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February
23, 2022
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C.R.R. No.3495 of 2017
(Via Video Conference)

In Re: An application under Sections 397/401/482 of the Code of
Criminal Procedure, 1973;

Bhaswati Mallick
Versus
Subrata Mallick & Anr.

Mr. Joyjit Roy Choudhury.
...for the petitioner.

Mr. Imran Ali,
Ms. Debjani Sahu.
...for the State.

Mr. Baidurya Ghosal,
Mr. P. Sinha Roy,
Ms. A Dutta.
...for the opposite party no.1.

Affidavit-of-service so filed by the learned advocate for the
petitioner be kept with the record.

Learned advocate for the petitioner draws the attention of
this Court to a document issued by the employer of the
husband/opposite party no.1. According to the learned advocate
appearing for the petitioner, the salary which was drawn by the
husband/opposite party no.1 was not known to the petitioner and,
as such, she could not satisfy the court regarding the quantum of
maintenance to be awarded. It has further been submitted that the
maintenance amount which has been awarded is not commensurate
with the status of the husband who draws salary of Rs.93829.25/-
per month as is reflected from the document issued on 04.10.2017.

Learned advocate appearing for the opposite party

no.1/husband denies such submission of the petitioner and intends to contest the same.

In view of the submissions which have been advanced by the learned advocate for the petitioner, I grant liberty to prefer an application under Section 127 of the Code of Criminal Procedure citing the non-availability of the document at the relevant point of time when the maintenance was awarded by the learned Magistrate or modified by the learned sessions court. Learned Magistrate after considering the authenticity/genuineness of the document or further evidence if required in connection with the said document would be at liberty to award maintenance, which appeals to the conscience of the court and is commensurate with the earnings of the husband.

With the aforesaid observations, CRR 3495 of 2017 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)