

21.09.2022

Piya (PA)

Sl no.1

Ct no. 30

CRR 3867 of 2019

Sri. Soumendu Ray

Vs.

Smt. Manasi Ray & Anr.

Ms. Shahina Haque

.....for the Petitioner.

Mr. P.K. Banerjee

Ms. Indrani Nandi

.....for the O.P. No. 1.

Mr. P. Bhattacharrya

.....for the State.

The revisional application has been preferred against an order and judgment dated 19.08.2019 passed by the learned Sessions Judge, Bankura in Criminal Revision No. 39 of 2018 enhancing the monthly maintenance allowance to the extent of Rs. 8000 and Rs. 6000 per month respectively.

The Criminal Revision no. 39 of 2018 preferred before the learned Sessions Judge, Bankura was against an order dated 29.09.2018 passed by the learned Judicial Magistrate, 5th Court, Bankura in Misc. Case no. 56 of 2015 under Section 125 of the Code of Criminal Procedure allowing the said application against the opposite party husband and granting the petitioner wife therein and their child minor daughter

maintenance allowance of Rs. 6000 and Rs. 4000 per month respectively.

The wife/opposite party no. 1 filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance of Rs. 12,000 for herself and Rs. 8000 for her minor daughter before the Trial Court. The case of the wife O.P. No. 1 is that she is the legally married wife of the petitioner. The mother of the petitioner instigated the petitioner and they together mentally and physically tortured the wife/O.P. no. 1. A girl child was born to them but the demand of dowry continued. Unable to meet the said demand she was ousted along with her minor daughter on 21.04.2015 from her matrimonial home and since then is living with her daughter in her paternal house, having no source of income and is totally dependant upon her father. The minor child is physically disabled. The petitioner husband works as a Senior Manager with Telco Company and earns a salary of Rs. 60,000 to 70,000 per month. The petitioner/husband appeared before the learned Magistrate and finally the Judicial Magistrate, 5th Court, Bankura allowed the application under Section 125 of the Cr.P.C. granting a sum of Rs. 6,000 and Rs. 4,000 respectively to the O.P. No. 1 wife and minor daughter.

Being aggrieved, the petitioner/husband preferred the Criminal Revision no. 39 of 2018 against the said order of the Magistrate. The learned Sessions Judge by a judgment dated

19th August, 2019 which is under revision here considered the matter. The petitioner husband in his examination in chief before the learned Sessions Judge admitted that he works at I.S.W.P. Company as Senior Manager and not with Telco Company. No pay slip was filed either before the Trial Court nor before the Sessions Court and on considering the materials on record, the evidence adduced by both sides and other materials on record, the learned Sessions Judge was pleased to allow the revisional application filed by the wife praying for enhancement of maintenance amount as granted by the learned Magistrate. The revision was allowed in part and the learned Sessions Judge modified the order of the learned Judicial Magistrate, 5th Court, Bankura and allowed the prayer for enhancement by granting a sum of Rs. 8,000 and Rs. 6,000 respectively as maintenance to the petitioner and her daughter.

Against the said order of enhancement, the present revision has been filed stating that the husband petitioner herein has filed a matrimonial suit being no. 345 of 2017 before the Principal Judge, Family Court at Jamshedpur, Jharkhand under Section 13 of the Hindu Marriage Act against the O.P. no. 1 praying for a Decree of Divorce and the said suit is still pending. It is the further case of the petitioner husband that the O.P. no. 1 wife has also filed a case under Section 23 (2) of the Protection of Woman from Domestic Violence Act, 2005 being Misc. Case No. 03 of 2018 pending before the Judicial

Magistrate, 4th Court, Bankura. It is the case of the petitioner husband that the O.P. wife refused to stay with his parents after marriage at Durgapur and he stayed for work at Jamshedpur. The O.P. wife then started staying with the petitioner husband at Jamshedpur and always threatened the petitioner with false criminal case and divorce. That his wife O.P. No. 1 always misbehaved with his parents and left for her parental home and when the petitioner went to bring his wife and child back he was mercilessly assaulted. The petitioner husband also filed a suit under Section 9 of Hindu Marriage Act for restitution of conjugal rights and due to intervention of family friends the O.P. wife came back to stay with the petitioner at Jamshedpur. The petitioner husband got his daughter treated for her disability by taking care of all the expenses but the relationship between the petitioner and his wife did not improve and the petitioner filed a case before the learned Additional Chief Judicial Magistrate, Jamshedpur. There are several cases and counter cases between the husband and wife in this case. The petitioner's husband's case is that he earns only Rs. 23,000 to 26,000 per month and that he being the only son, his parents suffering from age related diseases are solely dependant on him. It is stated that the O.P. wife is a graduate and trained in computer courses and is earning minimum amount of Rs. 15,000 per month as private tutor.

On perusal of annexure 'N' it is seen that a sum of around Rs. 23,000 is shown as credited to the account of the petitioner husband on the second/third of each month. It is the case of the petitioner that the said amount credited to his account is his salary and as such the said enhanced amount is causing serious hardship to run his family which includes his aged ailing parents.

Admittedly the minor child of the parties is physically disabled and stays with the wife/mother of the child. The O.P. wife has to look after herself and her child and from the records it is seen that it could not be proved that the O.P. wife has a source of income. Considering all materials and facts and circumstances and the medical condition of the child, the learned Sessions Judge rightly allowed the prayer for enhancement. Considering the amount to which the maintenance has been enhanced for the mother and child, this court finds no reason to interfere with the said order. It is well settled principle of law that an able bodied person has the responsibility and the liability to look after his family which includes his parents, wife and children. It is for him to ensure that his family members are able to lead a decent life style. The amount of maintenance granted by the learned Sessions Judge is bare minimum for a person to sustain for a month and as such the said amount is not being interfered with by this court.

In case the petitioner husband and O.P. wife approach the appropriate forum in future, they may be directed to file their affidavit of assets for proper consideration and adjudication of their respective prayers.

At this stage this court finds no reason to interfere with the order under revision and accordingly the revision being **CRR 3867 of 2019 is accordingly dismissed** on contest.

There will be no order as to costs.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)