

11.12.2020  
Ct. 30  
Sl.3  
KS/SD

**CRR 1841 of 2019**

**Dipankar Chatterjee**  
**-Vs.-**  
**Tamali Das nee Chatterjee**  
**(Via Video Conference)**

Mr. Joydeep Bhattacharya  
Mr. Sanjay Banerjee  
..... For the Petitioner  
Mr. Anirban Guha Thakurta  
Mr. Sujan Chatterjee  
..... For the O.P.

In this revisional application the petitioner-husband has assailed the order dated 28.05.2019 passed by the learned Additional District & Sessions Judge, Fast Track, 2<sup>nd</sup> Court at Alipore in Criminal Appeal No.291 of 2018 thereby modifying the order of the learned Judicial Magistrate dated 29.11.2018 passed in AC Case No.1298 of 2018 thereby enhancing the rate of maintenance including accommodation expenses awarded to the opposite parties from Rs.10,000/- per month to Rs.30,000/- per month, inter alia, on the ground that the complaint under Domestic Violence Act is absolutely the ingredients of Domestic Violence as defined under Section 3 of the Protection of Women from Domestic Violence Act, 2005 because the complaint bereft of any such mandatory ingredients and is not maintainable at all.

The learned Magistrate ought not to have taken any cognizance of the complaint and ordered to pass the order of mandatory protection. The learned Magistrate awarded monetary relief to the tune of Rs.10,000/- which the petitioner-husband is paying but on being appeal preferred by the wife, the interim monetary relief has been enhanced to Rs.30,000/-.

Learned advocate appearing for the petitioner relies upon a directive of the Hon'ble Supreme Court in the case of *Rajnish Vs. Neha & Anr.*, wherein the Hon'ble Supreme Court has said that the parties to the proceeding of such kind are required to furnish their income, assets and liabilities by way of affidavits.

Learned advocate appearing on behalf of the petitioner filed the Supplementary Affidavit which shows the monthly income of the petitioner and his net pay is of Rs.1,41,020/- whereas his total income is about Rs.1,60,376/- and the petitioner has also submitted certain banking documents to reflect his liability and the expenditure made on his part whereas the opposite party-wife having submitted affidavit in opposition stated on oath in Paragraph 7 that the averments made in paragraph 3 of the Supplementary Affidavit filed on behalf of the petitioner, are incomplete and inconsistent as to the fact that the opposite party-wife though is a Make Up Artist but does not run or work in a Beauty Parlour and on other hand, she sells artistry on line and has occasional and seasonal income but does not earn on monthly

basis and, as such, she suffers hardship on her part to maintain herself. It is a fact that the opposite party-wife has started her business while he staying at Bengaluru. But, after having returned to Kolkata she has no business as such, rather she has to depend on her parents and the documents which have been annexed to the Supplementary Affidavit in order to show income of the opposite party are all electronic documents and without the proof which cannot be taken into consideration.

It is also pointed out that having a facebook page or trying up with online service portal does not generate money as income on a regular basis so that one can maintain.

It is further pointed out that the opposite party has been abandoned by her husband and she has abandoned her business having returned to Kolkata from Bengaluru and has no income.

My attention is invited to the separation notice forwarded to the opposite party through mail on behalf of the petitioner husband wherefrom it is depicted that the petitioner husband assured to pay a sum of Rs.20,000/- to the opposite party wife as pocket money on monthly basis for taking care of the salon, medical expenses and also counseling/other expenses to be borne and incurred by the husband petitioner. What is pointed out that such pocket money had been admitted for payment to the opposite party. The petitioner has salary income, which has been well depicted from pay slip as submitted on behalf of him.

Since in the affidavits on oath, the opposite party wife has stated the fact that she has no business of the beauty parlour or any kind of business having no income of her own, the opposite party wife would be entitled to payment of maintenance. It is the fact that the Magistrate awarded a sum of Rs.10,000/- per month for monetary relief whereas the Appeal Court by the appellate order impugned has enhanced the maintenance award of Rs.10,000/- to Rs.30,000/-.

Being aggrieved, the petitioner husband has approached this Court. But to my understanding, the enhancement which has been made by the Appeal Court is not very high. Be that as it may, having considered the assurance given to the opposite party wife by the petitioner husband through mail for making payment of pocket money of Rs.20,000/- per month, let the order of the Appeal Court is modified to the extent that the petitioner husband will pay monetary relief to the tune of Rs.20,000/- instead of Rs.30,000/- till the disposal of the application under Section 12 of the Domestic Violence Act. The issue as to whether there is at all any domestic violence or not is the matter of the decision on evidence that can very well be decided by the learned Magistrate.

The proceeding under Section 12 of D.V. Act, 2005 is required to be disposed of summarily within a period of 60 days, therefore, the learned Magistrate will disposal of the Misc. Case under Section 12 of the D.V. Act as expeditiously as possible.

Arrear payable, if any, be paid to the opposite party by the petitioner husband.

The revisional application being CRR 1841 of 2019 stands disposed of.

No order as to costs.

**(Shivakant Prasad, J.)**