

29.09.2023

Item No.12

Ct.No.2

dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 267 of 2023

In the matter of : **Mohit Kumar Das** ... Petitioner.

Mr. Nripen Das,
Mr. Debanjan Das ... For the Petitioner.

The present revisional application has been preferred challenging the order dated 28.07.2023 passed by learned Judicial Magistrate, 1st Court, Jalpaiguri in Misc. Case No. 111 of 2021.

Learned advocate appearing for the petitioner has submitted that there was a notarized document wherefrom it would reflect that the lady has suo motu left the matrimonial home and snapped the relationship with her husband. There has been an *ex parte* decree in a case for restitution of conjugal rights. The learned advocate submits that the lady has also left the relationship in the year 2012 and all on a sudden in the year 2021, she has set the law into motion. In order to canvass and substantiate the issues, the learned advocate has relied upon the following judgments :

- (i) Amarendra Nath Bagui Vs. Gouri Rani Bagui & Ors. reported in 1991 (2) HLR 631,
- (ii) Nathu Ram Vs. Atar Kunwar reported in 1969 CriLJ 517 and

(iii) Malayaiah Vs. G. S. Vasantha Lakshmi and Ors.
reported in 1997 CriLJ 163.

By relying upon such judgments, what has been tried to impress upon this Court is that if suo motu a lady leaves the matrimonial home, in that case she is not entitled to get any maintenance.

I have perused the order passed by the learned Judicial Magistrate, 1st Court, Jalpaiguri which is an order for interim maintenance awarding a sum of Rs.5000/- per month to the wife/applicant. Records of the case reflect that such application was filed in the year 2021 and several dates have been fixed. Initially the present petitioner/husband appeared on 13.05.2022 and 30.07.2022. However, on 13.10.2022, the petitioner was absent followed by 25.11.2022 and 21.12.2022, and thereafter appeared on 28.02.2023 and finally on 03.06.2023, certain documents were filed at the instance of the husband. The learned Magistrate thereafter decided to proceed with the hearing of the interim application. The learned Magistrate while arriving at its conclusion assigned reasons which were advanced by the wife particularly with regard to the marital life, the cruelty which was inflicted and irresponsible behaviour of the present petitioner particularly his habits. Thereafter the learned Magistrate took into account the issue canvassed by the husband in the written objection wherein it was contended that the wife was disinterested in continuing her domestic

duties and did not maintain any form of relation with any of the family members of the opposite party.

It has also been submitted that the opposite party was ready and willing to lead conjugal life with the petitioner due to which he even filed a case for restoration of conjugal right which was decided in favour of the husband.

The learned trial court thereafter proceeded to assign the reason of the earning of the husband and the existence of an admitted marriage. The learned Magistrate relied upon the theory of able bodied person as the husband expressed a meager amount of earning to arrive at a conclusion of the quantum of interim maintenance to be awarded.

I find from the records of the case that the husband before the civil court has taken the plea that he was employed in a shop of a person/brother named Tarit Kumar Das and before the learned Judicial Magistrate, the petitioner has taken a plea that he was a hawker of clothes earning around Rs.4000/- per month.

Having considered the factum that the husband from the inception has not taken care of the wife and the allegations of physical and mental torture, the husband being a habitual drunkard and that there was demand for dowry itself satisfy *prima facie* the concept of cruelty/reasonable grounds which is sufficient enough for the purposes of not staying with the husband. As such the issue which has been

canvassed that the wife has suo motu left the home is not acceptable to this Court.

So far as the earning of the husband is concerned or the liabilities are concerned, learned Magistrate will allow the parties to file such affidavits as has been decided by the Hon'ble Supreme Court in ***Rajnish Vs. Neha & Another*** reported in (2021) 2 SCC 324.

The learned Magistrate is directed to pass an order for filing such affidavits to assess regarding the quantum of maintenance to be awarded, as in this case, I find that there is a vast difference between the claim of the wife that a sum of Rs.80,000/- is the earning of the husband and the plea of earning of the husband is of Rs.4000/- per month.

So far as the award of maintenance of Rs.5000/- is concerned since this is a case of under Section 125 of the Code of Criminal Procedure which directly relates to vagrancy, I am not inclined at this stage to stall the award which has already been passed. The petitioner would go on paying the said amount.

However, the learned Magistrate is directed to accept affidavits as directed by the Hon'ble Supreme Court in the case of ***Rajnish Vs. Neha & Another*** reported in (2021) 2 SCC 324 and thereafter reconsider regarding the amount of interim maintenance by arriving at a fresh decision.

It is reiterated that the husband would go on paying the amount as directed in the order dated 28.07.2023 and

the learned Magistrate would insist regarding completion of affidavits by both the parties within a period of sixty days from the date of communication of this order. A decision to that effect may be passed by the learned Magistrate within a period of thirty days from the date of filing of the affidavits. The whole process must be completed by 31.12.2023.

With the aforesaid observations, the revisional application being CRR 267 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)