

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 2884 of 2019
with
CRAN 381 of 2020

Ujjal Kumar Shil
Vs.
The State of West Bengal & Anr.

For the Petitioner : Mr. Ayan Bhattacharyya
Mr. Kunal Ganguly

For the opposite party No.2 : Mr. Purnashish Roy

Heard on: : 22nd January 2021

Judgment on : : 22nd January 2021

The Court:

This is an application challenging an order dated 08.08.2019 passed by the learned Judicial Magistrate, 3rd Court, Bishnupur at Bankura in Misc. Case No. 44/18, R 47/18, thereby directing payment of interim maintenance allowance to the wife and the child at the rate of Rs 5,000/- and Rs.. 3000/- per month, respectively from the date of application.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. Before the order portion, it was recorded by the learned Magistrate in the impugned order that the order will take effect immediately from 'today'. In spite of this, the learned Magistrate awarded maintenance allowance to be paid from the date of the application. The two directions are contradictory to each other. It is settled law that if maintenance allowance is directed to be paid from the date of application, some reasons are required to be recorded for the same. The sums awarded are too high for the petitioner to pay.

Learned counsel appearing on behalf of the opposite party / wife submits as follows. The petitioner is a doctor and is an R.M.O. at a government hospital. The petitioner earns substantial sums of money and also has landed property. The sums of maintenance awarded are very reasonable considering the standard of living of the petitioner and the opposite party. In fact, the petitioner is not paying any maintenance allowance.

I have heard the submissions of the learned advocates appearing on behalf of the petitioner and the opposite party no. 2 and have perused the revision petition.

It appears that the petitioner is a doctor by profession and has substantial earnings, even if one does not go into the question of him having landed property, at this stage. The sums awarded by the learned Magistrate are not at all excessive when compared with the earnings and the social standing of the petitioner.

That the order was to take effect from 'today' was a rather redundant observations, especially when juxtaposed with a clear direction that the interim maintenance allowance was to be paid from the date of application.

In any event, in ***Rajnish vs. Neha and Another, 2020 SCC Online 903***, the Hon'ble Apex Court has held that maintenance allowance under Section 125 of the Code is required to be paid from the date of application and not from the date of the order.

In view of the above, I do not find any reason to interfere with the impugned order.

Accordingly, the revisional application is dismissed.

The connected application is also disposed of.

However, there shall be no order as to costs.

Learned Magistrate shall dispose of the main application under Section 125 of the Code as expeditiously as possible and shall not be swayed by the observations made in this order, which were only meant for deciding this revision.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)