

01.04.2024
Sl.No. 42
Ct. 32
Amalranjan

In The High Court At Calcutta
Criminal Revisional Jurisdiction
Appellate Side

CRR 971 of 2018

Sk. Gulfan
Vs.
Rehana Bibi

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner. No accommodation sought for.

This case pertains to the year 2018.

The petitioner being the husband/opposite party filed this application under section 482 of the Criminal Procedure Code, 1973, challenging the impugned order dated 20.12.2017 passed by the learned Additional District & Sessions Judge, 7th Court, Paschim Medinipur in Criminal Revision No. 765 of 2016 thereby the learned Sessions Judge modified the order of maintenance passed by the learned Judicial Magistrate, 1st Court at Paschim Medinipur in favour of the wife/opposite party in M.R Case no. 352 of 2010 under section 125 of the Criminal Procedure Code, 1973.

The brief facts of the instant case is relevant for disposal of this case on merit to avoid further delay as the case is pending since 2018.

The case of the opposite party/wife was that the marriage was performed with the present petitioner/husband

herein according to Islamic law on 21.03.2004. After their marriage they have started living as husband and wife. From the said wedlock two male child were born.

However, it is the allegation of the wife that the husband started physical and mental torture upon the wife on different pretext.

On 26.9.2008, she along with her two children left the matrimonial home and started living in her paternal house. She has no independent income to maintain herself as well as to maintain her two children. As such, she filed an application under section 125 of the Criminal Procedure Code, 1973 claiming for maintenance. At the same time, the petitioner/husband has filed an application for restitution of conjugal life before the learned Judge, Family Court at Balasore, Orissa bearing C.P. no. 619 of 2010. But after receiving summons the petitioner contested the case filed by the opposite party/wife under section 125 of the Criminal Procedure Code. It also came to know that the opposite party wife had lodged an FIR with Kharagpur Town Police Station being case no. 188 of 2008 dated 28.9.2008 under sections 498A/323 of the IPC, 1860 against the petitioner herein. Same was finally decided and acquitted the petitioner from the charge under section 498A/323 of the IPC by the learned Judicial Magistrate, First Class, 2nd Court, Paschim Medinipur.

The allegation whatever made by the opposite party wife is totally false and fabricated. As such she is not entitled

to pay any maintenance from the petitioner/husband. Even though the learned Judicial Magistrate, First Court at Paschim Medinipure on 29.6.2016 was pleased to direct the petitioner to pay maintenance to the tune of Rs. 500/- each to two children from the date of the order.

The said order was challenged by the opposite party wife being aggrieved by and dissatisfied with the order of maintenance passed by the learned Magistrate before the learned District and Sessions Judge, Paschim Medinipur for its disposal.

After hearing of the parties, the learned Additional District and Sessions Judge finally disposed of the said revisional application after modifying the order passed by the learned Magistrate to the tune of Rs. 1600/- per month to the wife opposite party and 1200/- per month each to the two minor child from the date of passing of the order by the learned Trial court.

Being aggrieved and dissatisfied with the said order dated 20th December, 2017 the present petitioner filed this revisional application.

Accordingly, the instant revisional application has come up before this court for disposal. However, no one was present at the time of call.

On perusal of the application and materials available in the record along with the annexures thereto and the impugned judgment dated 20.12.2017, this court finds that there is no dispute between the parties that the opposite

party is a legal wife and their marriage was performed on 21.03.2004 and out of their wedlock two male child are born and they are residing separately in her paternal house. It is also not disputed that she has no independent income to maintain herself and her minor children.

It is settled principles of law that the husband is bounded duty to maintain wife and their children if she is unable to maintain herself and her children. The maintenance amount can be passed against the husband when he neglected or refused to maintain his wife etc. under section 125 of the Criminal Procedure Code.

It is also not disputed that the petitioner/husband is a truck driver by his profession. Though his income was not disclosed to the trial court or even in the Additional Sessions Judge. The opposite party wife claimed his income was at least Rs. 20,000/- per month. On the contrary the petitioner claimed his income was only Rs. 3000/- per month which is not at all convincing.

Considering the market prices of Essential Commodities, the learned Additional Sessions Judge has enhanced and modified the maintenance allowance at the rate of Rs. 1600/- per month for the opposite party wife and Rs. 1200/- per month for each children, which appears very reasonable.

Under such circumstances, this court does not find any merit in the instant case to interfere with the order passed by the Additional District & Sessions Judge, which

appears very genuine and reasonable according to the status and standard of the present petitioner.

Under the above facts and circumstances, the instant revisional application being **CRR 971 of 2018** is thus dismissed without 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.)