

02.5.15

Today the case record is taken up for for passing order regarding prayer for non-maintainability filed by the O.P.

The Ld. Advocate for both sides in full on the previous dates.

Both the parties filed separate hazira.

Perused the petition filed by the petitioner as also the praying for non-maintainability filed by the O.P.

The Ld. Advocate for the O.P submitted that the petitioner has no right to file her petition under Section 125Cr.P.C when she has already filed one application under Section 23 of the P.W.D.V Act against the same O.P husband and praying for maintenance and other relieves and the same is pending before Ld. J.M 2nd Court Howrah. He has also submitted where one petition has already been filed under Section 23 P.W.D.V. Act praying for maintenance then the petitioner has no right to claim maintenance once again on the same ground as per the provision of Cr.P.C.

The Ld. Advocate for the petitioner raised vehement objection.

Considering the entire facts and circumstances of this case the provision of P.W.D.V. Act and Cr.P.C and also keeping in mind the views of the Hon'ble Upper Court regarding the grant of maintenance to a wife I am of the considered opinion that there is no legal bar for a petitioner to file one petition under Section 125Cr.P.C and another petition under P.W.D.V. Act with a prayer in both the applications for maintenance. It is the discretion of the Court to take into consideration the amount of maintenance allowed in the petition filed by the petitioner while granting maintenance in this present case. The petitioner has till date not allowed any maintenance whatsoever in the petition filed under Section 23 P.W.D.V. Act. As such I do not find any ground to allow the prayer for non-maintainability as such the petition of the O.P on the ground of non-maintainability stands rejected.

To for hearing of interim petition.