materials available in the record, I find it is admitted fact that the opposite party is the wife of the petitioner and their marriage was dissolved by way of mutual consent u/s 13(B) of the Hindu Marriage Act, 1955. However, the husband has obligation and liable to maintain provided until remarried and she has no sufficient income to maintain herself. Petitioner is an able bodied person and after divorce both husband and wife are residing separately. There is no evidence that she has her own income to maintain herself. As such she is entitled to get maintenance.

In the evidence of PW 1 it reveals that the petitioner earning was Rs. 25,000/- to 30,000/- per month from the business and landed property, meat shop and tea stall. That evidence could not be rebutted by the petitioner. No sufficient document has been filed by the husband/petitioner to show his actual income.

In such situation, the learned judicial Magistrate rightly allowed the maintenance to the tune of Rs. 5,000/- per month to the wife irrespective of her status. I do not find any infirmity or perversity in the order passed by the learned Judicial Magistrate.

Accordingly, the application being **CRR 2182 of 2015** is, thus, dismissed without order as to costs.

Interim order, if any, stands vacated.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)