

08.07.2021
Item no.3
Ct. No.34
CHC

C.R.R. No.166 of 2012

(Via Video Conference)

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

AND

In the matter of:-

Prativa Rani Khanra
... petitioner

None appears for either of the parties.

The present revisional application has been preferred against the order and judgement dated 09.12.2009 passed by the learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas in connection with Case No. M 71/2004.

The subject-matter of the grievance of the present petitioner is that in her application under Section 125 of the Code of Criminal Procedure, the learned Magistrate partly allowed the petition by awarding maintenance of Rs.1200/- per month to the minor son but no maintenance was awarded in her favour.

I have perused the judgement dated 09.12.2009 and I find that there are contradictory observations of the learned Magistrate while refusing maintenance to the wife being the present petitioner. It has been categorically concluded by the learned Magistrate that there is no dispute regarding the marriage and the

wife was residing along with the child at her father's house. However, learned Magistrate failed to appreciate the allegation of torture being inflicted upon the petitioner which was one of the reasons for her departure from the matrimonial home.

The observation of the learned Magistrate which weighed for arriving at the conclusion is that:

“But I do not find anywhere that the O.P. still neglects or refuses to maintain his wife.”

This observation of the learned Magistrate is against the records and the evidence adduced in this case and accordingly the judgement and order dated 09.12.2009, so far as it relates to rejection of the maintenance so prayed by the present petitioner (wife) is set aside.

Learned A.C.J.M., Kakdwip is directed to freshly appreciate evidence of the case and come to a just and proper conclusion for awarding maintenance taking into account the minimum cost required for sustenance under the present strata of expenditure. As such C.R.R.166 of 2012 is allowed. Pending application, if any, is hereby disposed of.

Interim order, if any, is hereby vacated.

Learned Magistrate is directed to make efforts for appearance of both the parties within four weeks of receipt of this order and comply with the direction within the period of 90 days from the date of communication of this order.

Department is directed to communicate this order forthwith to the learned Additional Chief Judicial Magistrate, Kakdwip.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)