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June 16,
2022
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C.R.R. No.1057 of 2022

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

Shri Goutam Bhattacharjee
Versus
Smt. Soma Bhattacharjee

Mr. Kollol Kumar Basu,
Mr. Biswajit Hazra.
...for the petitioner.

Mr. Samrat Choudhury,
Mr. Anit Dey.
...for the opposite party.

Affidavit of service and supplementary affidavit so filed be kept with the record.

The present revisional application has been preferred challenging the order dated 4th March, 2022 passed in M. Case No.196 of 2020 by the learned Judicial Magistrate, 3rd Court, Barrackpore, District- 24 Parganas (North).

The grievance of the petitioner is that in the affidavit of assets filed before the learned trial court, the wife/opposite party in her affidavit of assets/liabilities submitted that there is rental income from a flat which is of Rs.10,000/- per month and yet the learned trial court held that the wife has no independent income. Learned advocate has also referred to column of the affidavit of assets and liabilities "F" details of income of the deponent wherein the name of the employer is Goutam Bhattacharjee and the monthly income has been shown to be Rs.50,000/- per month.

Learned advocate for the opposite party submits that the

same was because of wrongful drafting wherein the applicant/wife intended to bring to the notice of the court the earning of the husband by way of the affidavit. Additionally, it has been submitted that the prayer for interim maintenance was for an aggregate sum of Rs.20,000/- per month.

Record reflects that the gross salary of the husband/petitioner is Rs.63,533/-per month. Learned trial court has directed by way of interim measure during the pendency of the main application under Section 125 of the Code of Criminal Procedure to pay a sum of Rs.5,000/- per month to the wife and Rs.5,000/- per month to the child.

In view of the earning of the petitioner even if the contention of rental income of Rs.10,000/- per month is accepted, I do not think that the learned court by way of directing payment of Rs.10,000/- per month (aggregate) has exceeded his jurisdiction. In fact, the said amount is not even $1/6^{\text{th}}$ of the amount which the husband would pay for survival of the wife or the child. The petitioner would be at liberty to challenge the sources of the income of the wife, if any, in course of the trial.

No interference can be made at this stage when the order was passed by the learned Magistrate after taking into consideration all financial aspects and sources which were placed. Mere recording of the Magistrate to the effect that the wife has no independent source of income cannot call for interference of this Court as the quantum which has been awarded is a meagre amount.

Needless to state that the learned trial court would

independently consider the evidence which is adduced and arrive at his own finding as to whether there is any entitlement to maintenance or not and in respect of the quantum to be awarded if at all at the end of the trial.

With the aforesaid observations, CRR 1057 of 2022 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.)