

Court No. 6
(265719)

21.05.2025
(AD 24)
(S. Banerjee)

CO 1767 of 2025

Sri Debasish Roy
Vs.
Smt. Pika Roy (nee Ghosh)

Mr. Tapas Kumar Majumdar
Mr. Partha Pratim Bhattacharjee
...for the petitioner

Mr. Sambhunath De
Mr. Shyamal Kumar Halder
...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the husband and is directed against Order No. 19 dated March 28, 2025 passed by the learned Additional District and Sessions Judge, 2nd Court at Sealdah in Misc. Case No. 6 of 2022. By the order impugned the application filed by the wife/opposite party herein under Section 36 of the Special Marriage Act was allowed thereby directing the husband to pay a sum of Rs. 5,000/- per month as alimony pendente lite from the date of filing of the application and a further sum of Rs. 15,000/- towards the litigation cost.

Learned advocate appearing for the petitioner submits that the petitioner is paying a sum of Rs. 15,000/- per month in terms of an order passed under Section 125 of the Code of Criminal Procedure and a further sum of Rs. 5,000/- per month in a

proceeding under the Protection of Women from Domestic Violence Act, 2005 towards separate accommodation. He submits that the mother of the petitioner herein is suffering from cancer and the petitioner has to incur a substantial amount of money on account of the treatment of his mother.

Per contra, the learned advocate appearing for the wife/opposite party herein submits that the petitioner has suppressed the fact that the mother of the petitioner was a Central Government employee and she is getting a substantial amount of money on account of pension. He further submits that the mother of the petitioner is enjoying the cash-less medical facilities and, therefore, the petitioner is not liable to incur any medical expenses on account of the treatment of his mother.

Heard the learned advocates for the respective parties and perused the materials placed.

Record reveals that the learned Additional Sessions Judge in a proceeding under Section 125 Cr.P.C. passed an order directing the petitioner to pay a sum of Rs. 15,000/- towards interim maintenance to the wife. The petitioner challenged the said order before this Hon'ble Court in CRR 1454 of 2019 and a coordinate bench by an order dated July 2, 2019 affirmed the order passed by the learned Additional Sessions Judge with the modification that the interim

maintenance will be payable from the date of the order passed by the learned revisional court.

Thus, it appears that the order fixing the rate of maintenance at Rs. 15,000/- in a proceeding under Section 125 Cr.P.C. was passed in the month of May, 2019. The application under Section 36 of the Special Marriage Act was filed on February 25, 2022, i.e., after 2 ½ years from passing of the order by this Hon'ble Court.

It is not in dispute that the gross salary of the petitioner for the month of August, 2024 was Rs. 1,98,000/- per month. The learned trial judge after taking note of the affidavit of assets filed by the respective parties and after considering the propositions of law laid down by the Hon'ble Supreme Court in the case of *Rajnish Vs. Neha* reported at (2021) 2 SCC 324 and *Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury nee Nandy* and other decisions holding the field observed that a sum of Rs. 20,000/- towards maintenance as alimony pendente lite is just and proper. The learned trial judge after taking into consideration that the husband is paying a sum of Rs. 5,000/- towards separate accommodation to the wife and a further sum of Rs. 15,000/- per month as maintenance under Section 125 Cr.P.C. observed that the sum of maintenance paid by the husband to the wife in a proceeding under Section 125 Cr.P.C., is to

be adjusted from the aforesaid amount of Rs. 20,000/-.

The learned trial judge applied the correct legal tests while deciding the application under Section 36 of the Special Marriage Act.

Considering the fact that the maintenance of Rs 15,000/- in a proceeding under Section 125 Cr.P.C. was awarded only in the month of May, 2019 and due to passage of time there has been escalation in prices of various daily necessities, this court is of the considered view that the learned trial judge was right in directing the husband to pay the sum of Rs. 5,000/- as alimony pendenti lite with effect from the date of filing of such application. The quantum awarded on account of litigation cost also appears to be a reasonable amount.

For such reason this court is not inclined to interfere with the order impugned.

Accordingly, CO 1767 of 2025 stands disposed of.

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

(Hiranmay Bhattacharyya, J.)