

03.02. 2022
item No.31
n.b.
ct. no. 34

(via video conference)
CRR 3569 of 2019

Abhishek Bhattacharyya
Vs.
Sananda Bhattacharyya(Chatterjee)

Mr. Sourav Chatterjee,
Mr. Saikat Mondal,
Ms. Subhasree Patelfor the Petitioner

Mr. Ranadeb Sengupta,
Mr. Sanchit Talukdar
.....for the Opposite Party.

The subject matter of the revisional application relates to the judgment and order dated 30.8.2019 passed by the learned Sessions Judge, Bankura in Criminal Revision No.42 of 2018.

The said revisional application was preferred by the wife who was aggrieved by the final order passed in the proceeding under Section 125 of the Code of Criminal Procedure in connection with Misc. Case No.89/2016 (T.R. No.14 of 2016). The learned Judicial Magistrate, 6th Court, Bankura in the main application under Section 125 of the Code of Criminal Procedure was pleased to award maintenance only to the minor daughter namely, Abhisikta Bhattacharyya, however, by the said order, the Learned Magistrate refused to grant any maintenance in respect of the wife namely, Sananda Bhattacharyya (Chatterjee). The Learned Sessions Judge, Bankura in the revisional application accepted the evidence on record and modified the order of the learned Magistrate to the

extent that the wife, Sananda Bhattacharyya (Chatterjee) was entitled to maintenance and directed to pay a sum of Rs.7,000/- (Rupees Seven Thousand Only) per month from the date of the order passed by the Learned Magistrate.

Mr. Sourav Chatterjee, learned advocate appearing for petitioner/husband before this Court has filed a supplementary affidavit enclosing the evidence which was adduced before the Learned Magistrate in course of trial.

Mr. Sengupta, learned advocate appearing for the opposite party submits that there are arrears so far as the wife is concerned. According to him, the instruction which he has received is that there is delay in payment of dues.

Mr. Sourav Chatterjee, learned advocate appearing for petitioner/husband disputes such contention.

However, if an execution application is filed before the Learned Magistrate relating to the dues the learned Magistrate will dispose of the same in accordance with law at the earliest.

I am dissatisfied with the maintenance proceedings as the evidence has been recorded in this case by way of an affidavit which is nowhere available in the procedural law. Such affidavits can not be accepted as a substitute of evidence on dock. The contradicting materials which are appearing in evidence is because of the fact that the lady was not on dock before the Learned Magistrate and it was the lawyer's draft which was accepted as gospel truth. In fact, the affidavit was not affirmed in a proper manner. Such Notarial affidavits are not to be followed in respect

of provisions under the Code of Criminal Procedure until and unless the statutes specifically provide.

In view of the aforesaid, the Learned Magistrate is directed to freshly take evidence of all the witnesses who deposed before the Trial Court in course of trial. The Learned Magistrate would commence the trial de novo and will be at liberty to take into account the judgment of the Hon'ble Supreme Court in the case of Rajnesh Vs. Neha & Anr reported in (2021)2 SCC 324 for assessing the quantum. After the evidence is over, the Learned Magistrate will be at liberty to deliver a fresh judgment on the materials so adduced.

As an interim measure till the proceedings before the learned Magistrate conclude, the husband would go on paying a sum of Rs.14,000/- (Rs.7,000/- to the wife and Rs.7,000/- to the minor daughter) from the date of the order i.e. 03.10.2018.

Needless to state that the subsequent quantum which would be fixed by the Learned Magistrate, if at all, would be on the affidavit of assets which would be filed by the respective parties in consonance with the judgment of the Hon'ble Supreme Court referred to above. The quantum which has been spelt out by this Court is an interim measure. Learned Magistrate will be at liberty to arrive at an independent finding which may be either in excess of the amount or may not be for paying any amount.

Accordingly, the judgment and order dated, 30.08.2019 passed by the Learned Sessions Court in Criminal Revision No.42/2018 is set aside, as also the judgment and order dated

03.10.2018 passed by the Learned Judicial Magistrate, 6th Court, Bankura is also set aside.

With the aforesaid directions, CRR 3569 of 2019 is partly allowed.

All pending connected applications, if any, are consequently disposed of.

Learned Registrar (Judicial Service), High Court, Calcutta is directed to send communications to the Learned Magistrates conducting proceedings under Section 125 of the Code of Criminal Procedure to the effect that the evidence of the parties cannot be and should not be accepted by way of notarial affidavit, and the same should be physically on dock.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)