

CRR 3769 of 2019
(Via video conference)

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

In the matter of : Smt. Rupashree Mukherjee
.....Petitioner

Mr. Amitava Ghoshfor the Petitioner

Mr. Somnath Gangopadhyay
Mr. Rahul Singhfor the opposite party no. 2

The revisional application being CRR 3769 of 2019 was preferred challenging the order dated 19th October, 2019 passed by the learned Judicial Magistrate, 3rd Court, Barrackpore, North 24 parganas in connection with the Misc. Case no. 352 of 2018.

As the present petitioner happens to be the wife and similar application was preferred by the husband being the opposite party no. 2 herein before the learned Sessions Court, a coordinate bench of this Court by an order dated 30.6.2021 was pleased to call for the records of revisional application no. 53 of 2020 pending before the learned Additional Sessions Judge, F.T.C. III, Barrackpore, North 24 parganas. Both the revisional applications are taken up for consideration by this Court.

Mr. Ghosh, learned advocate appearing for the wife submits that the learned Magistrate failed to take into account the actual earning of the husband and awarded a paltry sum of Rs. 7,500/- per month towards interim maintenance. Learned advocate also submits that without assigning any reason,

learned Magistrate has ordered that such maintenance is to be paid from the date of the order.

On the other hand, Mr. Gangopadhyay, learned advocate appearing for the opposite parties, emphasized for production of the lower court records. His main contention is that the wife is having substantial earning which is more than that of husband and as such she is not entitled to any maintenance. Learned advocate also submits that the parameters considered by the learned Magistrate for awarding maintenance, are against the settled principles of law as learned Magistrate has grossly ignored the documents relied upon by the husband opposite party and arrived at his finding.

I have perused the order passed by the learned Magistrate and the materials considered by him. The purpose of interim maintenance is with the object of allowing an applicant to face the trial of the case with a relief to sustain herself during the pendency of the proceedings and interim maintenance do not decide the final rights regarding the quantum of the maintenance which is for the trial Court to decide after whole of the evidence has been placed.

In this context, different documents were tendered by either parties, the learned Magistrate only took into account the basic document relating to the income tax return of the husband as the foundation arrived at the quantum to be awarded by way of interim measure.

In view of the yardstick/parameters considered by the learned Magistrate for disposing of an application for interim maintenance, I am of the opinion that no interference can be

made at this stage for either enhancing the quantum of maintenance or reducing the quantum of maintenance. So far as the order of quantum of maintenance passed by the learned Magistrate is concerned, the same is hereby affirmed.

However, I find that the learned Magistrate directed that such quantum of maintenance is to be awarded from the date of passing of the order which according to me, is without any special reasons as is required by the statute. As such the said part of the order is set aside and it is directed that the husband would pay such amount of interim maintenance from the date of filing of the application.

Consequently, CRR 3769 of 2019 is partly allowed.

This order will cover the criminal revision no. 53 of 2020 which was pending before the learned Additional District and Sessions Judge, F.T.C. III, Barrackpore, North 24 parganas.

Interim order, if any, is hereby vacated.

Pending application, if any, is consequently disposed of.

The learned trial Court is directed to expedite the progress of the trial.

All parties are to act on the server copy of this order duly obtained from the official website of this Court.

(Tirthankar Ghosh, J.)