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IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

C.R.R 104 of 2022

In Re: An application under Article 227 of the Constitution of India;

Smt. Rinki Banik Dey
Versus
Ganesh Ch. Banik and others

Mr. Kallol Basu,
Mr. Bratin Kumar Dey,
Mr. Sanjay Mazoomdar,
Ms. Sukanya Adhikary.
...for the petitioner.

Mr. Aditi Shankar Chakraborty,
Mr. Arun Kr. Sarkar.
...for the State.

Mr. Subhasish Mishra,
Mr. Swarup Das.
...for the opposite parties.

Affidavit-in-opposition filed on behalf of the opposite parties and supplementary affidavit filed by the petitioner be kept with the record.

The grievance of the present petitioner is in respect of the order of the learned appellate court wherein the learned appellate court was pleased to set aside the order dated 18.02.2020 passed by the learned Judicial Magistrate, 2nd Court, Sadar, Cooch Behar, in Misc. Case No.115 of 2016.

Learned Judicial Magistrate, 2nd Court, Cooch Behar,

by its order dated 18.02.2020 directed the husband to pay maintenance of Rs.4,000/- per month to the wife/petitioner and Rs.4,000/- per month for the minor child aggregating to a sum of Rs.8,000/- per month. By the same order, the learned Magistrate was pleased to allow the medical expenses incurred for the purposes of treatment of the minor son to the tune of Rs.7,000/- per month. The appellate court refused to grant maintenance because of the fact that maintenance was received under the provision of Section 125 of the Code of Criminal Procedure. Therefore, the aforesaid observations of the learned appellate court is in gross ignorance of Section 20(d) of the PWDV Act. The casual manner in refusing to grant medical expenses to the minor son even after accepting that he is suffering disability is also in ignorance of Section 20(b) of the PWDV Act, 2005.

Having regard to the reason so assigned by the learned appellate court which was on the basis of assuming certain set of circumstances and not on the evidence adduced before the learned trial court, I am of the opinion that the impugned order is liable to be set aside. The judgment and order dated 11.4.2022 passed by the learned Additional District and Sessions Judge, Cooch Behar, in Criminal Appeal No.3 of 2020 is hereby set aside. Consequently, the order dated 18.02.2020 passed by the learned Judicial Magistrate, 2nd Court, Sadar,

Cooch Behar, in Misc. Case No.115 of 2016 is restored.

Thus, CRR 104 of 2022 is allowed.

Needless to state that there directions under Section 125 of the Code of Criminal Procedure for paying maintenance as also under the provisions of PWDV Act, 2005. Having regard to the settled proposition of law so far as the quantum of maintenance is concerned, the same should be given in any one proceeding obviously the higher amount should be considered and rest should be adjusted. So far as the medical expenses are concerned as directed above, the same must be paid on account of the minor son. If there are change of circumstances, the opposite parties would be at liberty to take out an application in supporting evidence before the learned Magistrate for alteration of the amount.

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.)

