

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. 2570 of 2021

With

I.A. No. CRAN 1 of 2022

Snigdha Mukherjee

Versus

Mr. Kalyan Mukherjee @ Kalyan Kumar Mukherjee

For the petitioner

: Mr. Navanil De,
Mr. Rajeshwar Chakraborty,
Mr. Srinjan Ghosh,
Mr. Subhrajit Dey

Hearing concluded on : 23/06/2022

Judgment on: 30/06/2022

Rai Chattopadhyay, J. :

- 1) The instant revision case is directed against the judgment and order dated 29.09.2020 passed by the Ld. Additional Sessions Judge Baruipur, South 24 parganas in Criminal Appeal No.8 of 2016. By dint of the same learned Trial Court has modified the order dated 24.10.2016 passed by the Ld. Judicial Magistrate, 1st class, Baruipur, South 24 Parganas in M.P Case No.21 of 2012 and T.R

Case No. 208 of 2012 to the effect that in place and stead of paying a sum of Rs.10,000/- as maintenance per month along with a further sum of Rs. 10,000/- p.m. as medical expenditure, the present opposite party would only require to pay the maintenance amount as directed and not the monthly medical expenditure.

- 2) Bereft of any unnecessary details the factual background necessary to be dealt with in this revision may be narrated that the petitioner is the wife of opposite party and they were married on 10.07.1985. Their marriage was registered as per provisions of Special Marriage Act, 1954. However the parties could not lead a peaceful conjugal life and the petitioner filed in the Trial Court her application/case under Section 12 of the Protection of Women from Domestic Violence Act, 2005, being registered as M.P Case No.21 of 2012. The said M.P Case No.21 of 2012 ended in the judgment by the learned Magistrate dated 24.10.2016, by dint of which the opposite party/husband was directed to pay a sum of Rs.10, 000/- per month to the petitioner towards her maintenance and also a further sum of Rs.10, 000/- per month for medical expenditure of the petitioner who has been suffering with the terminal decease like cancer.
- 3) The present opposite party was aggrieved by such judgment and order dated 24.10.2016 of the Magistrate and challenged the same in an

appeal in the court of Addition District and Sessions Judge, Baruipur, South 24 Paraganas being Criminal Appeal No.8 of 2016.

- 4) Petitioner in this revision has put forth her specific ground regarding her grievance as to the way the appeal proceeded in the court and according to her, her vital rights to defend the case has been jeopardised and also her right to be heard has been prejudiced, insofar as the court while passing the judgment under challenge in this revision has proceeded without knowledge of the petitioner and also without giving her an opportunity of being heard.
- 5) Certified copy of the order sheets of the learned Trial Court of the Criminal Appeal No.8 of 2016 have been referred, from which it transpires that the learned Trial Court on 03.12.2019 has recorded appearance of the parties and fixed a date for hearing of the case on 13.01.2020. On 13.01.2020 again the appearance of the parties was noted and the date was fixed on 05.03.2020 for hearing the appeal and filing written argument. It is shown from the order dated 05.03.2020 that the court has again recorded the appearance of the parties and fixed another date on 18.04.2020 for the same purpose. However, from the order dated 18.04.2020/30.07.2020, it transpires that the Ld. Trial Court has taken up the record and fixed a date, that is, 19.08.2020 for delivering judgment. It appears from the said order sheets that during the period from 05.03.2020 to the date of that

order, the case record could not be taken up by the court as per schedule, due to the suspension of work in court at the wake of the pandemic due to spread of Corona Virus. Ultimately judgment was pronounced by the Trial Court on 29.09.2020. It is found from the certified copy of the order sheets that though the court earlier noted the case to be fixed for hearing of appeal and submission of written argument by the parties, ultimately before delivering judgment, neither presence of any of the parties was noted by the Trial Court nor the fact that any of the parties could file their written notes of arguments before the court as was directed earlier.

- 6) In the judgment as impugned the Ld. Additional Sessions Judge allowed the appeal of the husband in part and modified the judgment of the Magistrate dated 24.10.2016 to the extent that he would not be required to pay the amount of Rs.10,000/- per month towards medical expenditure of the present petitioner wife.
- 7) The petitioner whose specific case has been that she was devoid of any independent earning and also that she has been subjected to domestic violence and that for years she has been suffering with cancer, now seeks an order from this court for redressal of her grievance.
- 8) It appears from record that vide order dated 23.12.2021, this court directed the petitioner to effect service upon the opposite party by

speed post with acknowledgement due and to file the affidavit-of-service. The affidavit-of-service has been filed and kept with the record. Though there is no 'acknowledgement due' attached with the same, I have considered the track report of the postal department and find endorsement regarding delivery of article at the destined address and thus hold the service to be a 'good' one. However when the matter is called on for hearing none appears on behalf of the opposite party/husband in spite of due service of notice.

- 9) In this case, the opposite party/husband has not disputed the factum of matrimonial tie with the present petitioner, either in the Ld. Magistrate's Court or before the first Appellate Court. Both the parties were represented in the court of Ld. Judicial Magistrate though during pendency of the appeal the pandemic set in, resulting into suspension of regular work in all courts in West Bengal. These caused certain irregularity in hearing of the case as per the courts diary and ultimately, as it is submitted and duly corroborated by the order sheets of the Ld. Trial Court, that, the impugned judgment was delivered without affording any opportunity of hearing to the present petitioner. No doubt, there is nothing before this court to confront or challenge the fact that the petitioner who has been contesting for her statutory rights has been deprived of being heard and the opportunity to place her argument in the Trial Court. This in my considered

opinion, calls for a remedial order from this court and I find that the instant revision case is legible to be allowed.

10) Hence, C.R.R No.2570 of 2021 is allowed. The impugned judgment of the Ld. Additional District & Sessions Judge, Baruipur, South 24 Parganas in Criminal Appeal No.8 of 2016 dated 29.09.2020 is hear by modified to the extent that the finding of Ld. Trial Judge that *husband is not required to pay the further amount of Rs.10,000/- per month towards medical expenditure of the wife* is set aside. The case is remanded back to the court of the Ld. Additional Session Judge Baruipur South 24 Parganas with the direction that the Criminal Appeal No.8 of 2016 which was pending before it be restored to its original file and be heard and disposed of by dint of a reasoned judgment on the point as mentioned above, after affording opportunity to both the parties to be heard and/or to submit written notes of argument. It is further directed that in the meantime the opposite party/husband shall continue to pay the sum of Rs.10,000/- per month as was directed by the Judicial Magistrate, 1st class, Baruipur, South 24 Parganas in M.P Case No.21 of 2012, and affairmed by the first appellate court in the impugned judgement, to be paid towards maintenance of the petitioner in accordance with the terms specified, without any departure.

11) C.R.R No.2570 of 2021 along with all connected applications are thus disposed of.

12) There shall be no order as to costs.

13) Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Rai Chattopadhyay, J.)