

07.01.2021

Ct. 30

Sd./14

CRR 1868 of 2020

Sri Arnik Chaki vs. Smt. Anumita Lahiri

Mr. Anirban Banerjee..For the petitioner.

Mr. Soumaya Ray ..For the opposite party.

In this revisional application the revisionist has prayed for setting aside the judgment dated 20.03.2019 passed by the learned Sessions Judge, Darjeeling in Criminal Appeal No. 01 of 2018 arising out of order dated 20.04.2018 passed by the learned Judicial Magistrate, 1st Court, Siliguri in Misc. Case No. 138 of 2016 thereby dismissing the appeal and upholding the order of the learned Magistrate directing the petitioner to pay maintenance of Rs. 5,000/- to the opposite party, inter alia, on the ground that the petitioner is employed in a private organization and his monthly salary is Rs. 13,640/- p.m. On the other hand, opposite party is an advocate practicing in the Siliguri Court and earns much more than the petitioner and therefore, she is not at all entitled to get any maintenance from the petitioner. It is also contended that the father of the petitioner is 76 years old and he is suffering from various ailments and is under constant medical treatment and the petitioner has to meet the expenses of the doctor attending to his father. It is also pointed out that the opposite party has filed Misc. Execution Case no. 22 of 2018 for payment of Rs. 105000/- and in spite of the extreme hardship the

petitioner has paid Rs. 80,000/- to the opposite party as per direction of the court below.

It is submitted that since the petitioner has paltry sum of earning, he is unable to pay maintenance to the opposite party and unable to mitigate his own bread and butter in such meager amount of income. Accordingly, the petitioner assailed the judgment impugned in this revisional application.

On rebuttal my attention is invited to the order passed by the learned Judicial Magistrate in Misc. Case No. 138 of 2016 vide order dated 20.04.2018, wherein it has been observed on perusal of the Domestic Incident Report by the Protection Officer, Darjeeling that domestic violence has been reported against the present petitioner husband and there was no denial to the averments of the aggrieved person on affidavit that the respondent no. 1 was employed in Philips India Limited and also has his own business. Rather the respondent no. 1 filed an evasive affidavit without mentioning anything about his earlier employment and business, if any, and the date from which he was so unemployed and he also did not mention whether during his marriage he was employed or not.

Accordingly, the learned Magistrate having considered submissions made on behalf of the accused person was pleased to direct the respondent no. 1/opposite party petitioner to make payment of Rs.

5,000/- p.m to the aggrieved person toward monetary relief while disposing of the application u/s. 23(2) of the Protection of Women from Domestic Violence Act 2005. However, a date was fixed for the evidence in respect of the proceeding u/s. 12 of the Act.

Being aggrieved and dissatisfied with the said order impugned passed by the learned Magistrate, the present petitioner preferred an appeal being Criminal Appeal No. 1 of 2018 before the District and Sessions Judge who has affirmed the judgment so passed by the learned Magistrate awarding interim monetary relief to the opposite party wife.

It is well understood from the observation made by the appellate court below that there was no document produced by the appellant, the present petitioner to show his income that he was employed in Philip India Limited. It is also revealed that one vehicle is owned by the appellant/respondent. The value of the vehicle was Rs. 7,30,000/- approximately, wherein the principal amount paid by the appellant/respondent was to the tune of Rs. 1,63,000/-. It is also gathered from the said order that the vehicle was purchased on the basis of hire purchase agreement and already paid a sum of Rs. 8,40,000/- to meet the loan on account of purchase of the vehicle on hire. Therefore, he must be said to have substantial earning but no income tax return has been shown before the courts below.

Now it is submitted by Mr. Banerjee, learned advocate appearing for the petitioner that there was a default in making payment on account of the loan of hire purchase of vehicle and the vehicle has been taken possession by the banker.

Be that as it may, I am of the opinion that on the factual aspect as reflected from the orders passed by the appellate court as well as the trial court, no substantial contention was made on behalf of the petitioner showing his income at the time of filing the application u/s. 12 of the D. V. Act. The amount of monetary relief @ 5,000/- awarded to the aggrieved person opposite party is quite a meager amount and that cannot be impugned or otherwise set aside on the simple plea of the petitioner that he has only earning of Rs. 13,000/- and odd per month.

Thus this revisional application being CRR 1868 of 2020 is disposed of affirming the orders of the learned court below.

(Shivakant Prasad, J.)