MANU/WB/0445/2002

IN THE HIGH COURT OF CALCUTTA

C.R.R. No. 340 of 2002

Decided On: 03.12.2002

Appellants: **Sm. Swastika Sen**
Vs.
Respondent: **The State of West Bengal and Sri Pritam Sen**

Hon'ble Judges:
Malay Kumar Basu, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Sekhar Basu, Joymalya Bagchi and Kaushik Gupta, Advs.

For Respondents/Defendant: Krishnendu Gooptu, Suman Ghosh and Sourav Bhattacharya, Advs. for Opposite party No. 2

Subject: Criminal

Catch Words:
Assault, Coercion, Natural Justice, Oath, Question of Fact, Stridhan

Acts/Rules/Orders:
Criminal Procedure Code (CrPC), 1973 - Section 125

Cases Referred:
Y. Arul Nadar v. Authorised Officer, Land Reforms, Thanjavur, AIR 1990 (Mad) 33; Bhagat Ram Sharma v. Union of India and Ors., AIR 1988 SC 740; Kashmiri Lal v. Kishen Deb, AIR 1924 All 563; Bhagban Dutt v. Sm. Kamala Devi and Anr., AIR 1975 SC 83; Amirtham Kudumbah v. Sarnam Kudumban, AIR 1991 SC 1256; Bengal Immunity Co. Ltd. v. State of Bihar and Ors., AIR 1955 SC 661; Muktinarain Jha v. State of Bihar, AIR 1978 SC 770; Captain R.C. Kaushal v. Mrs. V. Kaushal, AIR 1978 SC 1807; Dhananjoy Samanta v. Sobitri Samanta, 1999 CCrLr 116 (Cal HC), 2000 CCrLr (Cal) 179

Disposition:
Application dismissed

JUDGMENT

M.K. Basu, J.

1. This revisional application under Sections 482 Cr.PC is directed against the order dated 7.1.2002 passed by the learned SDJM, Alipur in Case No. M-244/01 pending before that Court under Section 125 CrPC rejecting a prayer for interim maintenance of the petitioner and interim award of Rs. 1500/- per month on account of the child till the hearing and disposal of the main petition. The case of the petitioner is as follows.

She was married to the opposite party No. 2 Promit Sen according to Hindu rites. On 18th June, 1998 soon after the marriage she was subjected to severe mental and physical torture by the opposite party No. 2 and her in-laws. The opposite party No. 2 was whimsical, selfish and irresponsible and he used to abuse the petitioner and to pick up quarrel with her every now and then on baseless and false accusations. She used to be constantly intimidated, threatened and assaulted by the opposite party No. 2 on a number of occasions on the ground of his dissatisfaction in respect of articles given by her parents during their marriage. Ultimately she was sent by the opposite party No. 2 and her in-laws to her parental home where she has been residing till now and the expenses of her and her child's maintenance are being borne by her father. The opposite party No. 2 neither care to bear any such expense nor paid any visit to her father's house nor take any information about them. She has no independent source of income. Under such circumstances she has filed the petition under Section 125 Cr.PC in question claiming maintenance from the opposite party No. 2 on account of herself as well as the child who was born out of this wedlock. The petitioner also filed a criminal case against the opposite party No. 2 and the other in-laws under Sections 498A and 406 IPC which is in the Court of the learned Magistrate being Jadavpur P.S. Case No. 190/2000. The Police after investigation has submitted a charge sheet in that case against the opposite party No. 2 and the other in-laws and that case is still pending in the Court of SDJM, Alipur for trial. The opposite party No. 2 is a professional singer and is the owner of an Export oriented Concern Style as M/s. Super Exports having its office at Mission Road, Bangalore-56, He is also a major shareholder of M/s. Super Plastic wherefrom he earns more than Rs. 1 1/2 lakhs per month. The petitioner has 10% share in a Travel Agency Firm under this Style M/s. Capri International which is owned by her mother but the form of business of that Firm is absolutely uncallable and since July 2001 she did not receive any remuneration from that firm in any manner. She has prayed for grant of maintenance to the tune of Rs. 20,000/- per month for herself and Rs. 10,000/- per month for the child.

2. The learned SDJM after hearing both sides and perusing a document filed by both the parties passed the impugned order rejecting the prayer of the petitioner for grant of interim maintenance and directing payment of Rs. 1500/- per month by way of interim maintenance for the child. Being aggrieved by this order the petitioner has preferred this revisional application challenging the same as erroneous and unjustified being passed on the basis of vague surmises and conjectures.

3. The contention of Mr. Basu, the learned advocate for the petitioner has been that it is not understood wherefrom the learned Magistrate could draw the conclusion that the petitioner was not a destitute lady and need not require any maintenance. Mr. Basu has criticised the impugned order as improper and perverse and his findings that the petitioner had some income of her own as totally unwarranted. According to Mr. Basu, the learned SDJM has not given any reason for coming to such finding and passing the impugned order and being a non-speaking order it has been rendered liable to be set aside. In support of his contention he refers to the decision reported in AIR 1990 SC 1984 wherein it has been held that assigning of reason in an order passed by an Administrative Authority or a judicial forum is of utmost importance and necessity. This is so because giving of reason is the sine qua non of ajudicial order and is a consequence of the principle of natural justice. Mr. Basu then submits that the provisions of the Cr.PC having been amended by the Act No. 50 of 2001, a Magistrate is no longer required to keep the amount of maintenance confined within the limit of Rs. 1500/- and in view of such Amending Act, the limit is only reasonableness. According to him, considering the standard of living of the parties and the rising price index in respect of the essential articles which are being necessaries the learned Magistrate ought to have awarded a much higher amount by way of maintenance for the child. So far as the wife is concerned, according to Mr. Basu, she having no independent source of income is entitled to get a reasonable amount of maintenance from the opposite party No. 2 whose income has already been mentioned above. Mr. Basu refers to a number of decisions of the Apex Court to bring home his point that the husband is under a statutory duty to provide maintenance to his married wife and under the shastric mandate also such an obligation has been cast upon the husband irrespective of whether the wife has got any stridhan properties or even any earnings. Mr. Basu's further contention is that in view of the Central Amendment of Section 125 of the Cr.PC the limit of

award of maintenance under the said section need not be confined to Rs. 1500/- and the learned Magistrate is now at liberty to award a higher amount if found justified or necessary. The question, however, has been raised as to whether the said amendment has got any retrospective effect, that is to say, whether the pending proceedings should be governed by the same. Inasmuch as, it came into force with effect from 24th September, 2001 when this proceeding had already been pending. Mr. Basu has strenuously argued that such a beneficial legislation will have retrospective effect and such pending proceedings will come under its purview. In this connection he refers to the decision reported in (1) AIR 1941 PC 38, (2) AIR 1961 SC 647. (3) AIR 1955 SC 661, (4) AIR 1978 SC 741 & 1807, (5) AIR 1991 SC 1256 and (6) 2000 CCrLr (Cal) 179.

4. As against this, Mr. Gooptu, the learned advocate for the opposite party No. 2 has argued that the petitioner cannot be entitled to get any award of maintenance for herself, because she has an independent source of income, a fact which is prima facie established from the document, namely, Income Tax Return submitted by her before the Income Tax Authority and the learned Magistrate was perfectly right refusing to award any interim maintenance at this stage after being satisfied prima facie from the documents filed by the parties that the petitioner having submitted Income Tax Return had definitely some source of income of her own and in view of the legal position she could not be entitled to get any maintenance from the husband. Mr. Gooptu draws my attention to pages 80 to 83 of the LCR. The Income Tax Statement pertaining to the Assessment Year 1999-2000. The next contention of Mr. Gooptu is that the amount of Rs. 1500/- as awarded for the child would not be enhanced, inasmuch as, the amendment of Section 125, Cr.PC as pointed out by Mr. Basu cannot have any retrospective effect. In support of the contention he cites the following reference:

> (1) AIR 1990 (Mad) 33 (Y. Arul Nadar v. Authorised Officer, Land Reforms, Thanjavur) wherein it has been held that as per the general rule when an amendment is introduced in the statute governing the case already pending, the rights and obligations of parties should be decided only according to the law which existed when the action was begun unless a clear contrary intention is evident in the Amending Act and there could not be any imputation of retrospective operation to an Amending Act and that could be done only by the Amending Act either expressly or by necessary implication; (2) AIR 1988 SC 740 (Bhagat Ram Sharma v. Union of India and Ors.) wherein it has been held that it is a matter of legislative practice to provide while enacting an amending law that an existing provision shall be deleted and a new provision substituted and such deletion has the effect of repeal of the existing provision and such a law may also provide for the introduction of a new provision. It bas been further held therein that amendment is in fact a wider term and includes abrogation or deletion of a provision in an existing statute and an amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred; (3) AIR 1924 All 563 (Kashmiri Lal v. Kishen Deb wherein it has been held that inasmuch as the accused had incurred the liability to have his prosecution sanctioned and the complainant on the dismissal of his application by the subordinate Judge had acquired a right to apply for sanction to the Appellate Court, Section 6 (sic) of the General Clauses Act applied to the case and the repeal of the old Section 195 did not affect the investigation and (4) AIR 2000 Mad 167 wherein it has been held that in case of Motor Vehicles Act being amended and each amending provision providing for no fault liability cannot be given retrospective effect, because if such retrospective effect was given, then it would definitely affect existing right or obligation of the owner of the vehicle in question and the insurer for no fault of theirs and it has to be decided in consonance with the law as it stands on the day of its moving, since it is a matter pertaining to procedure. It has been further held in this judgment that when two interpretation are found possible regarding the question of retrospectivity, the interpretation that the provision is prospective will be preferred.

5. Mr. Gooptu placing reliance upon the decision reported in AIR 1975 SC 83 (Bhagban Dutt v. Sm.

Kamala Devi and Anr.) contends that a wife's right to maintenance is not absolute and in determining the amount of maintenance a Magistrate is competent to take into consideration the separate income and means of wife. Their Lordships in this case have further observed that any other construction would be subversive of the primary purpose of the section and encourage vindictive wives having ample income and means of their own to misuse the section as a punitive weapon against their husbands.

6. Mr. Gooptu then contends that Section 125 CrPC is not intended to provide for a full and final determination of the status and personal rights of the parties at the interim stage and the jurisdiction conferred by this eection on the Magistrate is more in the nature of the preventive rather than a remedial jurisdiction and it is certainly not punitive.

7. He then submits that his client is suffering from chronic thyroid problems due to which he is undergoing medical treatment under the supervision of various doctors and a large amount of money has to be mobilised in order to continue his treatment and such facts are borne out from the medical documents annexed to the written objection filed by this opposite party No. 2 before the trial Court and due to such continued ailment and long absence from this city he is unable to derive any income from his profession, namely, singing Rabindra Sangeet and consequently he has to depend on others for his subsistence and medical treatment as has been stated by him on oath in the affidavit.

8. Mr. Gooptu then refers to the decision reported in AIR 1986 SC 984 to bring home the point that when affidavits are submitted by the parties in a proceeding for disposal of interim application under Section 125 CrPC, in the event one version is rejected being untrue or not credible at the interim stage pending trial, the other is to be accepted prima facie by the trial Court as proved. Mr. Gooptu has further submitted that the Income Tax Statement of the petitioner pertaining to the relevant year in question, that is, 2000-2001 has not been produced before this Court, though the learned counsel of the petitioner was so directed and on behalf of the petitioner the submission having been made that no return has been filed by her for the subsequent Assessment Year it should be taken that the petitioner having violated the mandatory provisions of the law as she has not submitted the Income Tax Return for the said Assessment Year, she is liable to serious penal consequences under the Income Tax Act and the Indian Partnership Act.

9. The question for determination in this revisional application is whether the impugned order suffers from any impropriety. By this order the learned Magistrate has refused to grant any interim maintenance in favour of the petitioner-wife, though he has allowed such maintenance for the child. The ground on which her prayer for interim maintenance has been rejected appears to have been couched in the following language.

> "Some unproved documents are filed by both parties in the form of affidavits and counter affidavits. These documents give some hints from which I prima facie find that the 1st party has some income of her own ..... In view of the above discussed circumstances I think that the 1st party is not a destitute lady required to be saved from vagrancy....."

10. Such a finding perhaps owes its origin to the existence of the Income Tax Return (annexed to the affidavit) submitted by the petitioner, Swastika Sen, for the Assessment Year 1999-2000, that is, for the period from 1.4.1998 to 31.3.1999. However, the learned Magistrate has not made it clear by using express words and that omission has quite pertinently given rise to such a criticism levelled by Mr. Basu against the order. This lapse may of course be due to a poor power of expression on the part of the Magistrate concerned, but the question which seriously arises is whether owing to such a reason, owing to the Presiding Officer's inability to apply the appropriate words in the reasoning part of his order which may be due to his poor expressive capacity, the order should be thrown away, even though there are good grounds transpiring from the materials on record justifying the passing of such an order.

11. Section 125(1)(a) CrPC clearly provides that a wife will be entitled to get an award of maintenance, If, inter alia, she is unable to maintain herself. It follows that if a wife is an employed person or has a business and earns a definite sum by way of regular income and.if the Court finds such income as sufficient for the purpose of enabling her to earn her livelihood, then certainly she cannot claim maintenance from the husband. This is the clear dictate of the law and a departure therefrom cannot be permissible. Otherwise, the expression, "if she is unable to maintain herself' would lose all its meanings. In the present case, the case of the opposite party-husband is that the petitioner is a 50% partner of a Travelling Agency along with her mother running in the name and style of M/s. Capri International and moreover, she is a dance-teacher and her collective income from the aforesaid sources is not less than Rs. 1,20,000/- per annum and this would be disclosed from the I.T. Return submitted by her. A xerox copy of the I.T. Return submitted by the petitioner before the Income Tax Authority for the Assessment Year 1999-2000 relating to the period from 1st April, 1998 to 31st March, 1999 has been filed (vide page 80 of the LCR). This return shows that the gross income which she earned during the said year from her business or profession amounted to Rs. 54,140/- and she paid income tax of Rs. 414/- on this amount during that year. As against this, the petitioner has stated in her counter-affidavit (vide page 68 of the LCR) that the said Travel Agency has become sick industry and the petitioner only has a share to the extent of 10% on the business of that Travel Agency and she gets only Rs. 600/- per month. As regards the Income Tax Return purportedly filed by her, her case is that she was forcibly made to sign this I.T. Return, although she had no income of her own and she wrote a letter to the Income Tax Commissioner dated 18.8.1999 stating that the I.T. Return in question had not been submitted by her since she had no taxable income at all and she was a mere student, but it was actually filed by her husband and further that the said Return though filed does not reflect the correct position. A copy of this letter bearing the stamp of the office of the Income Tax Commissioner initiating its receipt by the officer has been filed. But this letter practically takes us nowhere. Along with this Income Tax Return mentioned above statement that (sic) has been submitted showing that the petitioner earned a gross income of Rs. 54,000/- and odd and paid income tax of Rs. 414/- and they included a balance-sheet, self-assessment challan and a valuation return and the said Income Tax Return appears to have been signed by the petitioner herself. It has got some sanctity in the eye of law. As per the Income Tax Rule an assessee who starts submitting Income Tax Return has to continue submitting such returns every year. If she ceases to earn any income, even then she has to file a Nil Statement by way of Return. Moreover, in her petition the petitioner's own case is that she has 10% share in the said business and she earns only Rs. 600/- per month. In such an event also she is required to submit a Income Tax Return although her income may not be taxable. But curiously enough, the petitioner does not make any whisper in her affidavits as to whether she has submitted any such Income Tax Return in the subsequent years. During hearing of argument, on being approached by me. Mr. Basu, the learned counsel submitted that his client would not file any copy of such Income Tax Return before this Court relating to the current year. It is not understood whether she has submitted before the Income Tax Authority any such Income Tax Return at all during the current year or the year in question because of her silence in her petition as to this aspect of the matter. As a result, it is not clear as to whether any Return has at all be filed, by her for the relevant year before the Income Tax Authority and accordingly, as argued by the learned advocate for the opposite party, the question of drawing adverse presumption arises. As per the Rule, once a Return has been filed, one is required to go on submitting such Returns every year irrespective of whether one's income has fallen or decreased. Under such circumstances from the fact that the petitioner has not filed any such Income Tax Return for the relevant year, not she has stated on affidavit that she has not submitted any such Return before the Income Tax Authority for the relevant year, it is to be presumed prima facie that she is witholding the same and . had it been produced, sufficiently rebutted is a question of fact and cannot be determined without reference to the evidence which may be adduced by the parties during the inquiry to be held in the main proceeding.

12. At this stage when the question of payment of interim maintenance is under consideration and the evidences are yet to be adduced by the parties such documents and circumstances should serve as yardstick, only prima facie, to enable the Court to come to a finding and pass an order touching the question of interim relief. The question raised by the petitioner that the Income Tax

Return submitted by her was the result of force or coercion applied by her husband can be decided only after taking evidence from both sides and cannot be adjudicated upon at this stage simply on the basis of a copy of letter allegedly written by the petitioner to the Income Tax Authority, particularly when such an allegation does not find place in her affidavit. It would be unsafe and improper to hold without taking evidence that the Income Tax Return filed by her before the Income Tax Commissioner, which is an official and authentic document, is falsified by a mere letter allegedly written by her to that Authority,

13. The Income Tax Return prima facie shows that she had an average income of about Rs. 4500/- per month and in view of such earnings of the petitioner being prima facie found from the record, the Court below was not unjustified in refusing to award any interim maintenance for the wife so long as the main matter as not heard and disposed of by obtaining evidence from the parties on the prima facie substantial ground that she could not be said to be unable to maintain herself during the interim period. However, the manner In which the ordering part has been expressed by the learned Magistrate is not happy. Without holding an enquiry he cannot come to such a finding, viz. "..... the 1st party is not a destitute lady required to be saved from vagrancy." He ought to have used the phrase, "prima facie" otherwise such an observation conveys a wrong signal, as if he is disposing of the issue in the main proceeding once for all -- a course which is fraught with the danger of prejudging of the issue which Is to be decided after hearing of the main proceeding. It should not be forgotten that interim orders in respect of such matters are only provisional until final orders are made and such interim relief is granted only subject to what is found and enjoined in the final orders and interim orders which are passed on a prima facie satisfaction of the presiding officer of the concerned Court on the basis of documents or affidavits may very well be altered, varied or even totally vacated after considering the evidence both oral and documentary adduced by the parties during hearing of the main matter.

14. It is true, as has been argued by Mr. Basu, that the learned Magistrate has not assigned reasons for coming to his conclusions, for example, he has said that the first party is found to have some income, but he does not discuss from which documents he makes this observation, although the fact remains, as I have discussed above, the petitioners drawing an Income regularly has been shown by the document called Income Tax Return. Similarly, the learned Magistrate has made the observations that from some 'unproved documents' it has been shown that the lady was not a destitute person. Here again he ought to have elaborately made a discussion about such documents which he was referring to. In the absence of doing that his findings have been rendered unreasoned. Another instance of the impugned order's being vague and confusing is where the learned Magistrate uses the expression 'gives some hints'. Giving of hints and furnishing of proof are totally different concepts and on the basis of the former a Court of law cannot pass its verdict either granting or denying a relief sought by any party. Then again, in the concluding part of his order he says that in view of the 'abovediscussed circumstances' he thinks that "the 1st party is not a destitute lady required to be saved from variance". According to Mr. Basu, there is no discussion on this point in the least in the body of the judgment and hence the learned Magistrate's referring to the 'above discussed circumstances' is absolutely hollow. He argues that due to such paucity of reasoning the order becomes perverse and on that score alone it should be given a go-by. But this contention of Mr. Basu is not acceptable to my mind. Simply because reasons have not been assigned by the trial Court for arriving at a particular finding, although from the materials on record it is prima facie found that there exist some good grounds for drawing such conclusions, the said order cannot be set aside on the sole ground that the Court below has not recorded such reasons or grounds. This finding may or may not remain unaltered after evidence as adduced by the parties are considered by the learned Magistrate during the main hearing, but as an interim order it is quite justified. Since this part of the order does not suffer from any illegality or infirmity of law I do not find anything to interfere with the same.

15. The next point urged on behalf of the petitioner is relating to the second part of the impugned order and is on the alleged inadequacy of the amount of maintenance that has been awarded by the learned Magistrate on account of maintenance of the child, namely, Rs. 1500/-. According to

Mr, Basu, on the date on which this order was passed, that is, 7th January, 2002 the amendment of the CrPC in respect of Section 125(d) of the Code had already come into operation and therefore, the learned Magistrate's hands were not tied and he was not to be restricted regarding the quantum of maintenance to be awarded by him under this section within an amount not exceeding Rs. 1500/-. In other words, since by virtue of the said amendment a Court of Magistrate under this section became entitled to award any sum by way of maintenance which would be deemed to be reasonable in the circumstances, there was nothing to debar the learned Magistrate from fixing an amount by way of maintained exceeding Rs. 1500/- in order to do justice to the rising price and cost of living index and also to the status and standard of living of the petitioner in particular. In support of his argument Mr. Basu refers to a host of decisions of the Apex Court as well as of different High Courts. Thus he cites the decision reported in AIR 1991 SC 1256 (Amirtham Kudumbah v. Sarnam Kudumban) wherein it has been held that in case of a beneficial legislation whatsoever gives restriction use or constitutes an embargo in the way of giving effect to such a welfare enactment should be removed and according to Mr. Basu by stretching this logic to the present case, the benefit of this amendment should be extended to the pending cases also. It may be mentioned here that the above mentioned amendment came into operation on and from 24.9.2001 (vide the Government Notification concerned). Mr. Basu also refers to the decision reported in AIR 1941 PC 38 wherein it has been held that the words of remedial statute should be so construed as to ensure that the relief contemplated under the status in the question may not be denied to the clash intended to be relieved and on the basis of this ruling it should be taken that the amendment of the CrPC in question should have retrospective operation even though nowhere that has been mentioned in express terms. Then Mr. Basu relies upon another ruling reported in AIR 1955 SC 661 (Bengal Immunity Co. Ltd. v. State of Bihar and Ors.) whereunder Their Lordships enunciated certain principles on the strength of which propagated that ail beneficial status should be retrospective operation. The next ruling cited by Mr. Basu is reported in AIR 1978 SC 770 (Muktinarain Jha v. State of Bihar) and AIR 1978 SC 1807 (Captain R.C. Kaushal v. Mrs. V. Kaushal) whrerein it was held that the provisions of Section 125 formed a major of social justice for the purpose of protection the weaker section and with that end in view, according to Mr. Basu, any legislation containing beneficial provisions should have retrospective operation.

16. The second line of Mr. Basu's argument consists in the point raised by him that even if such a legislation is taken to be prospective, even then there will be no difficulty In granting the relief at the new rate and at the same time maintaining its prospectivity if with regard to a pending proceeding the new rate is applied only on and from the date when the amendment takes effect. In support of this contention he relies upon the decision reported in 1999 CCrLr 116 (Cal HC) and 2000 CCrLr (Cal) 179 (Dhananjoy Samanta v. Sobitri Samanta).

17. As against this, Mr. Gooptu vehemently argues that this petition for maintenance having been filed on 13.4.2001 this amending provision which came into effect on 24.9.2001 cannot govern this pending proceeding because of the general principle that unless a clear, contrary intention is evident in the amending Act, it cannot be retrospective and must be prospective. In support of this contention, the decision reported in AIR 1990 Mad 33 (Y.A. Nadar v. The Authorised Officer, Land Reforms, Thanjavur) is referred to wherein it has been held that when an amendment is introduced in the statute governing the cases already pending, the rights and obligations of parties should be decided only according to the law which existed when the action was begun, unless a clear and contrary intention is evident in the provisions of the amending Act and there could not be imputation of retrospective operation to an amending Act. He also cites a further couple of reported judgments to get his argument strengthened, namely, (1) AIR 1988 SC 740 (Bhagat Ram Sharma v. Unions of India) & (2) AIR 1924 Allahabad 563 which I have already discussed above.

18. Mr. Gooptu raises the question that if the argument of Mr. Basu is taken to its logical extreme, then by virtue of following of such a principle, namely, giving retrospective effect to such an amending provisions we may be led to an irreconcilable situation. Those cases which were filed before the coming into operation of such a legislation, but which were pending at the time when it came into operation and as disposed of without getting the benefit of this enactment will be

discriminated against and there may be the emergence of a spate of applications seeking the newly awarded benefit-- an exigency which the law never encourage.

19. Be that as it may, it should not be forgotten that after all this is an application for interim maintenance and the main maintenance application is yet to be heard. If this question, namely, whether the abovementioned amendment of Section 125 CrPC should have retrospective effect or not is decided at this stage, then that may involve the risk of pre-judging of the point falling for determination in the main application under Section 125 CrPC before the learned Magistrate. This is a stage wherein the question of granting of interim relief is taken up for determination and for that purpose such thread-bare analysis of the materials on record, vis-a-vis, the legal position will be highly undesirable and also impermissible. The learned Magistrate has awarded a sum of Rs. 1500/- on account of maintenance of the child by way of interim relief only and that is not the be-all and end-all of the respective cases of the parties and that amount has been fixed only as a provisional one in view of meet the urgency of the situation and the proper and final order as regards all related questions touching this application for maintenance will be passed by the Court of Magistrate after taking evidence from both sides and after hearing their arguments. Hence any observation or verdict given on the controversies raises by the parties on the questions in issue at this stage will be bound to have repercussions on the merits of the matter when the learned Magistrate will take up the same for final hearing and in order to avoid such a possibility of pre-judging of the issues awaiting determination by the learned Magistrate I refrain myself from expressing my views on the contentions of the learned advocate for both sides on this question as to whether the said amendment to Section 125 of the CrPC in question will have retrospective effective or prospective operation and (sic) the learned Magistrate could have granted an award of interim maintenance for the child exceeding Rs. 1500/- a month.

20. Instead, I am inclined to fix a time-limit within which the main proceeding under Section 125 CrPC in question may be finally disposed of by the Court below, leaving the impugned order intact.

21. Accordingly, I do not interfere with the impugned order but I direct the learned Magistrate to finally dispose of the main proceeding, that is, the application for maintenance under Section 125 CrPC pending before it, within two months from the date of receipt of the LCR without fail. If any of the parties does not cooperate, the case may proceed according to law notwithstanding such non-participation. While disposing of the main matter on merits the Court below shall not be influenced by any observation made in this judgment regarding the merits and shall adjudicate upon the same quite independently according to the law and as per the evidence that may be adduced by the parties before him.

In the result, the revisional application be dismissed. The LCR be sent back immediately to the Court below along with a copy of this judgment and order.

Interim order of stay, if there is any, be vacated.

Xerox certified copies, if applied for by any party, may be supplied without delay.