

February 28, 2024
AD-54
Ct. 32
SG

CRR 972 of 2018

In the matter of: Chandan Bhowmick
... petitioner

No one appears on behalf of either of the parties on call.

On earlier occasion, no one had appeared on behalf of the petitioner.

No accommodation was sought for.

Accordingly, the instant revisional application has been taken for disposal on merits as the case pertains to 2018 and to avoid further delay.

The petitioner being the husband filed this application under Section 482 read with 401 Cr.P.C. challenging the correctness, legality and propriety of the order dated 17.04.2018 passed by the Additional Chief Judicial Magistrate, Durgapur in Misc. Case No.401 of 2015 in a proceeding under Section 127 of Cr.P.C. arising out of Misc. Case No.114 of 2011.

The facts of the instant case are relevant for the purpose of disposal of the case as under:

The marriage between the petitioner and the opposite party was held on 14.12.2007 as per Hindu rites and customs at Durgapur. Thereafter their marriage was consummated and a male child was born out of the said

wedlock on 02.09.2008. It is contention of the petitioner that after birth of the said child she went to her parents house on 21.04.2010. She did not return at her matrimonial house without any reason. There was no dispute and differences between the parties. In spite of several attempt through common friends and family members to bring the opposite party to lead the conjugal life but she refused the same. She filed an application under Section 125 Cr.P.C. before the Additional Chief Judicial Magistrate, Durgapur being Misc. Case No.114/11 with an intention to extort money and to harass the petitioner. However, after hearing the parties, the learned Magistrate directed to pay a sum of Rs.5,000/- towards her maintenance and Rs.3,000/- for maintenance of the child.

The petitioner being aggrieved with the said impugned order dated 24.04.2012 passed by the learned Additional Chief Judicial Magistrate, filed a revisional application before the Hon'ble High Court being CRR 3288 of 2012.

Upon hearing the parties, the Hon'ble High Court modified the said impugned order after reducing the maintenance by considering the salary of the petitioner vide order dated 18.03.2012. Thereafter the opposite party has filed an application under Section 127 Cr.P.C. being Misc. Case No.401 of 2015 arising out of Misc. Case No.114 of 2011 before the learned Additional Chief Judicial Magistrate, Durgapur praying for enhancement of maintenance to the tune of Rs.20,000/- for herself and

Rs.15,000/- for maintenance of the child. The said application was allowed by the learned Magistrate on 17.04.2018 and enhanced the maintenance amount to the tune of Rs.7,000/- for the opposite party/wife and Rs.5,000/- for the child and the same was given effected from 09.12.2015 and arrear of maintenance accrued to be paid in eight equal instalments. Though the case of the petitioner is that his father is a cancer patient and he received a sum of Rs.19,200/- as net salary in every month even then the learned Magistrate had allowed the application filed under Section 127 Cr.P.C. and enhanced the maintenance, which is illegal and liable to be set aside. Accordingly, the instant case came up before this Court for disposal.

Upon perusal of the application as well as the annexures thereto, this Court finds that it is not disputed that the opposite party is not his legal wife. It is admitted fact that there is one male child born out of the said wedlock. The petitioner is an employee of Steel Authority of India, Durgapur Steel Plant. From the salary slip it appears his salary was Rs.68,880/- and after deduction on different heads including loan, he is getting Rs.19,204/- per month. By considering the amount of his salary and other circumstances, the learned Magistrate awarded maintenance as above, I find it is correct and legal according to the prevailing market price of different

commodities and income of the petitioner. Furthermore, he has also obligation to maintain his wife and minor son.

Under such circumstances, I do not find any infirmity, illegality or impropriety in the impugned order passed by the learned Magistrate.

Accordingly, the application is devoid of merit which required to be dismissed.

Thus, CRR 972 of 2018 is dismissed without any order as to costs.

Interim order, if any, stands vacated.

Let a copy of this order be sent to the learned court below for information.

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

(Ajay Kumar Gupta, J.)

