

17-08-2023
Court No.3
bm/mg/2.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

**C.R.R. 58 of 2019
With
IA No. CRAN 1 of 2019**

**SUTAPA CHAKRABORTY(BHOWMIK)
Vs.
BINOY CHANDRA CHAKRABORTY**

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
Mr. Sourab Ganguly
...for the State

The instant revisional application is preferred against the impugned Order dated 13.12.2018 passed by the Additional Sessions Judge, 3rd Court, Cooch Behar in Criminal Revisional Case no. 6 of 2018. The present petitioner drawn up Misc. case no. 57 of 2015 under Section 125 of the Code of Criminal Procedure praying for maintenance. Learned Judicial Magistrate, 2nd Court, Cooch Behar was pleased to allow maintenance to the tune of Rs.12,000/- per month and Rs.10,000/- one time litigation cost in favour of the petitioner.

Against the Order the opposite party/husband preferred a criminal revision which was also disposed of by the Additional Sessions Judge, 3rd Court, Cooch Behar in terms of Order dated 13.12.2018 setting aside the Order passed by the Judicial Magistrate.

On being aggrieved and dissatisfied, the instant application has been filed.

None appears for the petitioner today.

The learned Additional Sessions Judge observed that as per Section 125(4) of the Code of Criminal Procedure the wife shall not be entitled to live separately from her husband without any justifying cause and claim maintenance from her husband. The learned Additional Sessions Judge observed also that PW1 namely the petitioner left her matrimonial home along with her father in absence of her husband and that it is established from the evidence of PW2. He took back his daughter from her matrimonial home without informing anybody. According to the learned Additional Sessions Judge cross examination of PW1 and petitioner was not considered properly by the learned

Magistrate. From the Judgment passed by the learned Additional Sessions Judge it appears that there is clumsy mis-appreciation of evidence. Plethora of evidence are there to show that the petitioner was compelled to leave matrimonial home. It is also admitted by the DW1 namely husband that he earns Rs.69,000/- per month. This appears from his admission in course of cross examination. In a nutshell, there is failure of exercise of jurisdiction by the learned Additional Sessions Judge as manifested from failure of appreciation of materials on record.

The judgment is hereby set aside. The judgment passed by the Trial Court namely the learned Judicial Magistrate, 2nd Court, Cooch Behar in Misc. Case No.58 of 2015 stands upheld and restored. The opposite party no.1 shall continue to pay maintenance at a rate of Rs.12,000/- per month w.e.f the months of January, 2019. Arrear maintenance w.e.f the month of January, 2019 till passing of this Order shall be paid in ten equal monthly instalments by the opposite party no.2 to the petitioner within 15th of each succeeding month. Current amount of

maintenance shall be paid within 15th of each current month. In terms of this Order the instant criminal revision stands disposed of along with pending applications, if any.

(SUGATO MAJUMDAR, J.)