

19.12.2022

Item No.36
Ct.No.34
dc.

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

C.R.R. 214 of 2021

**Soumen Dutta
versus
The State of West Bengal & Ors.**

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

Mr. Kallol Mondal,
Mr. Moniruzzaman

... For the Petitioner.

Mr. Biplab Mitra,
Ms. Trina Mitra

... For the Opposite Party Nos. 2 & 3.

The present revisional application was preferred challenging the order dated 10.12.2020 passed by learned Additional District and Sessions Judge, Fast Track 2nd Court, Alipore, South 24-Parganas in Criminal Motion No. 360/2019 wherein the learned revisional court was pleased to set aside the order dated 06.08.2019 passed by learned Judicial Magistrate, 10th Court, Alipore in Case No. ACM-941 of 2018 and modified the same to the extent that the wife/opposite party no.2 herein shall be entitled to get maintenance of Rs.10,000/- per month from the date of the order. In the same breath, the revisional court also directed that so far as the order of the learned Magistrate directing Rs.10,000/- per month to be paid to the minor daughter, the same would remain unchanged.

Mr. Mondal, learned advocate appearing for the petitioner submits that the petitioner did not receive any communication in respect of the compliance of the direction

of the learned sessions court so far as service upon him is concerned. To that effect, the learned advocate relies upon a report of the S.D.P.O., Habra, Barasat Police District which reflects that the officer on questioning the concerned police personnel of Ashoknagar Police Station was not satisfied regarding the veracity of his version and the signature appearing therein in the summons. Learned advocate for the petitioner submits that an audience may be provided to him before the learned revisional court.

Mr. Mitra, learned advocate appearing for the opposite party nos. 2 and 3 has filed affidavit-in-opposition and submits that the amount of Rs.13,00,000/- which was paid out of the amount of Rs.18,00,000/- which was purportedly decided to be in the nature of permanent maintenance, the said amount of Rs.13,00,000/- so received was transferred to the bank to liquidate the loan amount. The learned advocate further submits that the amount of Rs.10,000/- so awarded to the child is a meagre amount and calls for interference by this Court. On query of this Court, learned advocate for the opposite party nos. 2 and 3 replied that while exercising revisional jurisdiction this Court is authorised to enhance the quantum of maintenance by exercising its authority. To that effect reliance has been placed upon a judgement of this Hon'ble Court in ***Shibnath Sharma Vs. Sisir Kumar Das & Anr.*** reported in **2010 Vol.1 CHN 116**. Learned advocate has emphasised on paragraph 8 of the said judgement which is as follows :

“8. Last but not the least, it was heavily contended by Mr. Moitra that at the present moment exercise of revisional power even suo motu by the High Court is hopelessly time barred. I am unable to accept such contention of Mr. Moitra. The power of the High Court to interfere with a grossly illegal order of any subordinate Court in suo motu exercise of its inherent jurisdiction as well as revisional or appellate power, when it is necessary to prevent miscarriage of justice and do real and substantial justice, is unlimited and unfettered. Even though the order in question was passed long back, the High Court's power to exercise its inherent jurisdiction as well as its revisional power suo motu is not trammled by any procedural restriction and when the High Court has noticed a glaring illegality it cannot remain silent, simply because the order in question is time barred and thereby perpetuating the illegality and miscarriage of justice. The suo motu exercise of its revisional power by the High Court cannot be denied on the ground of limitation. In this connection reliance may be placed in the case of Municipal Corporation of Delhi v. Giridharilal Sapru, reported in AIR 1981 SC 1169.

Accordingly, the order dated April 19, 2006 passed by the learned Sessions Judge, Burdwan in connection with Criminal Appeal No. 2 of 2006 arising out of the judgement and order dated February 10, 2006 passed in connection with C.R. Case No. 47/2003 is set aside and appeal stands revived and restored. It is directed the records of the Trial Court be immediately brought before the Appellate Court and Appellate Court shall dispose of the appeal in accordance with law after giving reasonable opportunity of hearing to the parties. Both the petitioner and the opposite party No. 1 are directed to appear before the Appellate Court within four weeks from this date. The Appellate Court is directed to conclude the hearing of the appeal as expeditiously as possible preferably within six months from the date of communication of this order.

In view of the fact the order passed by the Appellate Court pursuant to which the proceeding before the Trial Court has been re-initiated being set aside the proceeding now

pending before the Trial Court has become infructuous and the order impugned lost its force.

The office is directed to communicate this order to both the Trial Court as well as to the Appellate Court for taking necessary steps in this regard.

Criminal Section is directed to deliver urgent photostat certified copy of this judgement to the parties, if applied for.”

Learned advocate for the opposite party nos. 2 and 3 also relies upon a judgement of the Hon’ble Supreme Court in ***Kaushalya Vs. Mukesh Jain*** reported in ***(2020) 17 Supreme Court Cases 822*** and submits that the maintenance so awarded should not be interfered with. So far as ***Shibnath Sharma*** (supra) is concerned, in that case dispute arose as to whether summons case being tried by adhering to warrant case otherwise than on a police report would vitiate the trial, wherein the High Court came to the conclusion that it is for the accused to show how prejudice has been caused and the accused has suffered for arriving at such a conclusion. The circumstances are completely different in this case. In this case, what has happened is that a party to a litigation who is entitled to have an audience has challenged the issue relating to service of summons or knowledge regarding the date which has been fixed by the court and the prayer before this Court is for getting an audience for allowing the petitioner to advance his argument before the revisional court. The order which was passed by the learned Magistrate was interfered with by the revisional court, but without an audience being afforded to him. The only recording which reflects that in spite of receipt of summons of the revisional application, the

present petitioner failed to turn up is on the basis of a summons of a police personnel of Ashoknagar Police Station. The said signature which showed acceptance of the petitioner himself has been doubted by his superior on an enquiry on the basis of a complaint lodged by the petitioner. Thus, in this case what I find is that there is no scope of altering the circumstances and the clock be sent back which would be to the prejudice of the applicant(s) before the learned Magistrate. As such, without entering into the issue of the quantum which has been awarded by the learned sessions Judge in revisional application by its judgement dated 10.12.2020, I direct the learned revisional court to hear out the revisional application by affording three dates to the present petitioner being the opposite party in the revisional application before the learned sessions court. However, the maintenance so awarded to the wife and the child is not interfered with by this Court.

Such rehearing of the revisional application by the learned Additional District and Sessions Judge, Fast Track 2nd Court, Alipore should commence on and from 15.01.2023 and should be concluded by 28.02.2023. Learned revisional court would pass verdict of the revisional application by 15.03.2023.

Needless to state that the subject-matter of the revisional application relates to interim maintenance and the parties would be at liberty to pray for

enhancement/reduction by taking out appropriate application before the learned Magistrate.

With the aforesaid observations, the revisional application being CRR 214 of 2021 is partly allowed.

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.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)