

27.01.2021
Mithun
Sl. No.23
D/L.
Ct.No.30

CRR/2612/2019
with
I.A.No: CRAN/1/2019 (Old No: CRAN/3652/2019)

In the matter of : Somnath Kundu.

...the appellant.

Mr.Arpan Mondal, Adv.

...for the appellant.

Ms.Faria Hossain, Adv.,
Ms.Baisali Basu, Adv.

...for the State.

The instant revision is directed against an order passed by the learned Additional Sessions Judge, 17th Court at Alipore on 5th July, 2019 in Criminal Appeal No.80 of 2018.

The above-mentioned appeal was filed by the opposite party No.1/wife against the present petitioner/husband challenging the order passed by the learned Judicial Magistrate, 3rd Court at Alipore directing the present petitioner to pay monetary relief at the rate of Rs.5,000/- per month to opposite party No.1.

In appeal, the learned Judge, directed the present petitioner to pay monetary relief to the opposite party No.1 at the rate of Rs.20,000/- per month.

The petitioner being aggrieved against the said order has challenged the legality, validity and propriety of the order passed by the learned Judge in appeal.

Having heard the learned Advocate for the petitioner as well as the State of West Bengal and on perusal of the impugned judgment, it is ascertained that the learned Judge in appeal fixed interim monetary relief in favour of the opposite party No.1 considering gross salary of the present petitioner to the tune of Rs.92,362/- per month.

It is, however, pointed out by the learned Advocate for the petitioner that the petitioner has retired, in the meantime, on superannuation. He received Rs.38,118/- per month from his pension. He has a son who is mentally disabled. He has the responsibility to maintain his son as well as to bear all his medical expenses. He has also other family responsibilities and it is not possible for him to pay Rs.20,000/- per month in view of the fact that he only earns Rs.38,118/- per month from his pension. He has no other income except the said pension. Therefore, the learned Advocate for the petitioner has prayed for modification of the impugned order passed in Criminal Appeal No.80 of 2018.

It is pertinent to mention here that opposite party No.1 was initially served by the petitioner. Subsequently, the learned P.P.-in-Charge was requested to cause service

of notice of the instant proceeding to the Opposite Party No.1 through Officer-in-Charge of the local police station where she resides. The Officer-in-Charge, Patuli Police Station has submitted a report stating inter alia that notice has duly been served upon the opposite party No.1. However, she has not turned up.

Therefore, I proceed to dispose of the instant petition in absence of opposite party No.1.

I have closely examined the pension slip of the petitioner issued by the State Bank of India. His gross income is Rs.57,400/-. From the said amount, a sum of Rs.19,282/- is deducted towards commutation installments amount. As Such petitioner commuted a part of his pension. Surely he receive the lumpsum amount which has not been disclosed by him before this Court.

It is needless to say that quantum of monetary relief shall be fixed on the gross income of a person and not on net income. At the same time I am not unmindful to know that the petitioner maintains his son who is suffering from certain mental disability. The said son is now aged about 24 years. The opposite party No.1 being the mother of the said son does not look after him. He has also some family responsibilities.

Considering all facts and circumstances of this case as well as the present day market price and day to day

expenditure of a lady to run her life, I am of the view that the opposite No.1 is entitled to get a sum of Rs.12,000/- per month towards interim money relief till the disposal of the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

Accordingly, the order passed by the learned Additional sessions Judge, 17th Court at Alipore is set aside. The petitioner is directed to pay monetary relief as the rate of Rs.12,000/- per month from the date of the order passed by the learned Court of appeal till the disposal of the application under Section 12 of the said Act.

Such payment shall be made within 15 day of each succeeding month. So far as the arrears are concerned, the petitioner is at liberty to square up such dues towards monetary relief in 10th monthly installments.

It is made clear that observations made in the instant revision, is limited to the instant proceeding only and the learned Judicial Magistrate, Alipore to dispose of the application under Section 12 of the said Act without being influenced by any of the observations made hereinabove regarding quantum of maintenance or responsibility of the petitioner in any way.

The instant revision is accordingly disposed of.

(Bibek Chaudhuri, J)