

8.5.2023
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Ct. no. 3
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 59 of 2022

In the matter of : Rimpi Agarwal

...petitioner

Mr. Shibaji Kumar Das

...for the Petitioner

Affidavit of service filed by the petitioner is taken on record.

This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure, challenging the impugned order dated 14th March, 2022 passed by the learned Judicial Magistrate, 2nd Court, Siliguri, Darjeeling in connection with M.R. case no 155 of 2019 being a proceeding under Section 125 of the Code of Criminal Procedure, 1973.

The petitioners contended that the petitioner was married with the opposite party on 25th November, 2013. The petitioner alleged that from the very first day of marriage, the opposite party and her in-laws were never happy with the petitioner and they used to inflict torture constantly upon her. She further alleged that the opposite party always used to humiliate her and she was treated like a servant from the very beginning and not given to the status of a wife. The opposite party refused to take the petitioner to any doctor when she felt

ill. Subsequently, she got pregnant and without her consent, she was aborted. Subsequently, she again got pregnant. In the year 2014, she somehow gave birth to a minor child. The petitioner is presently in a distress condition and she is passing her days with great hardship. Finding no other alternative, she had initiated a proceeding under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act seeking maintenance before the learned Judicial Magistrate, Siliguri, Darjeeling, wherein the opposite party has been directed to pay Rs. 6,000/- per month to the petitioner within 10th of each succeeding calendar month.

Since the daughter of the petitioner is staying with the petitioner so she initiated a proceeding for maintenance for herself and also for her daughter under Section 125 of the Code of Criminal Procedure which is registered as M.R. case no. 155 of 2019. In the said case, the petitioner has prayed for a direction upon the opposite party to pay monthly maintenance of Rs. 30,000/- for herself and Rs. 20,000/- for her minor child. In the said proceeding, the petitioner has also prayed for interim maintenance.

Learned court below, by the impugned order, refused to grant any interim maintenance to the petitioner on the ground that payment of maintenance of Rs. 6,000/- per month has already been passed in the proceeding under the provision of Protection of Women from Domestic Violence Act. However,

learned Magistrate was pleased to grant Rs. 2,000/- per month towards interim maintenance for the minor daughter till disposal of the case.

Being aggrieved and dissatisfied with the said order, learned counsel for the petitioner submits, while passing the impugned order, learned court below failed to appreciate the true scope and spirit of Section 125 of the Code of Criminal Procedure which promulgates, an order of maintenance by any person having sufficient means in the event he neglects or refuses to maintain his wife, who is unable to maintain herself which is exactly the case in hand, where the opposite party/husband has an earning of Rs. 1,00,000/- per month. Learned court below failed to appreciate that under the financial year 2016-17, the opposite party herein had approximately monthly income of Rs. 39,000/- and that he has not brought forward his actual income. Learned court below failed to appreciate that the right of the petitioner to get maintenance cannot be denied on the basis of the claim that the petitioner is residing separately without any sufficient reasons, as she fulfils the condition to get maintenance. The impugned order is illegal and arbitrary. Accordingly, the petitioner has prayed for a direction upon opposite party to pay Rs. 30,000/- for herself and Rs. 20,000/- for her minor child, as interim maintenance, from the date of filing of the application.

I have gone through the order impugned as well as a copy of the order dated 4th October, 2021 which was passed under Section 23 of the Protection of Women from Domestic Violence Act. On perusal of the impugned order, it appears that the order is interim in nature and learned court below after considering the assets and liabilities, submitted by both the parties, have passed a reasoned order. Since the order is interim in nature, I find nothing to interfere with the said order at this stage.

CRR 59 of 2022 is accordingly disposed of with a direction upon the learned court below to adjudicate finally the petitioner's application under Section 125 of the Code of Criminal Procedure preferably within a period of twelve weeks from the date of communication of the order.

Let a copy of this order be sent to the learned court below for information. It is made clear that I have not gone into the merits about contentions of the petitioner and the court below will dispose of the application under Section 125 of the Code of Criminal Procedure, without being influenced by any observation made herein.

Let the lower court records be send down to the department.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)