

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 32 of 2019

Bhaskar Sehanabish

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Suman Sehanabis,
Ms. Atulya Sinha.

For the State : None.

For the Opposite Party : None.

Heard on : 13.02.2023

Judgment on : 15.03.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred against the Judgment and Order dated 15th March, 2018 passed by the Learned Additional Chief Judicial Magistrate in Misc. Case No. 17 of 2015 filed by the opposite party No. 2 i.e. the wife under Section 127 of the Code of Criminal Procedure.

The petitioner's case is that pursuant to an application under Section 125 of the Code of Criminal Procedure of the wife, the opposite party No. 2 and her son, a maintenance proceeding being M.R. 76 of 2009 was started before the Learned Court of Additional Chief Judicial Magistrate, Mathabhanga.

The petitioner being the opposite party in the said proceeding being Misc. Case No. 76 of 2009 filed his written objection denying all the material allegations and also specifically contending that not the petitioner and his family members but the wife i.e. the opposite party No. 2 herein used to misbehave with the petitioner and his family members since she was not willing to stay jointly at her matrimonial house.

On 30th May, 2012 the Learned Additional Chief Judicial Magistrate, Mathabhanga passed a Judgment/Order directing the petitioner to pay maintenance allowance of Rs. 5,000/- each to the

opposite party No. 2 and her son, total Rs. 10,000/- from the date of order.

Being aggrieved by and dissatisfied with the above Judgment and Order dated 30th May, 2012, the petitioner filed a revisional application before the Learned Additional Sessions Judge (newly created) Cooch Behar being Criminal Revision No. 43 of 2012 whereby the Learned Additional Sessions Judge (newly created) Cooch Behar modified the order directing the petitioner to pay Rs. 4,000/- per month to the opposite party No. 2 and Rs. 5,000/- to her son.

The opposite party No. 2 and 3 in the meantime filed an application before the Learned Additional Chief Magistrate, Mathabhanga under Section 127 of the code of Criminal Procedure being M.R. 17 of 2015 for enhancement of the maintenance amount.

On 15th March, 2018, the Learned Additional Chief Judicial Magistrate, Mathabhanga passed the judgment and order in M.R. 17 of 2015 **enhancing the maintenance amount to Rs. 5,000/- per month for the opposite party No. 1 i.e. the wife and Rs. 7,000/- per month to the opposite party No. 3 i.e. the minor son of the petitioner (total Rs. 12,000/- per month) from the date of passing of the order.**

It is further submitted that the opposite party No. 2 was/is working as School Teacher having monthly income of Rs. 10,000/- per month with huge additional income from private tuition.

On 5th April, 2016 the Learned Additional Chief Judicial Magistrate, Mathabhanga, Cooch Behar by the Judgment and Order in Misc D.V. Case 76 of 2012 directed the petitioner to pay a further sum of Rs. 3,000/- along with the maintenance of Rs. 10,000/- (modified in appeal to Rs. 4,000+ 5,000= 9,000/-) already ordered in maintenance proceeding being M. R. Case No. 76 of 2009 by the Learned Additional Chief Judicial Magistrate, Mathabhanga, Cooch Behar on 30th May, 2012.

Being aggrieved by and dissatisfied with the Judgment/Order dated 5th April, 2016 passed by the Learned Additional Chief Judicial Magistrate, Mathabhanga, Cooch Behar in Misc. D.V. Case No. 76 of 2012, the petitioner preferred an appeal before the Learned Additional District Sessions Judge, Cooch Behar being Criminal Appeal No. 15 of 2016 under Section 29 of the Protection of Women from Domestic Violence Act, 2005. The opposite party No. 2 herein also preferred an appeal before the Learned Additional District and Sessions Judge, Cooch Behar being Criminal Appeal No. 13 of 2016 challenging the same Judgment and Order of Learned Additional Chief Judicial Magistrate, Mathabhanga. On 18th July, 2018 the Learned Additional

Sessions Judge, 3rd Court, Cooch Behar dismissed the appeal of the petitioner being Criminal Appeal No. 15 of 2016 and allowed the Criminal Appeal being No. 13 of 2016 with a direction to provide further monetary relief of Rs. 7,000/- per month to the opposite party no. 2 and her son and to secure same level of alternate accommodation for the wife i.e. the opposite party No. 2 herein as enjoyed by her in the shared household or to pay rent for the same if the circumstances so required.

That being aggrieved by and dissatisfied with the above Judgments and Orders passed on 18th July, 2018 passed in both the appeals being Criminal Appeal No. 16 of 2016 as well as in Criminal Appeal No. 13 of 2016, the petitioner has already filed two revisional applications before this Hon'ble Court being C.R.R. No. 2779 of 2018 and C.R.R. No. 2778 of 2018 which are now pending before the Hon'ble Court.

The petitioner has been now imposed with huge liability of Rs. 12,000/- ordered in M.R. 17 of 2015 passed by the learned Additional Chief Judicial Magistrate, Mathabhanga in the application filed by the opposite party No. 2 under Section 127 of the Code of Criminal Procedure alongwith Rs. 7,000/- ordered in Criminal Appeal No. 15 of 2016 and Criminal Appeal No. 13 of 2016 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 alongwith a direction to pay rent for the

accommodation of the opposite party No. 2 wife. Total Rs. 19,000/- plus rent for the alternative accommodation of wife/opposite party no. 2.

It is submitted that the opposite party No. 2 herself was unable to adjust in her matrimonial house and with her aged ailing parents-in-law with the reason best known to her and constantly put pressure upon the petitioner husband for a separate mess which the petitioner being the only son did not agree leaving his parents alone. Result of which the opposite Party No.2 left her matrimonial house in the month of February, 2008 voluntarily and willfully. The petitioner tried his level best to get his wife and son back but failed, only thereafter the petitioner husband filed the Divorce suit and **the opposite party after lapse of 4 years lodged complaint against the petitioner under Section 498 (A) of the Indian Penal Code under Section 12 of the Protection of Women form Domestic Violence Act and the maintenance proceeding as well.**

The Learned Court while passing the impugned Judgment and Order on 15th March, 2018 enhancing the maintenance amount erred both in law and fact in failing to appreciate that the opposite party no. 2 is a School Teacher (Para-teacher) and earns sufficiently in as much as the pay scale of a para teacher has already been increased than earlier.

The Learned Trial Court as well as the Learned Appellate Court while passing their respective impugned judgments and orders erred both in law and fact in failing to appreciate that already the petitioner is paying the maintenance amount of Rs. 9,000/- to the opposite party No. 2 and her son pursuant to the order of the Learned Additional Sessions Judge (new created) Cooch Behar passed on 25th April, 2013 in Criminal Revision No. 43 of 2012 arising out of the judgment and order dated 30th May, 2012 passed by the Learned Additional Chief Judicial Magistrate, Mathabhanga in Misc. Case No. 76 of 2009 filed by the wife, the opposite party No. 2 herein under Section 125 of the Code of Criminal Procedure.

The petitioner also being a School teacher cannot bear the Rs. 4,000+Rs. 5,000+Rs. 3,000 (enhancement) + Rs. 7,000 (D.V. Act) huge liability of Rs. 19,000/- in total (Rs. 12,000/- from the order passed in the proceeding under Section 127 of the Code of Criminal Procedure and Rs. 7,000/- from the order passed in Criminal Appeal No. 15 of 2016) along with the liability of paying rent for accommodation particularly when the opposite party No. 2 is also a School Teacher.

The Judgment and Order dated 15th March, 2018 passed by the Learned Additional Chief Judicial Magistrate in Misc. Case No. 17 of 2015 filed by the opposite party No. 2 and 3 herein under Section 127 of the Code of Criminal Procedure is otherwise bad in law and liable to

be set aside and/or quashed, otherwise the petitioner will suffer irreparable loss and injury.

On perusal of the order of the Learned Magistrate, it is seen that the Court held that the husband is an Assistant Teacher of a High School and draws salary of Rs. 35,000/- to Rs. 36,000/- per month.

Thus the total amount of maintenance granted under various enactments to the wife of the son is as follows:-

- (i) Rs. 5,000+Rs. 5,000 (under Section 125 Cr.P.C.).
- (ii) Reduced to Rs. 4,000+ Rs. 5,000/- on appeal.
- (iii) Additional Rs. 3,000/- under Section 12 of D.V. Act.
- (iv) Additional maintenance of Rs. 7,000/- on appeal and counter appeal under Section 29 of the D.V. Act plus rent for alternate accommodation.
- (v) Enhancement under Section 127 Cr.P.C. of Rs. 4,000+Rs. 1,000 (Rs. 5,000) for wife and Rs. 5,000+Rs. 2,000 (Rs. 7,000) for the child.

Present total liability is Rs. 19,000/- as maintenance along with rent for alternate accommodation/residence.

Section 127 of the Code of Criminal Procedure, lays down:-

“127. Alteration in allowance.-

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly

allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a

[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance and expenses of proceeding, as the case may be,] the said order.”

The case of the petitioner/husband is that the wife is a para teacher.

No affidavit of assets and liabilities was called for from the parties, as per guidelines of the Supreme Court in **Rajnish vs Neha, Criminal Appeal No. 730 of 2020, on 04.11.2020**, while considering the prayer for enhancement.

As such the under Judgment and Order dated 15th March, 2018 passed by the Learned Additional Chief Judicial Magistrate in Misc. Case No. 17 of 2015 filed by the opposite party No. 2/wife under Section 127 of the Code of Criminal Procedure being not in accordance with law is liable to be set aside.

The financial status of parties, charges with passage of time, either for the better or worse. As such while considering a prayer/application for enhancement/reduction/modification the guidelines of the Supreme Court are to be applied, which would then meet the ends of justice.

CRR 32 of 2019 is allowed.

The Judgment and Order dated 15th March, 2018 passed by the Learned Additional Chief Judicial Magistrate in Misc. Case No. 17 of 2015 is hereby set aside.

Parties are at liberty to pray for enhancement/reduction /modification before the Trial Court which the Court shall dispose of in accordance with law.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)