

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 2170 of 2019

Smt. Ratna Roy

-vs-

Tapas Kumar Roy & Anr.

For the Petitioner : Mr. Apurba Kumar Dutta
Mr. Partha Banerjee
Mr. Kuntal Banerjee

For the Opposite Party No.1 : Mr. Sanjib Mitra
Mr. Rajesh Kumar Shah

Heard on : 26.7.2022

Judgment on : 29.07.2022

Ajoy Kumar Mukherjee, J.

1. The present application under Section 482 of the Code of Criminal Procedure has been preferred against the order dated July 20, 2019 passed by the learned Additional District and Session Judge, Serampore, Hooghly in connection with Criminal Motion No.4 of 2018 arising from the order dated April 9, 2018 passed by the learned Judicial Magistrate, 5th Court, Serampore, Hooghly in connection with the Misc. Case No.252 of 2017.

2. It has been contended by the petitioner that the petitioner filed an application under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate at Serampore, Hooghly for a direction upon the husband to pay a sum of Rs.30,000/- per month for her maintenance and the said application was registered as Misc. Case No.252 of

2017. In the said case an application for interim maintenance was also filed seeking a direction upon the respondent/husband to pay a sum of Rs.25,000/- towards monthly interim maintenance till main application for maintenance finally disposed of. The said application for interim maintenance was heard by the learned Judicial Magistrate and after considering the relevant materials and also taking into account the admission made by the opposite party no.1/husband that his monthly salary is Rs.65,000/-, the learned Judicial Magistrate, 5th Court, Serampore vide order dated April 9, 2018 was pleased to allow the said application for interim maintenance directing the opposite party no.1/husband to pay a sum of Rs.12,000/- per month to the petitioner towards interim maintenance by the 10th day of every month, till the disposal of maintenance case.

3. Being aggrieved and dissatisfied with the said interim order passed by the learned Judicial Magistrate, 5th Court, Serampore, the opposite party no.1/husband preferred a revisional application before the Court of learned Additional District and Sessions Judge, 1st Court, Serampore, Hooghly who modified the said order dated April 9, 2018 with a direction to the petitioner/husband to pay interim maintenance to the tune of Rs. 5,000/- per month from 09.04.2018 i.e. the date of order passed by the Trial Court.

4. It has been contended by the petitioner/wife that the learned Additional District and Sessions Judge, Serampore, Hooghly by interfering with the interlocutory order without any just cause revised the order dated April 9th, 2018 passed by the learned Judicial Magistrate, 5th Court, Serampore, Hooghly in connection with Misc. Case No.252 of 2017 and thereby reduced the amount of interim maintenance to the tune of Rs.5,000/- from Rs.12,000/-.

5. It has been further contended by Mr. Apurba Kumar Dutta, learned counsel appearing on behalf of the petitioner that learned Additional District Judge, Serampore, Hooghly illegally interfered with the order causing gross miscarriage of justice specially when the opposite party no.1/husband admitted that in the year 2015 his salary was Rs.65,000/- and as such, the opposite party no.1/husband is quite capable of paying a sum of Rs.12,000/- to the petitioner/wife towards interim maintenance.

6. Mr. Dutta further contended that it is true that Hon'ble High Court directed the opposite party no.1/husband to pay a sum of Rs.10,000/- in connection with a separate proceeding initiated under the provisions of Domestic Violence Act while disposing CRR 3062/2014 vide order dated 23.07.2015 and learned Magistrate while adjudicating the present application for interim maintenance under Section 125, taken the said amount under consideration for the purpose of allowing the interim maintenance by giving a clear finding therein and the interference by the learned Additional District and Session Judge, Serampore, Hooghly on the findings of the said order dated April 9, 2018 given by the learned Magistrate, reducing the interim maintenance to the petitioner/wife, is not warranted and the said order is perverse.

7. The learned Additional District and Session Judge while reducing the quantum of interim maintenance ought to have considered that the petitioner/wife is suffering from physical disorder due to post operation of fibroid in her uterus and due to such physical problem she needs adequate financial assistance and in the said backdrop reduction of interim maintenance is against justice and equity.

8. Mr. Dutta contended that the finding of the learned Additional District and Sessions Judge is that the opposite party/husband is paying interim maintenance in the said proceeding under Protection of Women from Domestic Violation Act, 2005 at the rate of Rs.10,000/- per month and if he is again directed to pay Rs.12,000/- per month in the present proceeding under Section 125 of the Code of Criminal Procedure at the interim stage then it would be certainly excessive. Such observation has been made without considering the issue and without giving any finding as to whether the opposite party no.1/husband has been paying the said amount to the petitioner/wife regularly or whether any arrear amount remained unpaid.

9. Mr. Dutta, learned Counsel on behalf of petitioner argued on law point also contending that order of granting interim maintenance being an interlocutory order Criminal Revision is not maintainable and Additional District Judge, Serampore should have rejected Criminal Motion 4/2018 as not maintainable. In this context he relied upon Allahabad High Court judgment in **Mohd. Shaqeel v/s. Smt. Ranno & Others** decided on 22.01.2020 in Criminal Revision 32/2020 and another judgment of Rajasthan High Court in **Vishal Kochar son of Shri Harish v/s. Smt. Pulkit Sahni** decided on 22.04.2022 in Criminal Revision Petition No. 462/2001.

10. Mr. Sanjib Mitra, learned Counsel appearing on behalf of the opposite party no.1, submits that the husband is regularly paying monetary relief in the proceeding under the Protection of Women from Domestic Violation Act, 2005 before the trial court at the rate of Rs.10,000/- per month and as such, learned Additional District and Sessions Judge, Serampore was justified in allowing Rs.5,000/- more in the present proceeding under Section 125 of the

Code of Criminal Procedure towards interim maintenance considering the income of the opposite party no.1/husband. He prayed that such order requires no interference.

11. Considered the rival contentions.

12. It appears that it was pointed out before the learned Magistrate in Misc. Case No.252 of 2017 that the opposite party no.1/husband is paying Rs.10,000/- per month in compliance with the order passed in the said case under Protection of Women from Domestic Violation Act, 2005 (PWDV Act) being No.57 of 2011 and the monthly income of the opposite party no.1/husband was also brought to the notice to the Court of learned Magistrate but without assigning any reason she directed opposite party no.1/husband to pay further Rs.12,000/- to the petitioner/wife towards interim maintenance including medical expenses. Accordingly, learned Additional District and Sessions Judge was justified in interfering with the order considering that the opposite party no.1 is already receiving Rs.10,000/- per month in terms of direction of the High Court in a separate proceeding. While deciding quantum of interim maintenance for the present case learned Revisional Court was justified in considering said amount of monetary relief of Rs. 10,000/- which the opposite party no. 1 paying in the proceeding under the PWDV Act.

13. In this context it is to be stated that case laws cited by the petitioner in support of the contention that Revisional application against interim order is not maintainable has got no relevance herein, firstly because petitioner should have agitated said point before the Revisional Court and secondly the question, whether an interim maintenance order is an interlocutory order, there are

conflicting opinion in this regard by various High Courts as has been pointed out by Allahabad High Court in **Mohd. Shaqeel (supra)** case.

14. Having considered the aforesaid facts and circumstances of the case and without touching the merit of the case, as the present application relates to an interim arrangement only, I find nothing to interfere with the order passed by the learned Additional District and Sessions Judge, 2nd Court, Serampore in Criminal Motion No. 4 of 2018.

15. However, following the ratio laid down in **Rajnesh v/s. Neha** (decided by Supreme Court on 04.11.2020 in Criminal Appeal No. 730/2020 arising out of SLP (Crl) No. 9503 of 2018) the learned Additional District and Sessions Judge and the learned Judicial Magistrate should have passed the order for interim maintenance from the date of filing of the petition instead of from the date of the order.

16. In view of the above, the order dated July 20, 2019 passed by the learned Additional District and Sessions Judge, 2nd Court, Serampore, Hooghly in Criminal Motion No.4 of 2018 is modified only to the extent that the husband/opposite party No. 1 herein will pay interim maintenance of Rs.5,000/- per month in the aforesaid Section 125 proceeding being Misc. Case No.252 of 2017 from the date of filing of the application, in addition to what has been ordered to be paid by the High Court in the proceeding under the Protection of Women from Domestic Violation Act, 2005 being Case No. 57/2011, till the disposal of the maintenance application and the arrear amount of such maintenance from the date of filing application, shall be liquidated by opposite party No. 1 by monthly installments within 31.03.2023.

17. Learned Judicial Magistrate, 5th Court, Serampore is further directed to dispose of the impugned maintenance application as expeditiously as possible preferably within a period of ten (10) months from the date of communication of the order.

18. CRR 2170 of 2019 is accordingly disposed of.

19. However, there will be no order as to costs.

20. 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.

(AJAY KUMAR MUKHERJEE, J.)