

D/L 90
March 15,
2022
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CRR No.562 of 2019

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

Barnali Sarkar
Versus
The State of West Bengal & Anr.

Mr. Sagar Saha,
Mr. Subir Debnath,
Ms. Roma Roy.
...for the petitioner.

Mr. Amlan Jyoti Sengupta,
Mr. M. Thakur,
Mr. Partha Sarathi Das.
...for the opposite party no.2.

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

The present revisional application has been preferred
challenging the judgment and order dated 14.01.2019 passed by he
learned Additional District and Sessions Judge, Ranaghat, Nadia in
Criminal Motion No.16 of 2018 wherein the subject matter of
challenge related to the order dated 20.03.2018 passed by the
learned Judicial Magistrate, 2nd Court, Ranaghat in Misc. Case
No.152 of 2014 (T.R.No.256 of 2014) under Section 125 of the Code
of Criminal Procedure.

Mr. Saha, learned advocate appearing for the petitioner
draws the attention of this Court to the fact that the learned
Magistrate on consideration of the evidence awarded maintenance

only to the minor daughter and refused to pay any maintenance to the wife. Learned advocate draws the attention of this Court to the relevant observations made by the learned Magistrate as follows:

“ Now, in this respect, a normal human having a high qualification is obvious to adopt such simple mode of earning by giving private tuitions. In this case, even if it is assumed that petitioner has not adopted such mode and has no income by giving private tuition but it can be inferred by a prudent man that petitioner having such high qualification is well capable of earning by giving private tuitions at her residence. Thus, the petitioner having passed her masters degree is expected not to sit idle at home and at least earn by giving private tuitions.”

Learned revisional court emphasized on the issue of observation and finding of the trial court that without any assigning any sufficient reasons, the petitioner has left her matrimonial home and approved the finding regarding the capacity of earning by way of private tuitions at her residence.

Mr. Sengupta, learned advocate appearing for the opposite party no.2/husband has supported the orders passed by the learned Magistrate as well as that of the learned revisional court/sessions court. According to the learned advocate, the wife has filed the present case on her whims and caprices and there was no allegation of torture being inflicted upon her in close proximity of time when the incident was alleged. It has been emphasized that the first complaint was filed before a court of law after ten months of

her leaving the matrimonial home and the integrity of such complaint is to be tested. Learned advocate additionally submits that the petitioner has been diligent and without any fail complied with the order passed by the learned Magistrate so far as it related to the amount of Rs.5,000/- awarded to the minor daughter.

I have assessed the orders passed by the learned Magistrate as well as the learned sessions court. The manner of interpretation of sufficient reason which has been approved by the sessions court particularly the personal opinion that a marriage involves certain domestic and mental adjustments, co-operation between the parties and lastly some endeavour to carry forward the marital tie throughout the life. Herein the petitioner seems to be lacking the above criterias. Along with the same, the learned Magistrate was pleased to presume that the petitioner having higher qualification is not supposed to sit idle and would be giving private tuitions.

Learned Magistrate grossly ignored the evidence of PW 1 wherein it has been categorically stated that she was subjected to physical and mental torture for demand of further dowry and she was abused and the opposite party used to torture her mentally by threatening her over telephone.

There are further allegations of stridhan articles being kept by the husband and his family members.

Be that as it may, without going into the intricacy of each and every allegations, I am of the opinion that the reasons which were assigned by the wife were supposed to be considered by the

learned Magistrate in the background of the fact that whether the said ground was sufficient enough for the wife to stay separately or away or refused to stay with the husband. I also do not agree with the findings of the learned Magistrate on the basis of certain presumptions that as the lady is highly qualified she cannot sit idle and is supposed to give private tuitions. There were no materials before the learned Magistrate and the learned Magistrate interpreted presumption as if the same was a proof. The learned sessions court also without application of any mind approved and endorsed the order passed by the learned Magistrate which was in gross ignorance of the settled principles of law.

Having regard to the observations made above, I set aside the finding passed by the learned Magistrate to the extent that the petitioner in the instant case is not liable to receive maintenance from the opposite party no.2/husband for herself (and the same being affirmed by the learned sessions court). However, I restrain myself from passing any quantum of maintenance at this stage.

Both the parties are directed to appear before the learned Magistrate wherein the petitioner would place her claim on the basis of status she is entitled. The opposite party no.2/husband will be also entitled to resist such claim on the basis of the materials which are available with him. The learned Magistrate would decide such quantum within a period of 60 days from the date of communication of this order after affording opportunity to both the parties.

The aforesaid order in no manner interferes with the

order of maintenance granted to the minor daughter. If there are any execution case which is pending relating to the dues of maintenance of the minor daughter, the learned Magistrate would resort to harsher process of law for executing the same in accordance with law.

With the aforesaid observations, CRR 562 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)