

30.11.2011

I have heard learned counsel for the applicant.

The applicant moved an application under section 125 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) which was allowed by the Magistrate by order dated 22.3.2001 directing the interim maintenance to be paid to the applicant at the rate of Rs.2,000/- per month.

While awarding the maintenance the Magistrate has not at all adverted to the income of the husband, and as to whether the wife is living apart because of his sufficient cost or not.

The revisional court set aside the order, saying amongst other things that because the wife has filed the application under section 125 Cr.P.C. belatedly after three years without explaining any reason for such delay and further because the wife has not instituted any civil proceeding for restitution of conjugal rights, therefor it would be presumed that she was living apart from the husband without sufficient cause. In my opinion, both the orders are not correct. Therefore, while the matter will be re-examined by the Magistrate expeditiously, after giving opportunity of hearing and, if necessary, of leading evidence to both the parties but the observations of the lower revisional Court will not be taken into consideration by the learned Magistrate.

With the aforesaid directions, the criminal revision is disposed of.

(Sushil Harkauli)
Acting Chief Justice