

04.01.2024

Sl.No. 19

Ct. 32

Amalranjan

CRR 813 of 2017

Ashim Chakraborty

Vs.

Paromita Chakraborty and anr.

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner nor accommodation sought for.

This case pertains to the year 2017. The nature of prayer and to avoid further delay, record is taken up for the purpose of disposal on merit.

The instant revisional application has been filed by the petitioner/husband under sections 397, 401 and 482 of the Criminal Procedure Code, 1973 being aggrieved and dissatisfied with the final order dated 22.12.2016 passed by the learned Judicial Magistrate, 5th Court, Serampore, Hooghly in Misc Case no. 289 of 2013 under Section 125 of Cr.P.C, thereby the learned Magistrate directed the petitioner/husband to pay a monthly maintenance to the tune of Rs. 25,000/- to the wife/opposite party no. 1 herein and further allowed a sum of Rs. 5,000/- as litigation cost.

The brief facts of the case are relevant for the purpose of disposal of the case as follows.

The petitioner got married with the opposite party 1/wife herein under the Hindu Rites and Customs on 2nd May, 2012. After few days of marriage, it was detected that the opposite party 1/wife was not a lady of sound mind and

she began to behave irrationally incurring displeasure of the family members of the petitioner/husband. The petitioner/husband along with his parents has brought the matter of misconduct and misbehavior to the notice to the parents of the opposite party 1/wife and also arranged for her medical treatment. All expenses of the medical treatments were borne by the husband/petitioner.

Due to her irrational behavior, the wife/opposite party 1 herein left her matrimonial home voluntarily on 26.02.2013 without intimating the husband/petitioner or any other family members.

The father of the petitioner/husband thereafter filed a complaint under section 420, 206 IPC being Serampore P.S. Case no. 166 of 2013 against the father and mother of the opposite party no. 1 on 3.5.2013 and that case is still subjudiced before the learned ACJM, Serampore.

On the other hand, opposite party 1/wife has filed an application under Section 125 of the Criminal Procedure Code before the learned ACJM, Serampore for maintenance with a prayer for awarding a sum of Rs. 35,000/- per month and a litigation cost to the tune of Rs. 50,000/- with a contention that the petitioner/ husband used to earn Rs. 1 lakh per month.

It is the contention of the petitioner that at the initial stage, learned Magistrate was pleased to allow interim maintenance to the tune of Rs. 1500/- per month, but surprisingly, at the time of considering the final hearing, the

learned Magistrate has awarded a sum of Rs. 25,000/- as monthly maintenance in favour of opposite party/wife without any sufficient materials of evidence that the petitioner/husband used to earn income of Rs. 1 lakh per month from his business of “Babu Sona Ghee” and further allowed a sum of Rs. 5,000/- as litigation cost and that is required to be paid within the 10th day of every succeeding month, when it falls due without fail.

As such the impugned order is required to be set aside as the impugned order is an abuse of process of law as the learned Magistrate has passed such order mechanically without going into the merit and evidences as adduced by the parties.

Upon perusal of the application together with annexures thereto, this court finds that the learned Magistrate has allowed maintenance to the tune of Rs. 25,000/- per month on the basis of evidence adduced by the opposite party 1/wife that the petitioner/husband is a business man, who has a business running in the name and style of “Babu Sona Ghee”. The wife/opposite party 1 has produced some documents showing the pictures of the business with a sealed plastic container containing Ghee in the name and style of “Babusona Ghee” marked respectively as Mat. Exbt. A/B-Mat. Exbt. -C.

The father of the petitioner deposed evidence as OPW-1, who did not deny the materials exhibits which was showing the business in the name and style of “Babu Sona

Ghee” and the said products belongs to the business of his son and about his income as claimed by the opposite party no. 1/wife.

The petitioner/husband had to prove his actual income by producing the valid documents to controvert the statements or evidence of the Opposite party no.1 but the petitioner has failed to prove his actual income. Furthermore, petitioner also failed to rebut the contention of business and his income as claimed by the wife. It is further admitted facts that the OP-1/wife is the legal wife of the petitioner and now she is residing separately and she has no source of her own income to maintain herself.

The petitioner being the husband has the bounded obligation to maintain his wife according to his status and earning when she has no her income to maintain her.

In such circumstances, I do not find any infirmity, illegality, perversity or any jurisdictional error in passing the order of maintenance and litigation costs.

Accordingly, the instant revisional application being **CRR 813 of 2017** is dismissed without any order as to costs.

Interim order, if any, stands vacated.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)