

20.09.2022

BMJR

Item no. 35

Ct. No.35

CRR 3126 of 2016

Ajit Das @ Ajit Kumar Das
Vs.
State of West Bengal & Anr.

Mr. Ajay Debnath For the petitioner

The petitioner is the husband of O.P No.2 who has filed the present application under Section 482 of the Code of Criminal Procedure with the prayer that the order dated 8th September, 2016 passed by the Sessions Judge, Maldah, in Crl. Revision No.40 of 2016 may be set aside.

The petitioner is aggrieved with the impugned order on the ground that an amount of interim maintenance to the tune of Rs.2000/- per month as was granted by the learned trial court, was enhanced abruptly by the Sessions Judge without considering the relevant fact like income of the petitioner, his status etc., to the tune of Rs.8000/- per month, while allowing the revision case preferred before the Sessions Judge by the present O.P no.2/wife.

It is stated that the petitioner husband is owner of a small shop and earning a paltry income therefrom. It is further stated that the petitioner has got no capacity to pay Rs.8000/- per month to his wife as interim maintenance.

On perusal of the document submitted in Court it is found that notice has already been served upon both the opposite parties

but neither the State nor the opposite party no.2 is represented today before the Court at the time of hearing.

Finding the service to be a good service, the matter is taken up for delivering the order.

The marital relationship between the parties is not denied in this case. It appears that a complaint case was filed before the Chief Judicial Magistrate, Maldah, on the basis of which Maldah Police Station Case No.263 of 2012 dated 01.08.2012 under Section 498A/496 of the Indian Penal Case was started. Opposite party No.2 has also preferred a case under Section 125 of the Code of Criminal Procedure before the Judicial Magistrate, 2nd Court, Maldah. The Magistrate has passed an interim order in the said case allowing an amount of Rs.2000/- per month as interim maintenance to the present opposite party No.2/wife. The said order of the Magistrate was challenged in a revision before the learned Sessions Judge and the learned Sessions Judge by dint of the impugned judgment dated 08.09.2016, allowed the revision and directed the present petitioner to pay enhanced amount of interim maintenance to the tune of Rs.8000/- per month to the wife.

After scrutinizing the judgment impugned in this revisional application, it is found that the Sessions Judge after discussing the facts and on the ground that the husband has not denied such facts as brought in by the present O.P No.2/wife before the Court has found that the husband has “substantial income”.

No doubt I am in concurrence with the submissions made on behalf of the petitioner that finding as above of the Sessions

Judge is bereft of any reason or supporting document which might have been filed before the Court.

At this stage of interim maintenance, there would not have reasonably been any substantive material before the Court to come to a definite finding as to the income of the parties. Assessment of “substantial income” of the present petitioner, is only a guess work by the court, not even specifying the amount of the same. Therefore, considering the vagueness of the process of making decision by the first appellate court, the findings of the impugned judgment appear to be not tenable in the eye of law.

The facts and circumstances prompt this Court to interfere into the impugned order and modify the monthly maintenance amount to be paid to the opposite party/wife to the tune of Rs.4000/- per month, instead of Rs.8000/- granted by Sessions Judge in the impugned judgment.

With this direction and without otherwise interfering with the points on merit, this revisional case is disposed of. Since it is found that the case under Section 125 Cr.P.C was filed in the year 2011, I am inclined to request the trial court to expedite hearing of the matter as far as practicable. The mode of payment as envisaged in the impugned order shall remain as it is.

Urgent certified copy of this order be supplied to the parties, if applied for.

(Rai Chattopadhyay, J.)