

(2022) 08 CAL CK 0080
In the Calcutta High Court
Case No : Criminal Revision No. 154 Of 2022

Debjani Das

APPELLANT

Vs

Shyamapada Jana @ Shyamapada Jana & Anr

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Citation : (2022) 08 CAL CK 0080

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Debjani Das, Subhasree Patel, Salini Das

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

1. Applicant of Misc Case No.426 of 2009 being a proceeding under Section 125 of the Code of Criminal Procedure has challenged the legality, validity and propriety of an order dated 27th December, 2021 passed by the learned Judicial Magistrate, 5th Court at Alipore directing the opposite party/husband to pay maintenance allowance at the rate of Rs.4500/- per month to the applicant from the date of the order on the ground that the learned Magistrate while fixing the quantum of maintenance failed to consider that monthly income of the husband of the applicant/opposite party herein. She also failed to appreciate that the applicant/petitioner was granted interim maintenance at the rate of Rs.10,000/- per month by this Court and final order of maintenance cannot be less than the interim order of maintenance.

2. Petitioner conducted the hearing of the revision petition in person. The opposite party/husband has duly represented by his learned Advocate.

3. I have heard the petitioner and the learned Advocate for the opposite party at length. It is pertinent to mention here that at the time of hearing the petitioner has submitted a written note in vernacular, the said written note is kept with the

record.

4. Indisputably, the petitioner is the legally married wife of the opposite party No.1. However, marital tie between the parties is severed by a decree of divorce passed ex-parte dated 25th June, 2007. In the year 2009, the petitioner filed an application under Section 125 of the Code of Criminal Procedure which resulted in registration of Misc Case No.426 of 2009. In the said proceeding upon an application of interim maintenance, trial court directed the opposite party No.1 to pay maintenance allowance at the rate of Rs.10,000/- per month during the pendency of the said case. It is submitted by the petitioner that the opposite party No.1 deals with the business of plying commercial vehicles. He is owner of nine numbers of cabs having commercial registration number. He also deals with the business of cable networking. He earns Rs. 1 lakh approximately per month. It is further submitted by the petitioner that the learned Magistrate while disposing of the abovementioned Criminal Misc Case did not even considered the income of the opposite party No.1 and basic need of the petitioner. It is also submitted by the petitioner that the learned Magistrate failed to appreciate the evidence on record, present market price of essential commodities and daily need of the petitioner for her bear maintenance.

5. Mrs. Subhasree Patel, learned Advocate for the opposite party No.1, on the other hand, submits that the petitioner is a handicapped person having 60% locomotive disability. In course of argument it is admitted by the learned Advocate for the opposite party No.1 that he is the owner of nine numbers of automobile cabs but all the said cabs are more than 15 years old and those are liable be to be scrapped. The said motor cars are not engaged commercially at present and the opposite party has no earning income from his transport business. According to the learned Advocate for the opposite party No.1, the opposite party somehow earns Rs.30,000/- per month. Therefore, she supported quantum of maintenance granted by the learned Magistrate vide order dated 27th

6. With the supplementary affidavit filed by the petitioner, she has annexed the Photostat copies of the evidence adduced by her, as PW1 and her father as PW2 and the opposite party No.1. In her cross-examination in chief, the petitioner stated on oath that on the date of deposition, the opposite party No.1 used to earn Rs.1,50,000/- per month. Therefore she prayed for maintenance allowance at the rate of Rs.50,000/- per month. I have carefully gone through the cross-examination of PW1. During cross- examination the statement of PW1 on oath to the fact that her husband used to earn Rs.1,50,000/- per month on the date of her evidence was not even challenged.

7. The father of the petitioner, namely Dipak Das deposed in the trial court as PW2. In his cross-examination it was suggested that the opposite party does not earns Rs.1,50,000/- per month which he denied. In the trial court the opposite party took a plea that the petitioner earns Rs.10,000/- per month by selling jams and jelly. But the learned Magistrate held on appreciation of evidence that the opposite party failed to prove such claim of income by the petitioner by adducing

satisfactory evidence and producing document in support of his claim. The learned Magistrate also found that the opposite party failed to produce any document to prove that he became totally incapable of performing any kind of work.

8. However, the learned Magistrate failed to consider the evidence of the petitioner with regard to the monthly income of the opposite party. Without arriving at such specific conclusion with regard to the monthly income of the opposite party, I am constrained to hold that the learned Magistrate acted illegally and material irregularities in fixing quantum of maintenance at the rate of Rs.4,500/- per month in favour of the petitioner.

9. Therefore, the impugned order with regard to the quantum of maintenance payable by the opposite party No.1 to the petitioner is liable to be set aside. Accordingly the instant revision is allowed. The impugned order dated 27th December, 2021 is set aside.

10. The learned Magistrate is directed to fix quantum of maintenance payable by the opposite party No.1 to the petitioner upon due consideration of the evidence adduced by the parties with regard to monthly income of the opposite party and basic need of the petitioner vis-a-vis., present market price of essential commodities and minimum requirement of the petitioner to lead a dignified life in society.

11. The learned Magistrate is further directed to disposed of the Misc Case No.426 of 2009 within two months from the date of communication of this order.

12. In the mean time the opposite party shall pay interim maintenance to the petitioner at the rate of Rs.10,000/- per month.

13. With the above order the instant criminal revision is disposed of.