

17-01-2022
Subha
Item no. 35
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
(Via video-conference)

C.R.R 1377 of 2020
with
IA No. 1 of 2020
with
IA No. CRAN 2 of 2021

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

In the matter of : Gita Biswas. ...Petitioner.

Mr. Sujoy Chakraborty
Ms. Shaswati Bhattacharjee
....for the petitioner.

Mr. Subhas Chandra Sarkar
..... for the opposite party/husband.

The subject matter of challenge in this revisional application relate to an order passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Barrackpore in Criminal Appeal No. 23 of 2019, wherein the learned appellate court was pleased to dismiss the appeal and affirm the order dated 27.06.2019 passed by the learned Judicial Magistrate, 5th Court, Barrackpore.

The grievance of the petitioner is two fold : Firstly, so far as the residential accommodation is concerned, the learned Magistrate did not consider the same and secondly, so far as the quantum which has been granted to the petitioner is a paltry sum compared to the status which the present petitioner should be entitled to, so far as her

husband is concerned.

Learned advocate for the opposite party/husband has filed an application including the salary statement of January, 2021 and submitted that the petitioner is trying to inflate the earnings of the husband and attempting to obtain an exorbitant amount of maintenance.

Learned advocate for the petitioner has drawn the attention of this court to a document(Pay slip of the opposite party/husband, i.e., Somenath Biswas for the month of January, 2021) relied upon by the opposite party/husband, according to him the document shows that the opposite party/husband is drawing basic pay alongwith allowances and is receiving gross pay/sum, approximately of Rs.65,000/-.

Having regard to such quantum which is being received by the opposite part/husband from his earnings which is a government employment, I am of the opinion that the quantum of maintenance of Rs.5000/- per month which has been awarded to the wife is not commensurate with the income of the husband.

The said amount is enhanced from Rs.5000/- per month to Rs.10,000/- per month which is in addition to the quantum of Rs.10,000/- which is being paid and already awarded for the maintenance of the minor daughter i.e., Rs.10,000/- per month.

I have perused the order of the appellate court and I find that the appellate court has not considered the relevant points either in favour of the petitioner or in favour of the opposite party/husband. There is no opinion expressed by the learned appellate court in respect

of the award of interim maintenance passed by the learned Magistrate.

This order of Rs.10,000/- per month to be awarded to the wife and Rs.10,000/- per month to be awarded to the minor daughter is by way of an ad interim measure during the pendency of the main proceedings of trial. As such, the learned trial court would independently come to a finding regarding the reliefs sought for and the rebuttable advanced by the respective parties.

At this stage, no order for residential accommodation is passed as there has been an observation made by the learned Magistrate that the lady is staying at her parental home. However, if evidence is adduced by the petitioner/wife in course of the trial, the learned trial court would appreciate the same for all practical purposes considering the ground reality attached to such prayer and its truthfulness.

It has also been submitted by Mr. Chakraborty, learned advocate appearing for the petitioner that there are huge dues.

Mr. Sarkar, learned advocate appearing for the opposite party/husband has also contested the issue.

I find that that a substantial amount has been paid by the husband but there are dues, which are subject to proof before the learned trial court.

If an execution case is preferred by the petitioner wife, the learned trial court would consider the same and dispose of the same within a reasonable period of time.

The petitioner/wife as well as the opposite party/husband are directed to present themselves on the next date fixed by the learned

trial court.

The learned trial court is directed to take steps for progressing with the trial from the next date. This would, however, not prejudice the execution case, if advised and is filed by the petitioner for which separate dates would be fixed.

With the aforesaid observations, the present revisional application being CRR 1377 of 2020 is disposed of.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, earlier passed, is hereby vacated.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]