

28.02.2023
Item No.41
Ct. No.236
S.A.

CRR 4079 of 2011

In the matter of : Manoj Roy Chowdhury
...petitioner

Mr. Narayan Prasad Agarwal
Mr. Pratick Bose
...for the State

This Revisional Application challenges the order No.11 dated August 30, 2011 passed by learned Additional Sessions Judge, 3rd Court, Alipore in Criminal Motion No.74 of 2011. By the impugned order learned Additional Sessions Judge was pleased to modify the order of maintenance passed by learned Additional Chief Judicial Magistrate, Alipore in Criminal Misc. Case No. 448 of 2009.

As usual none is appearing on behalf of the petitioner. Instead of adjourning the matter I intend to dispose of the same based on materials made available with the record.

From the attending facts of the case it is admitted that the opposite party no.2 filed an application under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Alipore claiming maintenance for herself and for her sons from her husband. Learned Trial Court, however, refused to allow the prayer for maintenance in respect of the elder son of the parties to the proceeding on the ground that he

attained majority. In the Criminal Revision preferred by the petitioner/wife, learned Additional Sessions Judge was pleased to modify the order passed by learned A.C.J.M., Alipore and thus directed the father to pay maintenance to the tune of Rs.10,000/- to his elder son who was not minor. The provision of Section 125 of the Code of Criminal Procedure enunciates that if a person having sufficient means refuses to maintain his wife or minor child, learned Jurisdictional Magistrate can pass the order for maintenance. Reading of the provision of Section 125 Cr.P.C. makes it clear that a boy after attaining majority cannot claim maintenance.

Therefore, the order impugned suffers from serious infirmity and warrants interference which I accordingly do by setting aside the impugned order as prayed for.

The Criminal Revision is thus allowed.

Let a copy of the order be sent down to learned Trial Court for information and necessary action.

With the disposal of Criminal Revision, interim order, if any, stands vacated.

(Siddhartha Roy Chowdhury, J.)