Form J(1) **IN THE HIGH COURT AT CALCUTTA**

Criminal Revisional Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 1377 of 2022

Sujoy Poddar

Vs.

Balaka Poddar & Ors.

For the petitioner : Mr. Ranadeb Sengupta, Adv.,
Mr. Sachit Talukder, Adv.

For the opposite party: Mr. Soumik Ganguly, Adv.,
Mr. Diptendu Banerjee, Adv.

Judgement on : 18.08.2022.

<u>Bibek Chaudhuri, J.</u>

It is not in dispute that the opposite party no. 1 is the legally married wife of the petitioner. It is also not disputed that in the said wedlock the opposite party no. 1 gave birth to two girl children who are at present minor.

On the allegation that the petitioner/husband refused and neglected to maintain the opposite parties in spite of having sufficient means and income, Misc. Case No. 76/2020 being a proceeding under Section 125 of the Code of Criminal Procedure was filed by the opposite parties claiming maintenance at the rate of Rs.20,000/- per month each for the petitioner no. 1 and 2 and Rs.30,000/- for the petitioner no. 3.

The Learned Judicial Magistrate, 2nd Court at Katwa by an order dated 21st March, 2022 granted maintenance allowance in favour of the petitioners directing the husband/petitioner herein to pay maintenance to the petitioners at the rate of Rs. 70,000/- per month. The said order dated 21st March, 2022 passed by the Learned Judicial Magistrate, 2nd Court, Katwa is impugned in the instant revision.

It is submitted by the Learned Advocate for the petitioner that the wife/opposite party no. 1 and the petitioner herein filed affidavits of assets in support of claim of the opposite parties and present income of the petitioner herein. The Learned Advocate for the petitioner has referred to point (I) of the affidavit of assets submitted by the petitioner before the Trial Court. From the said column it is found that the petitioner declared his net income during the financial year 2020-21 to the tune of Rs.1,72,000/- and during the period from 1st April, 2021 to 31st March, 2022 to the tune of Rs.18,000/-. It is also submitted by the Learned Advocate for the petitioner that the petitioner is not a salaried person. He earns his livelihood from his business. During Covid period, his business was not well run and, therefore, he could not earn sufficient amount of money like financial year 2020-21.

The Learned Advocate for the petitioner next takes me to affidavit of assets filed by the opposite party no. 1 in the Trial Court. He refers to column (J) of the said affidavit of assets and submits that all the requisite information required to be filed by the opposite party no. 1/wife in the affidavit of assets in respect of monthly income of the other spouse were left blank.

Therefore, the Learned Magistrate ought to have held that the opposite party no. 1/wife had no personal knowledge abut the income of the petitioner.

The Learned Advocate for the petitioner next takes me to the final order passed in Misc. Case No. 76/2022 by the Learned Judicial Magistrate, 2nd Court at Katwa on 21st March, 2022. In page no. 14 of the impugned judgment the Learned Magistrate has dealt with the issue as to whether the present petitioner/husband has sufficient means to maintain his wife or children. At the outset, the Learned Magistrate recorded that the petitioner, who is the opposite party no. 1 before this Court, has not been able to file any document to prove the actual income of the opposite party. At the same breath, the Learned Magistrate recorded that the income of the opposite party/petitioner herein is certainly within his personal knowledge and, therefore, the burden to prove the actual income of the husband rests upon the husband only and not on the petitioner. According to Learned Advocate for the petitioner, the above observation made by the Learned Magistrate is absolutely unwarranted and not based on record. In order to prove his income, the husband/petitioner made a declaration on affidavit that his net income during the financial year 2020-21 was Rs.1,72,000/- and in the following financial year Rs. 18,000/-. In spite of such affidavit of assets the Learned Magistrate was wrong in holding that the opposite party has not disclosed his true income for which the Court required to do some guesswork in order to ascertain the true income of the opposite party. Then, the Learned Magistrate accepted the wife's version as regards monthly income of the petitioner and held that the petitioner earns Rs.3,00,000/- per month.

Mr. Ganguly, Learned Advocate for the opposite party, on the other hand, has disputed about the authenticity of the declaration made by the present petitioner in the Trial Court on swearing affidavit. It is submitted by him that a person who earned a substantial amount of money and after statutory deduction his net income was Rs.1,72,000/-, his income during the financial year 2021-22 cannot fall down to such extent that his income was Rs.18,000/- during the said financial year. Therefore, Mr. Ganguly submits that the opposite party may be directed to produce income tax returns for last three years before the Learned Magistrate for calculation of the income of the petitioner.

It is also submitted by Mr. Ganguly that in order to ascertain the means of the petitioner/husband, the Court will take into consideration only the gross income of the husband. In support of his contention he refers to a decision of the Hon'ble Supreme Court in ***Dr. Kulbhushan Kumar –Vs. Smt. Raj Kumari & Anr.*** reported in ***1970 (3) SCC 129***.

Thus, it is clear from the submission made by Mr. Ganguly that he also cannot wholeheartedly support finding made by the Learned Magistrate in her impugned order regarding income of the present petitioner.

It is needless to say that the obligation to file affidavit of assets is not a statutory mandate. The obligation arises from precedents. It is required in the aid of taking appropriate decision with regard to a certain fact when the evidence of the parties seems to be insufficient. The other reason requiring the parties to file affidavits of assets is due to the fact that in a maintenance proceeding or a proceeding for monetary relief the contesting parties either pleads an inflated amount of income of the other party or there is a tendency on the part of the party having responsibility to maintain his wife and children to plead his income showing lesser amount than which he actually earns. Therefore, the higher Courts have felt it necessary that declaration with regard to income of the parties shall be filed in the proceedings of like nature by way of affidavit. Indisputably, the present petitioner being the husband pleaded his annual income for the financial year 2020-21 and 2021-22. It is also not in dispute that the income of the petitioner for the financial year 1920-21 is much higher than the financial year of 2021-22.

At the same time, this Court does not agree with the observation made by the Learned Magistrate in her impugned order where she held that the monthly income of the petitioner is Rs.3,00,000/- per month.

Considering such aspect of the matter, I am inclined to set aside the impugned order dated 21.03.2022. The petitioner is directed to submit income tax returns for last three years before the Learned Magistrate within three weeks from the date of communication of this order. The Learned Magistrate is directed to take note of the gross income of the petitioner on the basis of average calculation from the income tax returns during last three financial years. On the basis of such finding the Learned Magistrate shall consider dispassionately and in an objective manner the quantum of maintenance which the opposite parties are entitled to get from the petitioner.

Entire course of action shall be completed by the Court below within two months from the date of communication of this order.

I am not unmindful of the fact that the opposite parties have not prayed for any interim maintenance. Therefore, without prejudice to the rights and contentions of the parties that may be raised at the time of final hearing of MC Case No. 76/2020, the petitioner will go on paying a sum of Rs.35,000/- per month in favour of the opposite parties as lump sum amount of interim maintenance.

Before I part with I must record a note of dissatisfaction in respect of certain orders passed by the Learned Magistrate in the record of MC Case No. 76/2020. As for instance, it is pointed out that the present petitioner moved in revision being CRR No. 429/2022 before this Court challenging an order passed by the Learned Magistrate in Misc Case No. 76/2020. The Hon'ble Jay Sengupta, J. admitted the said revision vide order dated 16.02.2022 with a liberty to the petitioner to pray for an adjournment of the proceeding before the Trial Court on the next date fixed for hearing, i.e. on 18.02.2022. The petitioner prayed for adjournment being armed with above-mentioned order passed by this Court on 18.02.2022 in the Court below. The Learned Magistrate allowed the prayer for adjournment with a cost of Rs. 2,000/- to be paid by the petitioner observing, *inter alia,* that there is no specific order of stay as regard to the instant Misc. Case.

I am surprised to note as to how the Learned Magistrate imposed cost for granting an order of adjournment when liberty was granted by this Court.

It is needless to say that justice should not only be done but it must seem to have been done. The order dated 18.02.2022, *prima facie,* shows that dispensation of justice seemed to be a one way traffic for the Learned Magistrate. Therefore, this Court reminds her to dispense with justice, not only this proceeding but all judicial proceeding pending before her, in a dispassionate and impartial manner so that the order-sheet does not reflect any semblance of part performance of judicial function.

With the above observation and with the *bona fide* expectation that a Judge imparts justice to both the parties who come before him/her in a fair manner, the instant revision is **disposed of**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 04.