

12.04.2021
Mithun
Sl. No.17.
D/L.
Ct.No.30.

CRR/52/2021

In re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : Amitendu Mondal.

...the petitioner.

Mr. Chittapriya Ghosh, Adv,
Ms. Priyanka Saha, Adv.

...for the petitioner.

Mr.Dipanjana Dutt,Adv.,

...for the O/P.

Affidavit-of-service be kept with the record.

The instant revision is taken up for hearing in presence of the learned Counsels for the husband/petitioner and wife/opposite party No.2.

Suffice it to say that upon an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter described as the said Act), the learned Magistrate, 5th Court at Sealdah passed an order directing the husband/petitioner to pay Rs.6,000/- per month towards interim monetary relief to opposite party No.2.

The wife/opposite party No.2 challenged the said order passed by the learned Judicial Magistrate, 5th Court, Sealdah on 8th August, 2019 in Criminal Appeal No.19 of 2019 before the

learned Additional Sessions Judge, Second Court at Sealdah. The learned Judge in the Court of appeal below enhanced the interim monetary relief to the tune of Rs.15,000/- per month on consideration that the gross salary of the petitioner/husband is Rs.91,098/- for the month of February, 2020 and take home pay is Rs.69,224/-.

The husband/respondent has challenged the said judgment/order passed in Criminal Appeal No.19 of 2019 on 29th February, 2020.

It is submitted by the learned Advocate for the petitioner that the learned Appellate Court enhanced the interim monetary relief only on the basis of the monthly salary of the petitioner. The learned Judge in the Appellate Court did not consider the responsibilities of the petitioner to his mother and other family members and the amount spent by him to carry out such responsibilities.

Mr. Dutt, learned Advocate for the opposite party/wife, on the other hand, submits that it is an undenying fact that son must have some responsibilities towards his mother but it is submitted by him under instruction that the mother of the petitioner is a family pension holder. It is also submitted by him that the petitioner/O.P. is entitled to get at least 25 % of the husband's net salary towards interim monetary relief for her maintenance. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in **Kalyan Dey**

Chowdhury Vs. Rita Dey Chowdhury nee Nandy reported in ***(2017) 14 SCC 200***. In Paragraph 15 of the said report, the Hon'ble Supreme Court observed:

"....Following ***Kulbhushan Kumar Vs. Raj Kumari, (1970) 3 SCC 129***, in this case, it is held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife.

It is submitted by the learned Advocate for the petitioner that the opposite party/aggrieved person did not make any averment as to whether the aggrieved person/wife is in actual need of monetary relief or that the specific requirement for which monetary relief is required and up to what extent.

In this regard, I like to quote Paragraph 68 of the application under Section 12 of the said Act. It runs thus:-

"68. That the respondent no.1/husband is very much reluctant to provide proper maintenance or any medical expenses towards your petitioner. Moreover, the aged and ailing parents of your petitioner have to bear the maintenance expenses of your petitioner in her day to day life which becomes now extremely hardship for them."

The above averment clearly shows that the petitioner requires monetary relief from the opposite party for :-

- (1) Maintenance;
- (2) Medical expenses;
- (3) Expenses in her day to day life.

The opposite party is the wife of the petitioner who is a teacher of Kendriya Vidyalaya. I have already stated the amount of take home salary received by the petitioner. Following the ratio laid down in ***Kulbhushan Kumar (supra)*** and followed by ***Kalyan Dey Chowdhury (supra)***, I am of the view that the learned Court below did not commit any error, illegality or material irregularity in passing the impugned order in Criminal Appeal No.19 of 2019 dated 08.08.2019.

For the reasons stated above, the instant criminal revision is dismissed on contest however without costs.

(Bibek Chaudhuri, J)