

D/L 298
November
8, 2021
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C.R.R. No.533 of 2020

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973.

Aniruddha Barman @ Barma
Versus
Mohuya Burman (Singha Ray)

Mr. Sabir Ahmed,
Mr. Dhananjay Banerjee.
...for the petitioner.

Mr. Prasenjit Debnath.
...for the opposite party.

The subject-matter of challenge in the revisional application relates to an order dated 04.12.2019 passed by the learned Additional District and Sessions Judge, Chandernagore, Hooghly in Criminal Revision/Motion No.11 of 2017 wherein the learned sessions court while exercising its revisional jurisdiction was pleased to interfere with the quantum of interim maintenance so awarded by the learned Judicial Magistrate, 2nd Court, Chandernagore, Hooghly and enhanced the same from a sum of Rs.5,000/- per month to a sum of Rs.30,000/- per month. Number of execution cases were filed thereafter as the learned sessions court was pleased to order that the quantum of interim maintenance of Rs.30,000/- per month will be operative from the date on which the learned Magistrate passed the order of interim maintenance which is on 19.11.2016.

The petitioner as well as opposite party has filed

supplementary affidavit as well as the affidavit-in-opposition disclosing the nature of income, which the petitioner is earning. From the documents placed by Mr. Ahmed, learned advocate appearing for the petitioner, it has been emphasized that the petitioner presently is earning Rs.35,000/- per month. The documents which have been enclosed are photostatcopies reflecting the documents so issued by the company where the petitioner is presently employed.

Mr. Debnath, learned advocate appearing for the opposite party/wife vehemently opposes such contention and submits that the earnings relating to employment are one of the sources of income and there are other sources of earning which relate to rental income arising out of the property. Learned advocate further submits that the petitioner has only restricted to documents relating to employment since the year 2016 and there are documents/bank transactions which will reflect that prior to year 2016 the petitioner had rental income from a premises which has been let out to a Government/statutory body.

It is further submitted that a sum of Rs.1,50,000/- is the rental income from such property and just within close proximity of sudden matrimonial disputes arising, the present petitioner had cleverly transferred the same to the name of his father/family members.

Having regard to the decision of the Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha & Another reported in (2020) 2 SCC 324**, I am of the view that the affidavit of assets are

to be filed by both the parties before the learned Magistrate and the learned Magistrate would decide regarding the quantum of interim maintenance to be awarded afresh.

Presently, as an interim measure the following order is being passed:

- (a) The order dated 04.12.2019 passed by the learned Additional District and Sessions Judge, Chandernagore, Hooghly is modified to the extent that the petitioner would pay a sum of Rs.14,000/- per month till the quantum of interim maintenance is decided by the learned Judicial Magistrate, 2nd Court, Chandernagore, Hooghly.
- (b) The parties would file affidavit of assets by 1st December, 2021 before the learned Judicial Magistrate, 2nd Court, Chandernagore, Hooghly.
- (c) The learned Judicial Magistrate, on receipt of such affidavit of assets, would fix date for hearing within a week thereafter and continue with the hearing till the same is disposed of and by no standards the same would extend beyond 25th December, 2021. Learned Magistrate would pass an order regarding interim maintenance by 31st December, 2021.

It is categorically stated that the present interim measure of Rs.14,000/- per month has been directed only on the basis of the salary which is being earned by the petitioner/husband and in case prima facie it appears to the learned Magistrate that there are other

sources of income including the rental income or the property has been reverted back only after the matrimonial disputes arose and there was a rental earning to that extent which has been contended by the learned advocate for the opposite party/wife, in that case, the order of quantum of Rs.30,000/- so granted by the learned Additional District and Sessions Judge, Chandernagore, Hooghly, would revive.

With the aforesaid observations, CRR 533 of 2020 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The learned Magistrate is directed not to give effect to any of the execution cases, which are pending till 31st December, 2021. If thereafter the learned Magistrate feels that there has been any deviation, non-cooperation and non-payment, the learned Magistrate would revive the cases and execute the orders.

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

(Tirthankar Ghosh, J.)