

## Calcutta High Court

HON'BLE JUDGE(S): **BIBEK CHAUDHURI , J**

**SOUMYA DASGUPTA V. MONALISA DASGUPTA (DHAR)**

CRR - 3359 of 2022, decided on 26/04/2023

**Criminal P.C. (2 of 1974) , S.125— Maintenance - Grant of - Husband challenging amount of maintenance granted by trial court - Trial court without considering respective cases of parties granted interim maintenance of Rs. 30,000/- to wife and Rs. 20,000/- to daughter - Trial court did not consider affidavits of assets and liabilities before hearing - Trial court required to state in brief bare necessities of wife and her daughter - Since order granting interim maintenance was devoid of merits, order quashed - Trial court directed to dispose of application filed by wife for interim maintenance, afresh.**

(Para 9, 12)

### Name of Advocates

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Kallol Basu, Apalak Basu, Jyoti Prakash Banerjee, S. Sarkar, D. Das for Petitioner; Shibaji Kumar Das, Rupsa Sreemani for Respondent.

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1. **ORDER:-**An order dated 11th July, 2022 passed by the learned Additional Chief Judicial Magistrate, 2nd Court at Kalyani, Nadia in connection with Misc Case 328 of 2021 directing the petitioner to pay Rs.30,000/- per month to the petitioner's wife/opposite party herein and Rs.20,000/- per month to the daughter of the petitioner as their maintenance, is assailed in the instant revision.

2. It is alleged by the petitioner that his marriage was solemnized with the opposite party on 19th April, 2015 under the Special Marriage Act. After marriage the couple failed to lead happy conjugal life. However, in their wedlock a girl child was born on 4th February, 2016. The opposite party was allegedly subjected to physical and mental torture which compelled her to leave her matrimonial home with her minor daughter and she has been residing with her child at her paternal home. She has no source of income to maintain herself and her minor daughter.

3. It is alleged by the opposite party that her husband demanded a sum of Rs.20 lakhs from her paternal home. He also filed a suit for dissolution of

marriage by a decree of divorce before the learned District Judge, South 24 Parganas at Alipore being Matrimonial Suit No.1743 of 2021. It is alleged by the opposite party/wife that the present petitioner is an employee of Iris Software Technology Pvt. Ltd. and earns Rs.3 lakhs per month. The opposite party as petitioner in the trial court claimed maintenance at the rate of Rs.1.5 lakhs per month for herself and Rs.1 lakh per month for her minor daughter against the petitioner/husband. Vide order dated 11th July, 2022 the learned Additional Chief Judicial Magistrate at Kalyani passed an order directing the present

petitioner to pay interim maintenance at the rate of Rs.30,000/- per month in favour of opposite party/wife and Rs.20,000/- per month for the minor daughter of the parties, total being Rs.50,000/- per month. The said order is under challenge in the instant revision.

4. It is pertinent to mention at this stage that on the basis of a written complaint filed by the opposite party at Parnashree Police Station FIR Case No.192 of 2021 dated 24th July, 2021 under Sections 3 498A/406/506/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act was registered.

5. It is stated by the petitioner/husband that he is presently working in Connecting Dot Consultancy Pvt. Ltd. as Chief Business Officer and draws monthly salary amounting to Rs.30,000/-. It is also stated by the petitioner that the petitioner used to pay maintenance allowance at the rate of Rs.8,000/- per month to his wife since the date of separation and also incurred expenditure of Rs.70,000/- for admission of his daughter's school. The petitioner used to pay the medi-claim for his wife and his daughter on regular basis.

6. Mr. Kallol Basu, learned Advocate for the petitioner submits that the learned trial judge failed to consider the present income of the petitioner. It is true that the petitioner used to work in Bangalore. He used to earn lucrative salary. However he left the job and has been working Chief Business Officer in Connecting Dot Consultancy Pvt. Ltd and earns Rs.30,000/- per month. The learned Magistrate failed to consider the affidavit of assets and liabilities filed by the petitioner. He also failed to consider that the petitioner is depending on a salary based work and at best 1/3rd of his net salary can be

awarded as the highest quantum of maintenance. The learned Magistrate failed to consider the ability of the petitioner to decide as to whether he would be able to pay the said amount or not.

7. The learned Advocate for the opposite party, on the other hand submits that the petitioner used to work in a reputed company at Bangalore and he was the manager and business analyst in the said company. He left the job of Iris Software Technology Pvt. Ltd. with effect from 29th September, 2021. The learned Advocate for the opposite party raised a serious doubt regarding the salary of the petitioner on the ground that a person will not accept a job where his salary will be less by approximately Rs.1.20 lakhs. It is also submitted by the learned Advocate for the opposite party that whatever may be the case the petitioner is an MBA from Indian Institute of Management, Calcutta. He completed his B.Tech from Kalyani Government Engineering College. Therefore, he is highly educated person having good academic qualification. He is able to get a better job than the present one. It is no longer a *res integra* that an able bodied person is entitled to maintain his wife who has no means or source of income. When the petitioner has the ability and qualification to carry on better job and earn better salary for better living, such capacity of better living ought to be taken into consideration while deciding quantum of interim maintenance by the learned Magistrate.

8. Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record especially the impugned order dated 11th July, 2022 this Court is of the view that the learned Chief Judicial Magistrate, Kalyani utterly failed to consider respective cases of the parties. The learned Magistrate did not consider the affidavits of assets and liabilities filed by the opposite parties before hearing. On the contrary he made the following observation:-

"The allegations levelled in the petition against the opposite party and counter allegations levelled in the written objection against the petitioner will be determined after conclusion of trial.

At this state, the opposite party is duty-bound to provide all essential commodities and necessities to his wife and to his daughter on interim basis."

9. The above observation cannot be the reasons for granting interim maintenance. The learned Magistrate is required to consider the affidavit of assets and liabilities before granting even interim maintenance as decided by the Hon'ble Supreme Court in Rajnesh v. Neha. He required to state inbrief the bare necessities of the petitioner and her daughter. He required to state the reasons as to how he fixed Rs.30,000/- and Rs.20,000/- respectively towards interim maintenance for the opposite party and her minor daughter.

10. Since the impugned order dated 11th July, 2022 is devoid of any merit, the said order is set aside.

11. The instant revision is allowed.

**12.** The learned Magistrate is directed to dispose of the application filed by the opposite party No.2 for interim maintenance in the light of the observation made hereinabove in the instant order within one month from the date of the communication of the order.

13. The instant revision is, thus, disposed of.

**Petition Allowed**