

06.07.2021
Ct No. 35
D/L 15
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C.R.R. 1917 of 2020
(Via Video Conference)

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

In re : Tinku Bhowmik,

... Petitioner

Mr. Somopriyo Chowdhury,
Mr. Dipayan Das,

... for the petitioner

Ms. Devi Priya Mitra,

... for the Opposite party

Let the affidavits filed by the respective parties in the Court today be kept with the record.

In this revisional application, the petitioner has impugned an order dated March 7, 2020, passed by the learned Additional Sessions Judge, Fast Track Court-V, Alipore, South 24 Parganas in Criminal Appeal No. 74 of 2019.

The order impugned arises out of a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

The petitioner and her minor daughter approached the learned Magistrate in the Court below under the said provision against the opposite party, inter alia, for maintenance of Rs. 20,000/- per month for the minor daughter.

The petitioner is, admittedly, employed in the private sector, and, no amount of maintenance was claimed for her.

The learned Magistrate by an order dated November 12, 2018, allowed the prayer for maintenance and directed the opposite party to pay Rs. 12,000/- per month for the education of his minor daughter.

The said order was challenged by the opposite party before the learned Additional Sessions Judge, Fast Track Court-V, Alipore, South 24 Parganas. The learned Judge came to a finding that the income of the opposite party was Rs. 70,000/- per month while the income of the petitioner was found to be Rs. 50,000/- per month. The learned Judge by the order impugned directed that the expenses towards education and maintenance of the minor daughter have to be borne as per the ratio of the income of the opposite party and the petitioner. The learned Judge, therefore, directed that the ratio being 7:5, the opposite party should pay Rs. 7,000/- per month and the petitioner should pay Rs. 5,000/- per month towards the maintenance of their minor daughter.

I am of the view that the learned Judge in the appeal Court below was not justified in dividing the liability of payment of maintenance as awarded by the learned Magistrate.

Admittedly, the minor daughter is a student of St. Thomas School at Khidirpur, and she studies in Class-XI. The school fee,

as appearing from the annexures to the affidavit-in-reply filed on behalf of the petitioner is about Rs. 1.5 lakh per annum.

Needless to mention that a student of Class-XI, additionally needs to take tuition and a substantial amount has to be incurred for her regular expenses towards food, dress, conveyance etc.

The logic applied by the learned Judge in the appeal Court below is unacceptable because the learned Judge assumed that only Rs. 12,000/- per month is sufficient for the minor daughter. The learned Judge has failed to appreciate that admittedly, the minor daughter resides with the petitioner who has to bear all the expenses for her daughter.

I am of the opinion that at least Rs. 25,000/- per month is required for education, maintenance and other expenses for the daughter, who studies in Class-XI in a premier English medium school.

Therefore, the order of the learned Magistrate directing the opposite party to pay Rs. 12,000/- per month does not appear to be unjustified. The learned Judge in the Court below, sitting in appeal, ought not to have interfered with the order of the learned Magistrate.

In view of the discussions made above, the order dated March 7, 2020, passed by the learned Additional Sessions Judge, Fast Track Court-V, Alipore, South 24 Parganas, is hereby set

aside. The order of the learned Magistrate dated November 12, 2018, is upheld.

The criminal revision being C.R.R. 1917 of 2020 is, thus, allowed.

All parties shall act on the server copy of this order.

(Kausik Chanda, J.)