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September
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C.R.R. No.2075 of 2012
(Via Video Conference)

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

Smt. Rita Nayek
Versus
The State of West Bengal & Anr.

Mr. Tapan Dutta Gupta,
Mr. Kasishwar Ghosal.
...for the petitioner.

Mr. Tapan Dutta Gupta, learned advocate, appears for the petitioner and challenges the order passed by the learned Additional Sessions Judge, 1st Court, Purulia in Criminal Revision No.43 of 2007 which was disposed of by a judgment and order dated 21st January, 2012.

I have perused the order setting aside the award of maintenance dated 29.09.2007 passed in Misc. Case No.69 of 2004 by the learned Judicial Magistrate, 4th Court, Purulia which allowed maintenance to the petitioner and her two daughters.

The opposite party no.2/husband is not present before this Court.

I have perused the reasons so assigned by the learned Sessions Court which was on the foundation that the present petitioner/wife purposely did not decide to reside with the husband/opposite party. I find that the same is contrary to the records as the reasons so assigned by the wife was that the children

were admitted in a school in the locality which prevented her from shifting her residence. The very fact that the learned Sessions Court without overwhelming reasons decided to refuse any maintenance to the wife is prima facie devoid of any substance and, as such, interference of this Court is called for.

Accordingly, the order dated 21st January, 2012 passed by the learned Additional Sessions Judge, 1st Court, Purulia in Criminal Revision No.43 of 2007 is hereby set aside.

The learned Judicial Magistrate, 4th Court, Purulia is directed to consider afresh the quantum of maintenance which is to be awarded in view of the change of circumstances by passage of time and the cost required for an individual to survive.

Accordingly, CRR 2075 of 2012 is allowed.

The learned Judicial Magistrate, 4th Court, Purulia is directed to issue notice to both the parties and thereafter consider the quantum of maintenance to be awarded within a period of four weeks from the date of communication of this order. The learned Magistrate is also directed that in case any quantum is decided by way of arrear, proper instalments must be granted to the husband/opposite party so that no unnecessary harassment/hardship is created upon the opposite party.

Department is directed to communicate this order to the learned Judicial Magistrate, 4th Court, Purulia forthwith preferably within a period of seven days from date.

Pending application, if any, is consequently disposed of.

All parties, including the learned Magistrate, is directed

to act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)