

(2012) 04 CAL CK 0001

Calcutta High Court

Case No: C.R.R. No. 1612 of 2011

Ashis Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: April 19, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2013) 1 CHN 376

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Anjan Dutta, for the Appellant; Uday Sankar Chattopadhyay, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is directed against the judgment and order dated April 30, 2011 passed by the learned Additional Sessions Judge, 4th Court, Burdwan in Criminal Motion No. 102 of 2010 thereby confirming the order dated July 17, 2010 passed by the learned Chief Judicial Magistrate, Burdwan in Misc. Case No. 95 of 2010 u/s 125 of the Code of Criminal Procedure, 1973 thereby granting interim maintenance at the rate of Rs. 7,000/- per month against the petitioner. The petitioner holds the post of Joint B.D.O. under the Government of West Bengal. The marriage between the petitioner and opposite party No. 2 is an admitted fact. Admitted that the petitioner gets salary as per observations to the tune of Rs. 23,000/- per month and that the opposite party as no source of income.

2. Under the circumstances, the learned Chief Judicial Magistrate granted interim maintenance at the rate of Rs. 7,000/- per month. Being aggrieved, the husband/petitioner filed a criminal motion and that criminal motion was dismissed on contest. Being aggrieved, this application has been preferred.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that Mr. Anjan Dutta, learned Advocate, has referred to the contention relating to the quantum of interim maintenance granted by the Courts below. So, at present, I am concerned with the quantum of interim maintenance.

4. There is no denial that the husband/petitioner herein earns Rs. 23,000/- per month as salary. The Courts below has observed that the wife is entitled to get such maintenance as to maintain the status of her husband.

5. Upon considering all the aspects of the matter, the Courts below granted interim maintenance to the tune of Rs. 7,000/- per month. This Court is concerned with the illegality, impropriety or incorrectness of the impugned order. On perusal of the same, I do not find that the impugned order suffers from illegality, impropriety or incorrectness.

6. Mr. Dutta appearing on behalf of the husband/petitioner has referred to the decisions of [Saheda Khatoon Vs. Gholam Sarwar](#), Udayan Saha vs. Sm. Srabani Saha reported in 1995(1) CHN 260, [Dhananjoy Samanta Vs. Sabitri Samanta](#), , [Saygo Bai Vs. Chueeru Bajrangji](#), and thus, he submits that interim maintenance could not exceed 1/5th of the salary of the husband in any circumstances and that the Apex Court has observed that even maintenance may be granted to the tune of 10 per cent of the income of the husband.

7. As regards grant of interim maintenance, there cannot be any strait-jacket formula that 1/5th of the salary should be awarded as maximum interim maintenance. The decision of the Apex Court that 10 per cent of the salary should be given, will not be applicable in the instant case because of the fact that the wife was working as a Day Labourer and earned Rs. 45/- per day.

8. The paragraph 9 of the 1995 (1) CHN 260 clearly lays down that there is no inflexible rule or rigid formula on the basis of which the amount of maintenance could be assessed. Each case has to be decided on its own facts and circumstances. While determining the quantum maintenance, the Court has to bear in mind the social status of the parties, economic viability and the family background. But, ordinarily such fixation of amount should not exceed 1/5th of the husband's average income for three years preceding the date of the order. In the instant case, the husband being a Joint B.D.O., the wife may expect that she should maintain the same status as her husband has.

9. Under the circumstances, in consideration of the decision of 1995 (1) CHN 260 as noted above, I am of the view that there cannot be any formula that the maximum limit would be 1/5th of the salary. Since, both the Courts below arrived at a concurrent conclusion, I am of the view that the impugned order should not be interfered with under such circumstances.

10. In that view of the matter, I am of the opinion that this revisional application is devoid of merits.

11. It is dismissed accordingly.

12. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.