

**Form No. J(2)**

***IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION***

Present:

**The Hon'ble Justice Jay Sengupta**

**C.R.R. 137 of 2020**

**Jahar Roy**

**-vs-**

**Tilaka Roy**

For the Petitioner : Mr. S. Chatterjee

For the Opposite Party no.2: Mr. A. K. Chatterjee

Heard on : 26.03.2021

Judgment on : 26.03.2021

**Jay Sengupta, J.:**

This is an application challenging an order dated 05.07.2019 passed by the learned Judicial Magistrate, 3<sup>rd</sup> Court at Contai, Purba Medinipur in Miscellaneous Case No.14 of 2018 under Section 125 of the Code, thereby granting interim

maintenance to the tune of Rs.5,000/- to the opposite party/wife.

Learned counsel appearing on behalf of the petitioner husband submits as follows. The wife had deserted the husband as far back as in 1999. Although the present application was filed by the opposite party in 2018, the petitioner retired from public service as a Group-D employee of a Central Government concern on 30.06.2019. The impugned order passed on 05.07.2019 did not take into account the factum of superannuation of the petitioner. At present, the petitioner is drawing a pension of Rs.7,805/- per month. This is the only source of his income. With this kind of income it is impossible for him to pay a sum of Rs.5,000/- per month to the wife towards maintenance. The allegation levelled by the opposite party that the petitioner got married again is of no consequence as she had not lodged any complaint in this regard. In the interest of justice, the impugned proceeding under Section 125 of the Code may be expedited.

Learned counsel for the opposite party/wife submits as follows. The petitioner/husband inflicted cruelty on the opposite party/wife and drove her out from the matrimonial home in

2000. The petitioner is an able bodied man having pensionary income and capable of earning independently. The petitioner had also received other sums as retirement benefits. It further appears from the documents annexed that a considerable sum was earlier taken out by the petitioner in lieu of commuted pension.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the opposite party and have perused the revision petition.

At the outset, it is germane to mention the marriage between the couple is not disputed.

The contention of the opposite party/wife that the petitioner had received other retirement benefits and commuted a part on pensionary benefits earlier has to be looked into by the learned trial court while finally deciding the application under Section 125 of the Code. The learned trial court also ought to ask the parties to furnish their affidavits of assets and liabilities in terms of the decision of the Hon'ble Apex Court in the case of Rajnesh -vs- Neha & Anr. reported in 2020 SCC Online 903.

Since a reasoned order has been passed by the learned Magistrate awarding a sum as an interim measure to the wife

and it is indubitably the obligation of the husband to maintain his wife, quite at the standard that she would have enjoyed had she lived in his household, and in view of the rising price indices, I do not find any justification in interfering with the impugned order.

Accordingly, the revisional application is dismissed.

However, learned trial court shall not be swayed by the observations of this Court because the same were meant for deciding the revisional application.

I request the learned trial court to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties and in particular, preferably within a period of six months from the next date of hearing.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Jay Sengupta, J.)**