

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 3963 of 2017****IN THE MATTER OF****Goutam Mandal.****Vs.****Mousumi Mondal.**

**For the petitioner : Mr. Soumyajit Das Mahaptra, Adv.,
Mr. Shamim Ul Bari, Adv.,
Ms. Madhurai Sinha, Adv.**

**For the Opposite Party : Mr. Dhananjay Banerjee, Adv.,
Mr. Arup Kumar Bhowmick, Adv.**

Judgment on : 28.03.2023

Subhendu Samanta, J.

The instant criminal revision has been preferred against the judgment and order dated 20^{1st} August 2017 passed by Learned CJM Malda, in case No. 304 M/2013 whereby Learned Magistrate has allowed the application u/s 125 Cr.P.C. filed by the opposite party and directed the petitioner to pay maintenance of Rs. 7,000/- per month for his wife (OP) and Rs. 3,000/- per month for his minor daughter.

The brief fact of the case is that the present opposite party filed the petition u/s 125 Cr.P.C before the learned Magistrate for getting maintenance from the present petitioner for herself and for minor daughter.

The matter was contested by the present petitioner; evidences, both oral and documentary were adduced. After hearing both the parties Learned Magistrate has passed the impugned order by directing the present petitioner to pay maintenance Rs. 7,000/- per month to the present OP and Rs. 3,000/- per month for her minor daughter.

Hence this revision.

Learned Advocate for the petitioner submits that the impugned order passed by the Learned Court below suffers illegality and impropriety. The impugned order is not at all a speaking order. No reason was assigned by the Learned Magistrate in passing the impugned order. The present OP never proved any income of the present petitioner, instead the order of maintenance was passed by the Learned Magistrate. No documentary evidences were adduced by the present OP before the Learned Magistrate. During her examination she stated that she would produce necessary documents regarding income of petitioner; withholding such documents tantamount to raise adverse presumption. Thus, the order and judgment impugned, is illegal one. He further argued that when magistrate did not ascertain the income of the OP. How the Magistrate passed the award against the present petitioner. He again argued that the impugned judgment and order by the Learned Magistrate is barred under the provisions of Section 354(6) of Cr.P.C.

Learned Advocate for the petitioner pointed out some portion of the evidences of PW 1 recorded the Learned Magistrate and the other relevant evidences. On the basis of which, he argued that the impugned order can not be sustained.

Learned Advocate appearing on behalf of the opposite party submits that the impugned order passed by the Learned Court below is not barred under the provision of 356(6) of Cr.P.C. He specifically pointed out that the present petitioner has denied marriage and parentage of the minor child before the Learned Magistrate. The evidences before the Learned Magistrate is sufficient to hold that the present petitioner had married with the present

OP. He argued that there is no illegality in the impugned order passed by the Learned Magistrate the pleadings of the present OP before the Learned Magistrate discloses that the present petitioner is a LIC Agent. The present petitioner also did not deny the fact but he wilfully did not produce any document regarding of his income. The mere statement of the present petitioner that at present he is not the LIC Agent shall not suffice his liability to produce income proof certificate before the Learned Magistrate. So he prayed for dismissal of the instant criminal revision.

Heard the Learned Advocate, perused the materials on record also perused certificate of the impugned order including the copies of order and copy of petition and objection filed by the opposite parties before the Learned Magistrate.

During the course of argument the Learned Advocate for the petitioner cited a decision reported in **(2004) 7 SCC 431** regarding the principle that the order passed by Single Judge of High Court on the basis of non-application of mind and without any reason not sustainable.

The principles laid down in the given citation is well excepted principle however, the facts and circumstances of this case is not matching with the cited case.

Perused the impugned judgment passed by the Learned Magistrate it appears that in passing the impugned judgment Learned Magistrate has decided the case on the basis of some points. In deciding the point that whether the present OP is illegally married wife of the present petitioner or not; Learned Magistrate of view that the present OP is the legally married wife of petitioner.

The peculiar facts of this case shows that initially there was an allegation of rape against the present petitioner by the OP. On the basis of the said complaint one police case was started and charge sheet was submitted against the present petitioner and his father. During the continuation of that criminal case the present petitioner married OP to get-

rid of the criminal case. Thereafter, the minor child was born out of the wedlock between the petitioner and OP. However, the criminal case is ended in conviction against the present petitioner u/s 376 IPC.

In spite of these facts the present petitioner denied his parentage with the minor child and marriage with the OP. It further appears that after the examination of the case is over one application u/s 112 of Cr.P.C was filed by the present OP for conduction of DNA test of the minor child to ascertain the parentage of the present petitioner. The petition was allowed but the present petitioner denied to take part of such DNA test. Learned Magistrate on that score is of view that the present petitioner wilfully did not consented to conduct DNA test, if that be done the parentage of the present petitioner with the minor child would have been proved.

It is fact that no document of income was produced or proved before the Learned Magistrate; it is also a fact that Learned Magistrate did not ascertain the income of the present petitioner. It is the pleadings of the present petitioner before the Learned Magistrate that initially he was LIC Agent but subsequently his agency was terminated, but no such document was produced by the present petitioner to prove his plea. However, it is also a well settled rule and principle of law that section 125 Cr.P.C. was codified for the benefit of the destitute lady and minor child who was not taken care of by their husband and fathers respectively.

In this particular case it is observed that the direction of the Hon'ble Supreme Court passed in **Rajnish Vs. Neha [(2021) 2 Supreme Court Cases 324]** was not followed. It is directed by the Hon'ble Supreme Court in all maintenance cases the affidavit of income of the parties must have to be furnished. In that score, it appears to me that the impugned judgment did not follow the guideline. However, the impugned judgment was passed much prior to the judgment of **Rajnish Vs. Neha**. So, it would be prudent for this court to pass such necessary order, so that in this case the direction of Hon'ble Supreme Court may be followed.

For the purpose of following the guidelines of Hon'ble Apex Court in **Rajnish Vs. Neha**. The instant proceeding need be remand back before the Learned Magistrate for compliance of the formalities according to **Rajnish Vs. Neha**.

Till then the petitioner is directed to pay the maintenance to the opposite party and his minor daughter as awarded by the Learned Magistrate in the impugned order.

I make it clear that the order of maintenance passed by the Learned Magistrate and affirmed by this court on the same tune will not be reached its finality till the compliance of the formalities of **Rajnish Vs. Neha** be fulfilled and on the basis of which Learned Magistrate shall arrive a final finding.

Accordingly the CRR is disposed of.

The impugned order of maintenance passed by the Learned Magistrate shall be remain in force till the date of final conclusion of the case by the Learned Magistrate.

The case be remanded back to the Learned Magistrate for necessary compliance according to the judgment of Hon'ble Supreme Court passed in **Rajnish Vs. Neha**.

LCR along with the order of this court be sent back to the Learned Magistrate at once. The parties are directed to appear before the Learned Magistrate on 22nd of May of 2023 with their necessary affidavit of income to be produced before the Learned Magistrate.

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

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.)