

29.07.2021

Item No.39
Ct.No.34
dc.

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

**C.R.R. 2886 of 2019
with
CRAN 1 of 2020 (Old No. CRAN 3830 of 2020)
+
CRAN 2 of 2020 (Old No. CRAN 3832 of 2020)
+
CRAN 3 of 2021
(Via Video Conference)**

**Pooja Sharma
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Ayan Bhattacharjee,
Mr. Anand Keshari,
Mr. Atish Ghosh ... For the Petitioner.

Mr. Debasish Roy,
Mr. Sayan Ray,
Mr. Avik Ghatak,
Mr. Samrat Choudhury ... For the Opposite Party No.2.

The original order, which is an issue before this Court, is the order dated 20.12.2012 passed by the learned Judicial Magistrate, 5th Court, Alipore in connection with Misc. Case No. 284 of 2012.

The petitioner, being aggrieved, approached the learned sessions court and the learned sessions court in Criminal Motion No. 28 of 2013 was pleased to award *ad interim* maintenance so far as the children are concerned, but refused interim maintenance to the present petitioner who happens to be the wife of the opposite party/husband.

On assessment of the documents, which have been placed before me, I find that in paragraphs (w) and (x) at

inner page 7 of the written objection, which was filed before the learned Magistrate, refer to remuneration of the partnership firm and rent being received by the present petitioner/wife has been made. Presumably, the aforesaid amount(s) weighed with the learned Magistrate while refusing to grant interim maintenance.

The present case being one under Section 125 of the Code of Criminal Procedure, I am of the opinion that the wife/opposite party is entitled to get a sum of Rs.25,000/- per month by way of interim maintenance. The same is subject to adjustment, if the remuneration and the rent, referred to in paragraphs (w) and (x) at inner page 7 of the written objection, had been received by the wife/petitioner from the inception. The opposite party/husband will be allowed to produce documents to that effect that such amount of remuneration or rent was being received by the wife at the relevant point of time when the order was passed.

Pursuant to the decision of the Hon'ble Supreme Court in the case of **Rajnish Vs. Neha & Another** reported in (2021) 2 SCC 324, the petitioner and the opposite party are directed to file affidavit of assets before the learned Magistrate and the learned Magistrate, on appreciation of the same, would reconsider afresh regarding the interim maintenance to be awarded in accordance with law.

As the application under Section 125 of the Code of Criminal Procedure was filed in the year 2012, the learned Magistrate, as such, would take steps, so that the case may be taken to its logical conclusion within a reasonable period

of time, preferably within a period of one year from the date of communication of this order.

So far as the children are concerned, the learned Magistrate would assess their age and thereafter, come to a finding whether maintenance is required to be awarded in favour of them or not, till then, the order of the learned sessions court would continue and subject to be adjusted from the business of the partnership firm.

It has been submitted that the son has already attained majority. If the learned court comes to a finding to that effect, then in that case, if there are any arrears, the same should be cleared and adjusted towards the admission fees which the son would be entitled to pay to the Institute for his studies in graduation course.

The aforesaid sum would be paid by the opposite party/husband and if the learned court is satisfied regarding the accounts, the same would be adjusted from the accounts of the business of the partnership firm.

With the aforesaid observations, CRR 2886 of 2019 is disposed of.

Interim order, if any, is hereby vacated.

All connected pending applications 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.)