

D/L 29
February
15, 2022
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C.R.R. No.657 of 2020
(Via Video Conference)

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

Prabir Kumar Chatterjee @ Probir Kumar Chatterjee
Versus
The State of West Bengal & Anr.

Mr. Biadurya Ghosal.
...for the petitioner.

Let the affidavit-of-service filed by the petitioner be kept
with the record.

The subject matter of challenge relates to the order dated
6.2.2020 passed by the learned Judicial Magistrate, 4th Court-cum-
Railway Magistrate, Sealdah, South 24 Parganas in Misc. Case
No.05 of 2017 arising out of an application under Section 127 of the
Code of Criminal Procedure.

Mr. Ghosal, learned advocate appearing for the petitioner
submits that the learned Magistrate enhanced the maintenance
amount of Rs.7,000/- per month to Rs.11,000/- per month without
appreciating the evidence which was placed before the learned trial
court. According to the learned advocate, the petitioner is receiving
a sum of Rs.24,000/- per month and the same would be reflected
from the pension documents. Learned Magistrate had those
documents as admissible evidence and in spite of the same
enhanced the amount. Additionally, it has further been contended
that the learned Magistrate failed to appreciate the changed
circumstances under which the application under Section 127 of

the Code of Criminal Procedure was preferred.

In spite of service, none appears on behalf of the private opposite party no.2/wife.

Having regard to the contentions so advanced by the learned advocate for the petitioner, I am of the opinion that the petitioner would go on paying the earlier amount of Rs.7,000/- per month and the learned Magistrate in the meantime would re-assess the evidence for arriving at a fresh finding regarding the quantum to be awarded to the wife. Learned Magistrate is directed to scrutinise the possible earnings of the husband being the present petitioner and thereafter quantify/fix the amount of maintenance which he thinks fit and proper to be enhanced.

Accordingly, the order dated 6.2.2020 is set aside. The learned Magistrate would within sixty days from date arrive at a fresh finding after analysing the evidences, which are already on record. In case the learned Magistrate decides to award a sum above Rs.7,000/- per month, in that case the arrears should be equally distributed by way of instalments so that the petitioner, who is also an aged person does not suffer. It is reiterated that under no circumstances the earlier amount of Rs.7,000/- per month should be defaulted by the petitioner during pendency or continuance of the hearing of the proceeding under Section 127 of the Code of Criminal Procedure.

With the aforesaid observations, CRR 657 of 2020 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

As directed earlier, the learned Magistrate would strict to the time period and pass a fresh order/judgment.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)