

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1877 of 2011

Gouranga Mohan Sarkar

-Vs-

The State of West Bengal and Anr.

For the Petitioner : Mr. Karabi Roy
Mr. Sarbani Mukhopadhyay

For the State : Mr. Bidyut Kumar Roy
Mr. Sima Biswas

Heard on : 29.09.2023, 14.12.2023, 19.01.2024

Judgment on : 19.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 25.05.2011 passed by the Learned Additional District and Sessions Judge, Fast Track Court – 2, Kalyani in Criminal Motion No. 3/11 by modifying the order passed by the Learned Additional Chief Judicial Magistrate, Kalyani in Misc. Case No. 204/10 by directing the petitioner to pay interim maintenance of Rs. 7000/- per month to the opposite party no. 2 and to pay a sum of Rs. 8000/- per month towards the interim maintenance of their daughter with effect from the date of filing petitioner for interim maintenance and order dated 16.12.2010 passed by the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia in

connection with Misc. Case No. 204/2010 allowing interim maintenance petition by directing the petitioner to pay Rs. 10,000/- per month as interim maintenance towards the opposite party no. 2 and Rs. 8000/- per month as interim maintenance towards their daughter with effect from the date of filling the interim maintenance petition.

2. The present petitioner is an assistant school teacher now attached to Pritinagar Bhudeb Smriti Vidyapith, Post Office – Pritinagar, District – Nadia and he earns about Rs. 30,000/- per month.
3. The petitioner was married with the opposite party no. 2 on 20th November, 1989 and a daughter was born due to their wedlock who is now doing her Bachelor of Science (1st Year).
4. Since marriage opposite party no. 2 was in a habit of wandering and she expressed her unwillingness to lead her matrimonial life and voluntarily left her matrimonial house. With an intention to malign the petitioner she filed a case claiming maintenance in the year 2008 being no. Misc. Case No. 138 of 2008 but the said case was compromised and withdrawn and they started living together. She also filed a case under Section 498(A) of the Indian Penal Code on 12.08.2010 falsely implicating the petitioner 6 months after the alleged date of the incident.
5. In the year 2010 the opposite party no. 2 left the petitioner's house voluntarily and took her daughter with her and filed a petition before the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia praying for maintenance under Section 125 of the Code of Criminal Procedure, with an

allegation that the petitioner inflicted mental and physical torture upon her and drove her out. The opposite party no. 2 also contended that they were married in the year 1989, and after marriage the father of the opposite party no. 2 gave the petitioner Rs. 32,000/- to buy Land and Rs. 30,000/- to construct a house but still the petitioner used to inflict mental and physical torture upon her for demand of more money. For those reasons opposite party no. 2 was compelled to leave her matrimonial house and filed a case for maintenance in the year 2008. That case was withdrawn and again she started her conjugal life but things did not change and on 15.02.2010 allegedly she was driven out.

6. Petitioner stated that it was admitted that their daughter had attained her majority and as such her mother cannot pray maintenance on behalf of their daughter and as per Section 125(1)(C) of the Code of Criminal Procedure a major daughter was not entitled to get maintenance unless she was unable to maintain herself due to some physical and mental disability.
7. Petitioner was very much willing to live with the opposite party no. 2 and their daughter.
8. Petitioner has no other income to save and except the income towards the salary as an assistant teacher which is about Rs. 30,000/- per month. Petitioner has old and ailing mother, who has no other person to look after except the petitioner and all the expenses including the medical expanses of the mother was bear by the petitioner. Petitioner was also suffering from various ailments.

9. Petitioner in spite of his great hardship is paying Rs. 9,000/- per month as maintenance towards the opposite party no. 2 and their daughter.
10. Learned Advocate for the petitioner submitted that –
- i. The opposite party no. 2 voluntarily left her matrimonial house and denied to continue her conjugal life with the petitioner and as such she was not entitled to get any maintenance as per the provision of Section 125(4) of the Code of Criminal Procedure.
 - ii. The daughter of the petitioner has attained her majority and as such her mother cannot claim maintenance of her behalf.
 - iii. As per Section 125(1)(C) of the Code of Criminal Procedure major daughter was not entitled to get maintenance unless she was unable to maintain herself due to mental and physical disability and as such the daughter of the petitioner was not entitled to get maintenance.
11. Heard the submissions of the Learned Advocate for the State.
12. The marriage between the parties is not disputed. The opposite party/ wife is unemployed and has to be maintained by the petitioner.
13. Admittedly daughter has become a major and has sufficient income through appropriate employment. The petitioner is to pay a sum of Rs.10,000/- per month to the wife alone within 10th day of every succeeding calendar month. Arrears to be paid within 60 months from the date of passing this order calculating the sum from the date of filing of the petition for interim maintenance.
14. There is no order to costs.

15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)