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April 4,
2022
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C.R.R. No.4024 of 2017
With
CRAN 2 of 2019 (Old CRAN 2567 of 2019)

Rita Adhikary
Versus
The State of West Bengal & Anr.

Ms. Jharna Biswas.
...for the applicant in CRAN 2567 of
2019/opposite party no.2 in CRR4024 of 2017.

Mr. Supratik Basu,
Ms. Samata Charri,
Mr. Shuvam Shaw.
...for the opposite party no.2 in CRAN
2567 of 2019/petitioner in CRR 4024 of 2017.

Re: CRAN 2 of 2019 (Old CRAN 2567 of 2019)

An application for recalling and/or modification of the judgment and order dated 02.07.2019 passed in CRR 4024 of 2017 has been filed at the instance of the applicant one Rita Adhikary.

Record reflects that the learned Magistrate in C. Case No.812 of 2010 (T.R. No.461 of 2005) was pleased by judgment dated 25th May, 2017 to allow the application under Section 12 of the Protection of Women from Domestic Violence Act with certain directions including monetary relief of Rs.10,000/- per month.

Ms. Biswas, learned advocate appearing for the applicant submits that the spirit and tenor of the judgment dated 02.07.2019 in CRR 4024 of 2017 was based on the foundation that there was no affidavit enclosed along with the application under Section 12 of the Protection of Women from Domestic Violence Act. The order of

the learned Magistrate reflects that after full-fledged evidence was completed, the learned Magistrate arrived at his own conclusion. As such, the issue of affidavit, if not raised at the earliest point of time, should not have been a prime consideration for setting aside the judgment which was arrived at after whole evidence was complete. It would be a full repeated exercise if the parties are sent back and asked to repeat the same set of things.

It has been emphatically submitted by the learned advocate appearing for the applicant, Rita Adhikary that there is an affidavit already available on records before the learned Magistrate and so far as the same is concerned the document was not before the Hon'ble Judge who decided the matter.

Be that as it may, the only issue remains is whether an affidavit was accompanying the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In case the learned Magistrate finds that in the original application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 there is an affidavit existing in the records, the learned Magistrate would after issuing notice to both parties and a hearing on the issue whether affidavit was there or not there in the records reconsider the issue. In case, the learned Magistrate finds that the affidavit was there on records, the learned Magistrate would be at liberty to continue directing payment of sum of Rs.10,000/- per month which was granted as a monetary relief and was stalled because of the order of the Hon'ble High Court on 02.07.2019.

As the learned advocates representing both the parties

are present, I direct that both the parties should appear before the learned Judicial Magistrate, 6th Court, Sealdah on 19th April, 2022 when the learned Magistrate would fix subsequent dates for continuation of the issue which will be placed before the said court.

With the aforesaid observations, CRAN 2 of 2019 (Old CRAN 2567 of 2019) is disposed of.

Let the lower court records be sent back to the learned Judicial Magistrate, 6th Court, Sealdah within a week from date.

Department is directed to take urgent necessary steps for forwarding the records.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)