

10.08.2021
Ct No. 35
D/L 45
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C.R.R. 1363 of 2021
With
C.R.R. 1306 of 2021
(Via Video Conference)

Re: An application under Section 402 of the Code of Criminal Procedure, 1973.

In re : Smt. Paramita Mondal & Anr.,
... Petitioners

Mr. Kallor Kumar Basu,
Md. Jannat Ul Firdous,
... for the petitioners in CRR 1363 of 2021

Mr. Sarthak Chowdhury,
Mr. Sourav Paul,
... for the petitioner in CRR 1306 of 2021

The husband and the wife, both are aggrieved by an interim order dated April 3, 2021, passed by the learned Judicial Magistrate, 2nd Court, Chandannagar, Hooghly whereby the learned Magistrate granted Rs. 25,000/- per month for maintenance of their minor daughter to be paid the husband.

The husband challenges the said order by filing the revisional application being C.R.R. 1306 of 2021 whereas the wife challenges the same by filing the revisional application being C.R.R. 1363 of 2021. Both the revisional applications are taken up together for hearing.

Mr. Kallol Kumar Basu, learned advocate appearing in support of the application filed by the wife, submits that the

learned Magistrate in the Court below did not follow the procedure required to be adopted in deciding the application for maintenance. No affidavit of assets was filed by the husband in the Court below though the wife had filed her affidavit of assets in support of her income.

It has further been submitted by Mr. Basu that the learned Magistrate while passing the order of maintenance did not take into consideration that the wife has already paid Rs. 8 lakh to the husband by encashing some fixed deposits. It has further been urged by Mr. Basu that a loan was obtained jointly by the parties for purchasing a flat, but all the monthly installments for repayment of loan are being paid by the wife alone. The said fact was also not considered by the learned Magistrate.

Mr. Sarthak Chowdhury, learned advocate appearing in support of the application filed by the husband, submits that the order impugned is liable to be interfered with since the learned Magistrate has failed to take into consideration the settled proposition of law that an earning mother is also under an obligation to maintain her minor daughter. The husband alone cannot be held liable to pay the maintenance.

It has further been contended by Mr. Chowdhury that the wife is well placed in the society. She is a bank officer.

The relevant part of the order impugned is quoted below:

“However, the fact remains that the petitioner No. 2 i.e. the minor daughter of the O.P. has got every right to claim maintenance from her father. As per the affidavit of assets and liabilities submitted by the O.P., his net salary is Rs. 1,05,605/- per month but he has not

disclosed his gross salary. In support of his averments, the O.P. filed his I.T. return for the assessment year 2020-21 which shows his total income as Rs. 12,94,110/-. However, the O.P. did not file any salary statement or pay slip before this Court.”

The order, therefore, clearly shows that the husband filed an affidavit of assets in support of his income.

The order impugned further reveals that the income of the husband was duly considered by the learned Magistrate and the learned Magistrate came to a finding that the net salary of the husband was Rs. 1,05,605/- per month.

With regard to the income of the wife, it is the specific finding of the learned Magistrate that she earns about Rs. 64,000/- per month and she works as an officer for Allahabad Bank.

Having regard to the respective income of the parties, I am of the opinion that the learned Magistrate in the Court below did not commit any illegality in saddling the husband with the responsibility to pay Rs. 25,000/- per month towards maintenance of the minor daughter.

The wife is a bank officer having sufficient income to maintain herself. Therefore, no exception could be taken for the fact that the learned Magistrate in the Court below, did not grant any maintenance for her to be paid by the husband.

Encashment of fixed deposit or repayment of loan by the wife as urged by Mr. Basu cannot be considered at the interim stage in passing the order of maintenance for the minor daughter.

The wife is at liberty to adduce evidence in support of her case at the appropriate stage of the proceeding.

In view thereof, I do not see any reason to interfere with the order impugned.

Accordingly, both the revisional applications, being **C.R.R. 1363 of 2021** and **C.R.R. 1306 of 2021** are dismissed.

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

(Kausik Chanda, J.)