

15.01.2024

Sl. 14

Court No.

32

CRR 1383 of 2017

**Suman Kalyan Chakraborty
Vs.
Moumita Roy nee Chakraborty**

Nobody appears on behalf of either of the parties.

Even on earlier occasions, no one represented the petitioner. No accommodation was sought for.

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

The brief fact of the instant case is that the Petitioner being the husband filed this revisional application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the correctness, legality and perversity of the order dated 13th February, 2017 passed by the learned Judicial Magistrate, 5th Court at Barrackpore, North 24-Parganas in Misc. Case No. 644 of 2015 in an application filed under Section 125 Cr.PC filed by the opposite party/wife thereby the learned Magistrate allowed the interim maintenance petition on contest without order as to costs and directed to pay a sum of Rs. 2,000/- per month to the petitioner from the date of passing order as interim maintenance. Interim maintenance shall be paid by the petitioner herein within 1st ten days of every month though

the present petitioner prays for dismissal of the said application on the ground that the opposite party/wife has filed that application on false statement suppressing the material facts that she is the house wife and she has no her own income to maintain herself and she requires maintenance to Rs. 15,000/- per month and also prayed for ad interim maintenance to the tune of Rs. 10,000/- per month though she is working lady and earns a handsome income to maintain herself.

The said applications were filed in the month of September 2015. Prior to filing of the application by the petitioner stating therein that the opposite party/wife is an employee and working as District Project Manager (MIS), W.B.S.R.L.M./D.R.D.C., Jalpaiguri and earning a gross salary of Rs. 35,000/- per month from the said office. If she is the employee and earning Rs. 35,000/- per month i.e. more than the petitioner's income, she is not entitled to get any interim maintenance to maintain herself. The petitioner also filed his salary certificate in supplementary affidavit wherefrom it appears that petitioner's income is to the tune of Rs. 17,600/- per month i.e. less than the opposite party's income. However, without considering the facts and earnings of the opposite party/wife, the learned Trial Court erred in allowing a sum of Rs. 2,000/- per month to the petitioner from the date of passing of order observing therein inter alia:

"It is well-known as pronounced in a catena of

judgments that provisions under Section 125 Cr.PC is essentially a beneficial one and not liable to be rejected solely on the ground that the woman is an earning body, that apart, documents are devoid in seal of issuing authority and a merely photocopy of document, accuracy of such document cannot be ascertained at that stage.”

Considering the applications and annexure thereto, this Court finds it is not disputed that opposite party/wife is not a wife of the present petitioner and they are residing separately but however, without ascertaining actual facts that she is a working lady and her income is Rs. 35,000/- per month. The interim maintenance should have not been allowed as the claim of the petitioner herein is supported by document. It is annexed herewith bears signatures of the administrative officer, who informed that the opposite party/wife is a working lady and her present income Rs. 35,000/- per month. That fact cannot be ignored while passing order of maintenance without verify the same.

Under such circumstances, the petitioner has strong case.

Accordingly, criminal revisional application being **CRR 1383 of 2017** is allowed and the order dated 13th February, 2017 passed by the learned Judicial Magistrate, 5th Court at Barrackpore, North 24-Parganas in Misc. Case No. 644 of 2015 in an interim maintenance application filed under

Section 125 Cr.PC is set aside.

Let the order be sent to the learned Court below for information.

Parties shall act on the server copies of this order downloaded from the official website of High Court at Calcutta.

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

(Ajay Kumar Gupta, J.)