

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 3510 of 2023

(Assigned)

Soumitra Mukherjee.

Vs.

Rubi Mukherjee

For the Petitioner :Mrs. Arundhati Banerjee, Adv.
Mr. Kaustav Banerjee, Adv.
Ms. Riya Kundu, Adv.

For the opposite party :Mr. Subir Ganguly, Adv.
Mr. Sumanta Ganguly, Adv.

Heard on :27.09.2023, 24.11.2023,
11.12.223, 15.01.2024

Judgment on :24th January, 2024

Bibhas Ranjan De, J.

1. The present criminal revision application has been preferred by the petitioner challenging impugned order dated 06.02.2023 passed by learned Judicial Magistrate (for short J.M), 2nd Court, Rampurhat, Birbhum in connection with Misc. Case no. 351 of 2021 thereby partly allowing the interim prayer of maintenance filed by the opposite party (for short O.P) herein under Section 125 of the Code of Criminal Procedure (for short CrPC).

Brief facts:-

2. The petitioner namely Soumitra Mukherjee married the opposite party herein Rubi Mukherjee on 05.05.2011 as per Hindu Rites and Customs. Thereafter, the petitioner and the O.P led conjugal life and out of such wedlock they have one daughter aged about 9 years. It is alleged by the O.P herein that she had been driven out of her matrimonial house on 24.02.2021 due to the non-fulfillment of demand of further dowry worth of Rs. 5,00,000/- and since then she has been residing in her paternal house. As a sequel of this action, she lodged a criminal case against her husband and in-laws. It is contended by the O.P herein that the petitioner is an able

bodied person and has many landed properties including a pakka house. It is further contended that the petitioner is an employee under Indian Railway Department earning a handsome salary and thus capable of maintaining both the O.P and their daughter. Accordingly, the O.P on 01.10.2021 filed an application under Section 125 of the CrPC for maintenance before the Learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum which was subsequently transferred to the Learned J.M, 2nd Court, Rampurhat, Birbhum for disposal.

Arguments advances:-

3. Ld. Counsel, Mrs. Arundhati Banerjee, appearing on behalf of the petitioner has contended that since inception of marriage between petitioner and the O.P there was a clear mental mismatch which resulted in her desertion on own volition. Hence, the O.P is not entitled to any order of maintenance under the Provision of Section 125 of CrPC. Mrs. Banerjee has further contended that the op through her brother also lodged a criminal case under Section 498A/307/34 of Indian Penal Code (for short IPC) and Section 3 /4 of Dowry Prohibition Act, with the intention to falsely implicate the petitioner and his

aged parents which is still pending before the Ld. JM, 1st Court, at Rampurhat, Birbhum in connection with Paikar Police Station Case no. 37/2021 corresponding to GR case no. 249 of 2021.

4. The claim of the O.P regarding the monthly income of the petitioner to the tune of Rs. 75,000/- to Rs. 80,000/- was also firmly denied by the Ld. Counsel appearing on behalf of the petitioner. It was further contended by the Ld. Counsel that after all deductions and looking after all his dependants the petitioner could only save an amount of Rs. 3,000/- to Rs. 4,000/- that too being spent on litigation by the petitioner hence paying the due interim maintenance amount of Rs. 7,000/- as ordered by the Ld. JM, 2nd Court, Rampurhat, Birbhum is impossible for him.

5. Per contra, Ld. Counsel, Mr. Subir Ganguly, appearing on behalf of the opposite party has duly supported the impugned order.

Decision with reason:-

6. It is settled proposition of law that the object behind providing maintenance, pendente lite, to a spouse in a matrimonial proceedings is to the effect that during the pendency of the

proceedings the spouse can maintain herself or himself and also have sufficient funds to carry on the litigation and not unduly suffer in the conduct of the case for want of funds. A spouse unable to maintain himself or herself is entitled to maintenance on the principle of **equistatus** and respect that the spouse would have enjoyed if he /she continued to live with the other spouse. While, determining the amount of maintenance the court has to necessarily arrive at the prima facie determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude. It is essentially interim in nature. Capacity of the other party to earn cannot be taken into consideration. It is only the actual earning of the opposite party on the basis of which relief can be granted. Permanent income and not casual income is relevant. The provisions are only beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse, even during the course of trial.

7. The purpose of paying interim maintenance is two folds

- First to prevent vagrancy as a result of strained husband-wife relationships and
- To guarantee that the poor litigating spouse is not crippled as a result of a lack of funds to defend or prosecute the case.

8. After analyzing the factual matrix of this case it is admitted that

- The O.P is the legally married wife of the petitioner and they have a child
- Petitioner is an able bodied man
- Admittedly, the O.P is living separately from the petitioner
- The O.P has no independent source of income thus she is unable to maintain herself and her minor daughter
- The petitioner has not paid any money towards maintenance of the O.P or his minor daughter.

9. It is not out of place to mention here that the issues raised at the behest of the petitioner herein are all matter of evidence to be decided in course of trial.

10. On careful scrutiny of the impugned order between the line it appears that Ld. Magistrate, 2nd Court addressed all the

issues discussed and decided by this Court before granting interim maintenance in favour of the O.P herein.

- 11.** Thus, being the position, I find hardly any scope to interfere with the order impugned. As a sequel, the Criminal Revision application being no. CRR 3510 of 2023 stands dismissed.
- 12.** Interim order, if there be, any stands vacated.
- 13.** Pending applications, if there be, any stands disposed of accordingly.
- 14.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 15.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]