

19.2.2024
BR
Sl. No. 38

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

CRR 1609 of 2017

**Tuya Bhattacharya (nee Mukherjee)
-Vs-
Sri Ujjal Bhattacharya & anr.**

No one 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 year 2017.

The facts of the case is relevant for the purpose of disposal of this case.

The petitioner being wife filed an application under Section 397 read with Section 401 and 482 of the Code of Criminal Procedure , 1973 challenging the judgment and order dated 23rd December, 2016 passed by learned Additional District and Sessions Judge, Fast Track-4th Court, Barasat, North 24-Parganas in criminal revision No. 28 of 2013

thereby allowed the revisional application on contest without cost by setting aside the order dated 30.11.2012 passed by learned Judicial Magistrate, 1st class, Barasat in Maintenance Case No. 239 of 2008 under Section 125 of the Code of Criminal Procedure and whereby directed the husband/opposite party No. 1 to pay a sum of Rs. 2,500/- as maintenance for wife and a sum of Rs. 1,500/- per month for her minor daughter totaling a sum of Rs. 4,000/- per month with effect from 30.11.2012.

Petitioner had filed an application under Section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate, 1st class, 1st Court, Barasat, North 24-Parganas praying for maintenance to the tune of Rs. 10,000/- for herself and Rs. 6,000/- maintenance of her minor daughter and the same was registered as Misc. Case No. 239 of 2008 after considering and scanning of the evidence of both sides, the learned Magistrate

has allowed a sum of Rs. 2,500/- each for wife and minor daughter total amounting to Rs. 5,000/- as maintenance to be paid by the husband.

Being aggrieved with the said judgment, the opposite party no. 1/husband filed a revisional application before the learned Sessions Judge, North 24-Parganas. After hearing the parties, the said application was allowed on contest and finally directed to pay a sum of Rs. 2,500/- per month towards the maintenance of the wife/petitioner and Rs. 1,500/- per month towards her minor daughter totalling of Sum of Rs. 4,000/- per month instead of Rs. 5,000/- with effect from 30.11.2012.

Considering the materials available in the record as well as judgment passed by the Additional Sessions Judge, this Court finds the petitioner and opposite party no. 1 is the legally husband and wife and dispute and differences arose between them on different

issues. One Matrimonial Suit being No. 124 of 2007 was pending before the learned Additional District and Sessions Judge, 3rd Court at Barasat. In such proceeding the learned Additional District Judge directed the husband/opposite party No. 1 to pay a sum of Rs. 1,500/- per month as an interim alimony to the wife. In spite of passing such interim alimony, the learned Judicial Magistrate has passed another maintenance amount of Rs. 2,500/- each to the wife as well as her minor daughter, when the opposite party has refused and neglected to maintain them. It is the obligation of the husband to maintain his wife and his daughter even though the Matrimonial Suit is pending and interim alimony is passed under Section 24 of the Hindu Marriage Act subject to amount of interim alimony already awarded should be adjusted while passing the interim maintenance under Section 125 of the Criminal Procedure Code.

It is settled principles of law that the maintenance amount granted in different proceedings are to be adjusted while allowing maintenance to the party, who are unable to maintain and fully dependant upon the husband.

Considering all those facts the learned Additional District and Sessions Judge has reduced the maintenance amount from Rs. 5,000/- to Rs. 4,000/- that is Rs. 2,500/- per month to the wife and Rs. 1500/- per month to the daughter totalling amounting to Rs. 4,000/- per month from 30.11.2012.

Under the above facts and circumstances, this Court does not find any illegality or perversity in the impugned judgment and order under challenge. The order passed by the learned Additional Sessions Judge appears correct, legal and there is no jurisdictional error in law.

Accordingly, CRR 1609 of 2017 is, thus dismissed without any order as to costs. Interim order, if any be vacated.

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

Urgent xerox certified copy of this order, if, applied for, be given to the learned advocate for the parties on usual undertakings.

(Ajay Kumar Gupta, J.)