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February
21, 2022
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C.R.R. No.1881 of 2019
(Via Video Conference)

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

Nargis Parvin
Versus
Mokbul Hossain & Anr.

Mr. Pratip Kumar Chatterjee,
Mr. Sabir Ahmed.
...for the petitioner.

Mr. S.S. Imam,
Mr. Sandip Kundu.
...for the State.

Mr. Asraf Ali,
Mr. S.S. Arefin,
Ms. Sreejoyee Bose.
...for the opposite party no.1/husband.

Learned advocate for the petitioner submits that the learned Magistrate while passing the order on 28.03.2018 did not incorporate in the said order that the maintenance allowance which was awarded was to be paid from the date of filing of the application which is against the statutory mandate of Section 125 of the Code of Criminal Procedure.

Learned advocate appearing for the opposite party no.1/husband submits that the learned Magistrate prior to arriving at his conclusion observed that "having considered the income of the O/P, needs of the petitioner and her minor daughter as well as status of both parties, I think Rs.8,000/- per month for the

petitioner would be sufficient as maintenance from the O/P”.

According to the learned advocate, there is no minor daughter of the opposite party for which she is entitled to pay. Although the ordering portion do not reflect the same, yet as pointed out by the learned advocate appearing for the opposite party no.1/husband, the said contentions cannot be brushed aside. According to the learned advocate the quantum was decided by the learned Magistrate on the belief that the maintenance was being awarded for two persons, that is, the wife and the minor daughter, but if somebody do not exist, the learned Magistrate cannot take into account by awarding the quantum. Learned advocate has also submitted that he preferred an application under Section 127 of the Code of Criminal Procedure before the learned Magistrate for pointing out such illegality.

On the other hand, Mr. Sabir Ahmed, learned advocate appearing for the petitioner submits that an execution case is pending, as till date substantial amount has not been paid.

Learned Magistrate is directed to expedite the proceedings. Till the application under Section 127 of the Code of Criminal Procedure is decided by the learned Magistrate, the opposite partyno.1/husband, who happens to be a Government servant, would continue to pay a sum of Rs.8,000/- per month.

With the aforesaid observations, CRR 1881 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.)