

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 3790 of 2017

with

IA No. CRAN1 of 2018

with

(Old No.CRAN 30 of 2018

IN THE MATTER OF

Jayanta Barui.

Vs.

Smt. Malatti Barui @ Patra.

**For the Petitioner : Mr. Gautam Banerjee, Adv.,
Ms. Priya Dey, Adv.,
Ms. Chumki Das Bairagya, Adv.**

**For the opposite party : Mr. Kamalesh Chandra Sahu, Adv.,
Ms. Payel Mitra, Adv.,**

Judgment on : 21.04.2023

Subhendu Samanta, J.

This is an application u/s 401 read with Section 482 of
the Code of Criminal Procedure against the Judgment and

Order dated 19th August 2015 passed by Learned Judicial Magistrate at Barrackpore, North 24 Parganas in connection with Misc Case No. 579 of 2014 thereby allowing the prayer of the present opposite party u/s 125 Cr.P.C. and directing the petitioner to pay a sum of Rs. 1200/ per month towards maintenance by the opposite party and also against the notice dated 19th August 2017 directing the present petitioner to appear and answer the claim of opposite party for realisation of Rs. 43,200/- towards arrear of maintenance.

The brief fact of the case is that the present petitioner and the opposite party is legally married husband and wife. Their marriage was solemnised on 12th August 2013 according to Hindu Rites and Customs. Some matrimonial disputes cropped up and they started living separately. The OP wife filed an application u/s 125 Cr.P.C. before the Learned jurisdictional Magistrate. The present petitioner appeared before the Learned Magistrate and filed show cause. After hearing the parties the Learned Magistrate passed interim order of maintenance.

Hence this revision.

Learned Advocate for the petitioner submits that the impugned order passed by the Learned Magistrate is palpably illegal in the eye of law. he further pointed out that the Learned

Court below has failed to appreciate the facts and circumstances of this case and came to a erroneous finding. The Magistrate did not consider the fact that the present opposite party wife has independent income so she is not entitled to get any amount of maintenance. He again argued that the present petitioner is only earning Rs. 3000/- per month. So it is not possible for him to pay Rs. 1,200 /- per month to the OP as interim maintenance. He further pointed out that learned court below consider the pleadings of the petitioner passed the erroneous order.

Learned Advocate for the opposite party raised their objection and submitted before this court that the amount of maintenance is a meagre amount. No person can carry out his living in such amount. He further pointed out that the present petitioner deliberately violated the order of the Learned Magistrate as well as the Order of the Court. He has not paying regularly such small amount of maintenance. The petitioner tried is level best to harass the opposite party. The opposite party was subjected to physical and mental torture at her matrimonial home consequently she was driven out from her matrimonial home. Now the present OP is residing at her parent's house at the mercy of her relatives. She has no

independent income. Thus, the impugned order passed by the Learned Court below suffers no illegality.

Heard, the Learned Advocate perused the impugned order and also perused the petitioner and supplementary affidavit filed before this court it appears that the impugned order was passed by the Learned Magistrate. In considering the interim application of maintenance filed by the present OP wife. Learned Magistrate has recorded the pleadings of the parties and is of view that he has prima facie satisfied about the case made out by the petitioner. The findings of the Learned Magistrate is justifiable that in disposing of an application for interim maintenance u/s 125 Cr.P.C. the Magistrate list scope to enter into the merit of the case. I find no infirmity in the finding of the Learned Magistrate. More over the order of interim maintenance along in favour of the opposite party is very meagre amount. Thus I find no justification to enter into such order.

Learned Advocate for the petitioner raised several points regarding the independent income of the present O.P. this plea is being the subject matter of the finality of the Misc case. Thus, this revisional Court has no scope to enter into the pleadings of the parties.

Considering the same the Instant criminal revision got no merit and liable to be dismissed.

In result thereof CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by the court during the continuation of the instant criminal revision are also vacated.

Learned Magistrate is directed to dispose of the Misc case as early as possible most preferably within 6 months of the date of the receipt of this order after awarding a reasonable opportunity of the parties of being heard and leading evidences on their behalf according to direction of Hon'ble Supreme Court passed in **Rajnish Vs. Neha**.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)