

03.11.2022
Item no.1.
Court No.35.
I.T

**C.R.R 1859 of 2015
and
CRAN 1 of 2015 (Old No. CRAN 3415 of 2015**

**Prasanta Roy
-Vs.-
Nupur Roy Biswas**

Mr. Ayan Bhattacharjee
Mr. Sharequl Haque

..... For the Opposite Party No.2

With

**C.R.R 2489 of 2015
and
CRAN 1 of 2015 (Old No. CRAN 2440 of 2015**

**Nupur Roy Biswas
-Vs.-
Prasanta Roy**

Mr. Ayan Bhattacharjee
Mr. Sharequl Haque

..... For the Petitioner.

Ld. Advocate appearing on behalf of the opposite party no.2 in CRR 1859 of 2015 is present. None appear on behalf of the petitioner. He is also representing the petitioner in CRR 2489 of 2015, in which case none is appearing for the O/PS.

It is submitted that the present revision case is listed together with the other one being CRR 2489 of 2015 and both are connected with each other. It is submitted further that the opposite party/wife in CRR 1859 of 2015 has filed the other revision case (CRR 2489 of 2015) and in both the cases the

impugned judgment of the court below dated 18th February, 2015 in Misc Case No.116 of 2009 is challenged.

Having being satisfied about the completion of service so far as CRR 2489 of 2015 is concerned and in view of absence of the petitioner in the present case both the connected matters are taken up together for passing necessary order.

On wife's behalf it is submitted that the impugned order is a non-speaking one and by dint of the same a paltry and insufficient amount of Rs.8000/- per month was awarded to the wife as maintenance, in a proceeding under Section 125 of Cr.P.C. That, the same is not even commensurate and coherent with the monthly income and standard of living of the husband. It is submitted that the husband being a government servant being employed with the Indian Railways and earning handsomely from his such avocation, is sufficiently capable to provide adequate maintenance to the wife.

On perusal of the husband's contentions on affidavit, it appears that he has also pleaded non application of mind by the Magistrate while passing the impugned order and non-consideration of the attending facts and circumstances of the case. He has pleaded the maintenance amount to the tune of Rs.8000/- per month to be exorbitant and beyond his capacity to pay.

The Magistrate by dint of his order dated 18th February, 2015 has disposed of wife's petition under Section 125 of Cr.P.C by directing the husband to pay a sum of Rs. 8000/- per month

as maintenance allowance to the wife from the date of the said order, i.e, 18th February, 2015. The Magistrate has also directed to pay a sum of Rs. 15000/- as litigation cost to the wife. Both the spouses are aggrieved of the said order and challenge the same by filing the present two revisions respectively, however, on different grounds.

As a matter the fact, it can be noted that the impugned order has been passed by the Magistrate upon evidence. Necessary ocular and documentary evidence were there before the court at the time of delivering the judgment. Needless to say however, that the parties have argued non-consideration of the same resulting into delivering of the alleged impugned judgment.

It is pertinent to note that at present there are well formulated guidelines governing the field are in this case, pursuant to the verdicts of the Hon'ble Apex Court, regarding determination of the amount of maintenance allowance payable under Sections 125 of Cr.P.C. It is profitable in the circumstances to note the directions and guidelines given by the Hon'ble Supreme Court in the case of Rajnesh vs Neha & Anr., reported in (2021) 2 SCC 324, by dint of which the Hon'ble Apex Court has structured the criteria to arrive at a just decision as regards maintenance payable in a case like this. Definitely at the relevant point of time when the impugned order was passed in 2015, there was no such direction of the Hon'ble Supreme Court in this regard as it is in Rajnesh's case. However, considering the specific facts and circumstances of the present

case where the income and capacity of the husband is disputed and also the eligibility of the wife is denied and disputed regarding her claim of maintenance in a proceeding under Sections 125 of Cr.P.C, it would be just and proper to embark upon the guidelines formulated in Rajnesh's case to come to an appropriate decision in this particular matter, between the said two parties. This shall serve the ends of justice, negating any possibility of discrimination or miscarriage of justice.

Therefore CRR 1859 of 2015 and CRR 2489 of 2015 both are disposed of with this common order by directing setting aside of the impugned order dated 18th February, 2015 passed by Id. Magistrate in Misc Case No.116 of 2009.

Ld. Magistrate is directed to consider wife's petition under Section 125 of Cr.P.C as pending and shall require the directions of the Hon'ble Apex Court as made in Rajnesh's case to be complied with duly and immediately by the parties by issuing appropriate order. He shall thereafter dispose off the said application of the wife under Section 125 of Cr.P.C, on the basis of the entire material available before it.

CRR 1859 of 2015 and CRAN 1 of 2015 (Old No: CRAN 3415 of 2015) With CRR 2489 of 2015 and CRAN 1 of 2015 (Old No: CRAN 2440 of 2015) both are disposed of with this common order, connected application in both the case, if any, are also disposed of.

Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)