

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 2001 of 2019

With

CRAN 1 of 2020 (Old CRAN 859 of 2020)

Smt. Archana Jaiswal

-vs-

Sri Harish Chandra Jaiswal & anr.

For the Petitioner	: Mr. Siddhartha Sarkar : Mr. Hirak Roy
For the Opposite Party	: Mr. Dhiraj Trivedi : Mr. Shailendra Kumar Mishra : Mr. Bikash Kr. Singh
Heard on	: 15.6.2022
Judgment on	: 20.06.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order no. 22 dated 11.4.2019 passed by the learned Principle Judge, Family Court, Calcutta in Misc. case no. 14 of 2016, the present revisional application has been preferred.

2. The petitioner's contention is that the petitioner was married with the opposite party and due to said matrimonial relationship, the petitioner gave birth of one male child namely, Pratik Jaiswal on 8.10.1998. Further allegation of the petitioner is that since marriage, the petitioner was subjected to serious

physical and mental torture by the opposite party at the instigation and active participation of her in laws and for which the petitioner initiated one application under Section 125 of the Code of Criminal Procedure. The said application was heard and disposed of on 17.10.2012, directing the opposite party to pay a sum of Rs. 5,000/- (Rupees five thousand) only per month to the petitioner/wife and Rs. 4,000/- (Rupees four thousand) only per month for her son. On 18.3.2016, the opposite party initiated one application under Section 127 of the Code of Criminal Procedure, 1973 being Misc. case no. 14 of 2016 praying for modification of the aforesaid order dated 17.10.2012 in maintenance case no. 54 of 2003 by releasing the opposite party from paying maintenance amount of Rs. 4,000/- to the son who has attained majority. After hearing the learned Principal Judge, Family court allowed the application and the order dated 17.10.2012 passed in Misc. case no. 54 of 2003 was modified to the extent that the petitioner is no longer entitled to maintenance on account of her son since November 2015.

3. By the impugned order dated 12.6.2019 in Misc. execution case no. 65 of 2016, the executing court observed that record reveals that the petitioner has received amount of Rs. 4,000/- per month as maintenance for her son knowing well that the minor son attained majority on and from 18.10.2015, though she is not entitled to any maintenance for her son since November 2015 on account of attaining majority of her son, Pratik Jaiswal and considering all these aspects, the application dated 20.3.2018 was disposed of by the court below with a direction that the excess amount of Rs. 95,000/- paid by the opposite

party to the petitioner be adjusted with the arrears amount claimed by the petitioner/wife.

4. Learned counsel for the petitioner submits that the father had paid the said maintenance amount to his son's welfare and as such he cannot claim for return of the said amount and accordingly, the said order dated 12.6.2019 is required to be set aside and if the amount of Rs. 95,000/- is adjusted from her arrear maintenance amount, it will be very difficult for her to meet up her day-to-day expenses.

5. Section 125 is enacted for social justice and specially to protect women and children, within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Section 125 of the Code gives effect to the natural and fundamental duty of a man to maintain his wife and children. Having considered the same I find that the impugned order passed on 12.6.2019 calls for interference. This is also because admittedly the alleged excess amount was paid by the husband/opposite party to his son and accordingly, the said amount if any, paid in excess, as awarded by court, then that should not have been adjusted with the maintenance amount awarded to the petitioner/wife. The opposite party in his affidavit-in-opposition has annexed a copy of affidavit wherefrom it appears that the said, Pratik Jaiswal is presently employed as a daily sales consultant and earning Rs. 24,000/- per month.

6. In view of above, the revisional application being CRR 2001 of 2019 is allowed. The impugned order dated 12.6.2019 passed by learned Principal

Judge, Family court, Calcutta in Misc. execution case no. 65 of 2016 is hereby set aside.

7. However, this order will not preclude the opposite party to recover the excess amount if any, from the said son namely, Pratik Jaiswal.

8. CRR 2001 of 2019 along with CRAN 1 of 2020 (Old CRAN 859 of 2020) are accordingly disposed of.

There will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE)