

16-02-2022
Subha
Item-29
Ct -.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

(Via video-conference)

C.R.R 1823 of 2020

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

In the matter of : ***Sundar Ali Sheikh.*** ...Petitioner.

Mr. Sourav Chatterjee
Mr. Soumya Nag
Mr. Mahamaad Mamud

....for the petitioner.

Mr. Ayan Bhattacharyya
Mr. Sharequl Haque
Mr. Aditya Ratan Tiwari
Mr. Amitabrata Hait
Mr. Subhajit Manna

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

‘Vakalatanama’ filed by the opposite party no. 1 in court
be kept with the record.

The present revisional application was preferred
challenging the order dated 10.02.2020 passed by the learned
Additional Chief Judicial Magistrate, Kalna in connection with
Misc. Case No. 127 of 2017.

Mr. Chatterjee, learned advocate appearing on behalf of the
petitioner reiterated the submissions regarding applicability of the
provisions of Section 127 of the Code of Criminal Procedure in a
case where it had its origin under the Muslim Women (Protection of

Rights on Divorce) Act, 1986.

To that effect, learned advocate for the petitioner has taken the court to the initial proceedings, the orders passed by the learned Magistrate, subsequent challenge before the learned sessions court as well as the high court.

Additionally, it has been submitted that the subsequent judgement of this court in CRR 2709 of 2013 do not empower the Magistrate to stretch the provisions of law and forcefully apply the provisions of a different statute.

Mr. Bhattacharyya, learned advocate appearing on behalf of the opposite party no.1 supports the order passed by the learned Magistrate and submits that the application filed under Section 127 of the Code of Criminal Procedure is maintainable and the learned trial court has rightly held the same.

I have perused the judgment and order passed in CRR 2709 of 2013 wherein the plea of enhancement was canvassed by the wife/private opposite party herein which is set out as follows:-

“Thus, in view of the aforesaid discussion so long made, this court is satisfied that this petitioner is entitled to get maintenance from her ex-husband to the tune of Rs.2000/- per month as claimed by the petitioner from the date of filing of Misc. Case No. 98 of 2002. The prayer of Mr. Bhattacharyay that this court has power to enhance this amount from Rs.2000/- per month to any higher amount cannot be conceded by this court as there is no such prayer before this court and no such case was made out before the trial court.

However, the matter may be left open to be decided if any case for enhancement of the said maintenance is filed. It may be noted that the maintenance was claimed as back as in the year 2002 when the money value of Rs.2000/- was at least four fold compare to today's valuation."

The observations made by a co-ordinate Bench of this court have already attained its finality. Therefore, the argument advanced by the petitioner regarding the maintainability of Section 127 Cr.P.C is too technical as it has been held by the co-ordinate Bench that if the wife is able to reflect circumstances for enhancement, the learned Magistrate would consider the same.

Thus, the nomenclature under which the enhancement has been prayed for becomes redundant. This court is, thus, of the opinion that the wife is entitled to claim for enhancement and the maintainability of the enhancement has been settled.

So far as the quantum of enhancement is concerned, if at all, the learned court would consider the factual circumstances which has been placed before the court by way of an application or by way of a rebuttal by the husband/petitioner.

At this stage, Mr. Sourav Chatterjee, learned advocate for the petitioner submits that he may be allowed to file a written objection before the learned Magistrate which would be restricted to the issue of pleadings in the application under Section 127 Cr.P.C filed at the instance of the wife/opposite party herein.

In view of the observations made above, no interference is

called for in the order dated 10.02.2020.

Accordingly, the revisional application being CRR 1823 of 2020 is disposed of.

The written objection which has been prayed for before this court by the learned advocate for the husband/petitioner should be filed within a period of 60 days starting from 22.02.2022.

Reply, if any, be filed within a period of fortnight thereafter by the wife/opposite party herein.

The learned Magistrate would dispose of the application under Section 127 Cr.P.C by 20th May, 2022.

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

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

(Tirthankar Ghosh, J.)

With the aforesaid observations, the revisional application being CRR 1830 of 2020 is allowed.

Let the report submitted by the Inspector-in-Charge, Raghunathganj P.S, Jangipur P.D through the learned advocate for the State be kept with the record.

Interim order, passed herein, is made absolute.

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

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

[Tirthankar Ghosh, J]

