

07-06-2022
Subha
Item no.83
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2671 of 2021

In the matter of : **Smt. Sarmistha Santra**petitioner.

In Re : An application under Section 401 read with Section 482 of the Code of Criminal Procedure.

Mr. Ayan Basu
Mr. Sourav Bera
Mr. Sumit Routh

.....for the petitioner.

Mr. Kallol Mondal
Mr. Partha Sarathi Basu
Mr. Krishan Roy
Mr. Souvik Das
Mr. Anamitra Banerjee

....for the Opposite Party.

Affidavit of service so filed be kept with the record.

. Mr. Basu, learned advocate appears on behalf of the petitioner and is aggrieved by the quantum of maintenance of Rs.7,000/- awarded by the learned Magistrate.

According to the learned advocate, the petitioner is an Assistant Engineer of Indian Oil Corporation and a salary slip of the year 2010 was relied upon for the basis of the quantum of award of maintenance decided by the learned Magistrate.

Learned advocate further submits that the order of maintenance was passed in the year 2020 and as such it was incumbent upon the learned Magistrate to take into consideration the

subsequent development including the salary of the husband.

Mr. Mondal, learned advocate appearing on behalf of the husband/opposite party on the other hand submits that the contention of the wife was that the husband was earning Rs.18,000/- when the application under Section 125 of the Code of Criminal Procedure was filed, in course of evidence it has surfaced that an amount of Rs28,000/- was earned by the husband. The learned Magistrate relying upon such evidence fixed the quantum of award.

In view of the evidence available before the learned Magistrate while passing the final order in an application under Section 125 of the Code of Criminal Procedure, the quantum/award has been fixed, I do not find that the order so passed was illegal.

However, in proceedings under Section 125 of the Code of Criminal Procedure, there are changing circumstances and such change is based on the needs of the claimant, the cost index and obviously if there has been an enhancement in the earning of the husband/opposite party. These are change of circumstances and the provisions under Section 127 of the Code of Criminal Procedure incorporates such change of circumstances which are to be brought to the notice of the jurisdictional court for a change in the quantum.

In view of the aforesaid, I grant liberty to the wife to take out an application under Section 127 of the Code of Criminal Procedure before the learned Magistrate. If the wife is unable to substantiate her foundation of claim by producing any documentary evidence in support of the present salary of the husband, the learned Magistrate would direct the same designated officer who appeared

earlier in the case to produce the present salary receipt by the husband and thereafter decide the quantum in accordance with law.

With the aforesaid observations, the present revisional application being CRR 2671 of 2021 is disposed of.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby vacated.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]