

04.01.2024

Sl.No. 9

Ct. 32

P.A.

CRR 260 of 2023

Ananya Biswas Nee Dutta

Vs.

Sri Tridiv Biswas and Anr.

Mr. Asis Bhattacharya,

Mr. Biswajit Mitra,

Ms. Nilam Shaw

.....for the petitioner

Petitioner being the wife of Opposite Party No. 1 filed this application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the correctness, legality and propriety of an order No. 13 dated 07.12.2022 passed by the Learned Principal Judge, Family Court-I, Calcutta in Misc. Case No. 13 of 2021 thereby the Learned Judge rejected the application for interim maintenance.

The brief facts are relevant for the purpose of disposal of this instant revisional application as follows:

Petitioner is a legally wife of opposite party no. 1 and their marriage was solemnized was 27th April, 2018 according to Hindu Rights and Customs and the said marriage was also registered.

It is the allegation of the petitioner that just after three months of marriage, the opposite party no. 1 used to

make demand of further dowry. The opposite party asked to bring money from time to time with a view to maintain peaceful conjugal life and created a tremendous mental pressure upon the petitioner. The opposite party no. 1 in collusion and conspiracy with his parents used to create physical and mental torture upon her due to non-fulfillment of illegal and wrongful demand and finally she was driven out from the matrimonial home with a single cloth on 17.08.2022. Now she is residing separately.

Finding no alternative, she has compelled to file an application for maintenance under Section 125 of the CrPC and application for interim maintenance as she has no her own source of income to maintain herself. The Opposite party No.1 refused and neglected to maintain her though he has bounded obligation to maintain her.

It is further contended that respondent has been working for gain at M/s. M Junction Services Ltd., 3rd Godrej Water Side Tower-1 and D.P. Block, Sector- V, Bidhannagar, Kolkata- 700 091 and his earning is Rs. 45,000/- per month as such she prays for 20,000/- as maintenance from the date of filing of the maintenance application under Section 125 of the Cr.PC.

Learned advocate appearing on behalf of the petitioner submits that the learned Principal Judge without considering the case of the petitioner rejected the prayer for interim maintenance on the ground that the petitioner has

her own income to the tune of Rs. 12,000/- to 15,000/= per month from private tuition and she is educationally qualified lady having M.A. degree in Political Science. Though, she has no her own income and pursuing her post graduate in political science.

It is further denied that she earns Rs. 12,000/- to 15,000/- by private tuition.

On the other hand, the opposite party/husband has an academically qualified and he is P.G.D.M Finance, able bodied young man having capacity to earn and to maintain his wife but the Learned Judge out rightly rejected the prayer of interim maintenance, which is liable to be set aside and interim order should be awarded in favour of the petitioner as sought for as interim maintenance till disposal of the main application.

On the other hand, no body appears on behalf of the Opposite party no.1 even proper service of notice and copy of application.

Having heard the submission of the learned advocate appearing on behalf of the petitioner and on perusal of the record including the order dated 7th December, 2022 passed by the Principal Judge, Family Court-1, Calcutta, this Court finds the interim maintenance is rejected on contest with an observation as, inter alia:

“This is the very unhappy case where husband lost his job and earnings allegedly due to ill-treatment by his wife. On

going through I find that the husband has stated that he has no income and no employer at present. There is no evidence that the OP/husband is possessed sufficient means. There is no document on record to show that the OP is employed and earning. Prima facie this does not appear to be a case of refusal and negligent to maintain.

As OP is found not in possession of sufficient means, I am unable to award any amount as interim maintenance in the facts and circumstances of the case and without contested evidence.

For the foregoing reasons; the application for interim maintenance is liable to be rejected.”

This Court finds the order is suffered from patent illegality because the Learned Principal Judge has without adducing evidence, held that this is a very unhappy case where husband lost his job and earnings allegedly due to ill-treatment by his wife. Such observation is without any base at the stage of hearing application for interim maintenance. Furthermore, husband has stated that he has no income and no employer at present and there is no evidence that OP/Husband has possessed sufficient means to maintain her. This observation is also unacceptable. It may be true that the OP/Husband lost his job for whatsoever reasons but it is admitted fact that the OP is highly qualified and he is PGDM Finance and furthermore, he is able bodied young man having capacity to earn and maintain his wife. Being the

husband, it is the obligation to maintain his wife if she is unable to maintain herself from her own income. She has to survive during pendency of the main application for maintenance.

In such a position, the learned Principal Judge ought to have awarded even minimum interim maintenance during pendency of main application according to status of the husband so that she can survive herself as she denied her income from private tuition.

It is further admitted fact that both petitioner and opposite party No.1 are husband and wife and their marriage is registered marriage and they are residing separately due to matrimonial dispute.

Under such circumstances, this Court finds the order of rejection of interim maintenance is patently illegal, incorrect and suffers from perversity.

Accordingly, the impugned order dated 07.12.2022 is hereby set aside.

Consequently, the Criminal Revisional Application being **CRR 260 of 2023** is allowed without order as to costs.

This Court hereby requested the Ld. Principal Judge to hear afresh both the parties over the issue of interim maintenance, if main application is not yet disposed of, within a month from the date of communication of this order and decide the same afresh in accordance with law without

being influenced by any observations, whatsoever made above.

Let a copy of this order be communicated to the Learned Court below for information and taking necessary action.

All parties are to act in terms of the 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 as expeditiously as possible taking all legal formalities.

(Ajay Kumar Gupta, J.)