

10.09.2021

Item No.10
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2740 of 2017
(Via Video Conference)

Mousumi Sarkar
versus
Abdul Wadud

Mr. Arnab Saha,
Mr. Abhimanyu Banerjee,
Mr. Subhasis Saha ... For the Petitioner.

Ms. Shabana Hasin ... For the Opposite Party.

Ms. Sreyashee Biswas ... *Amicus Curiae*.

Learned advocate for the petitioner submits that without any substantial reasons, learned Magistrate directed the husband to pay maintenance to the wife from the date of the order instead of from the date of filing of the application.

Learned Sessions Judge while considering the revisional application, *inter alia*, observed as follows :

"On carefully scrutiny of the case record it appears that the instant maintenance application was filed on 20.11.2008 and the petitioner concluded her evidence only on 15th day of January 2015. So, no need to point out that the delay in disposal mainly attributed to the petitioner and thus, she is not entitled to get any benefit for her own default."

Affidavit-in-opposition filed by the opposite party be kept with the record.

According to the learned advocate for the opposite party, the petitioner was only earning about Rs.3000/- when

the application under Section 125 of the Code of Criminal Procedure was filed before the jurisdictional court. The same, as such, is not commensurate with the amount of Rs.3000/- which was awarded as maintenance by the learned Magistrate on 26.07.2016.

Lower court records were called for and Ms. Sreyashee Biswas, learned advocate of this Court was directed to assist the Court to ascertain the dates to find whether the wife/petitioner attributed to the delay as observed by the learned Sessions Judge. The learned advocate submits a list of dates from where it reflects that out of 30/35 dates so fixed before the learned Magistrate, only on 4 occasions, the petitioner was not present.

Having regard to the fact that the case was initiated in the year 2008 and the order was passed on 26.07.2016, it was incumbent upon both the learned Magistrate as well as the learned Sessions Judge to assign special reasons for not giving effect to the order of maintenance from the date of the application being filed, in view of the fact that no interim maintenance was granted to the wife/petitioner in this case.

Taking into consideration the submissions of both the parties, I am of the view that the award of maintenance should be effected from the date of filing of the application. Again there must be a practical approach to the problem and all on a sudden the husband cannot be saddled with liabilities of 12 years to pay the whole of the dues. As such, from the date of filing of the application till the judgment and

order dated 26.07.2016 has been passed, the husband would pay a sum of Rs.1500/- per month for the said period which would be calculated by the learned Magistrate for the purpose of arrears of the case till the date of delivery of the judgment.

If the wife takes out appropriate application, the learned Magistrate would be at liberty to consider the same and provide reasonable instalment for diluting the stress.

With the aforesaid observations, CRR 2740 of 2017 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

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

(Tirthankar Ghosh, J.)