

03.01.2023

Item No.29

Ct.No.34

dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 438 of 2021

Gopal Saha & Ors.

versus

Dipali Saha & Anr.

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Mrs. Karabi Roy ... For the Petitioners.

Petitioners are aggrieved by the order passed in Criminal Appeal No. 22 of 2019 wherein the learned Sessions Judge, Nadia was pleased to dismiss the appeal holding, *inter alia*, that after obtaining the interim order, the appellant was not participating in the proceedings before the appellate court. Criminal Appeal No. 22 of 2019 was preferred against the judgement and order dated 13.06.2019 passed by learned Judicial Magistrate, 5th Court, Krishnagar, Nadia in Misc. Criminal Case No. 25(IV) of 2016 wherein the learned court in a proceeding under Section 12 of Protection of Women from Domestic Violence Act, 2005 was pleased to allow the prayers relating to maintenance and for residential right in the shared household. By the same order, the learned Magistrate was pleased to restrain the husband/opposite party from committing any act of domestic violence or aiding or abetting in the commission of such acts of domestic violence upon the petitioners.

Mrs. Roy, learned advocate appearing for the petitioners submits that the appeal was not disposed of on merits, but on grounds which were beyond the control of the

present petitioners and especially during the pandemic. It has also been contended that the husband is also paying maintenance in a proceeding under Section 125 of the Code of Criminal Procedure and without adjustment of the amount, the wife is claiming separate amount in separate proceedings for maintenance which are endorsed by the courts below.

I have considered the submissions of the learned advocate appearing for the petitioners and I am of the opinion that the statutory appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 cannot be considered as a matter of right. It was incumbent upon the petitioners to pursue the appeal diligently. The appeal was preferred in the year 2019. There was interim order and subsequently the same was dismissed on 12.01.2021.

Having regard to the reasons so assigned by the learned Sessions Judge and the background in which the provisions of the Act were brought in force, I am of the opinion that no interference is called for in respect of the order relating to dismissal of the appeal. However, I find that in Misc. Case No. 247(iv) of 2016 in a proceeding under Section 125 of the Code of Criminal Procedure, the learned Judicial Magistrate, 4th Court, Krishnagar, Nadia was pleased to award of Rs.2000/- per month to the wife and Rs.2000/- per month to the daughter. In the present proceeding being Misc. Crl. Case No. 25(iv) of 2016, the learned Judicial Magistrate, 5th Court, Krishnagar, Nadia has observed that no document relating to maintenance under Section 125 of the Code of Criminal Procedure has been produced before the

said court and as such, awarded maintenance of Rs.2500/- per month to the wife and Rs.2500/- per month to the minor daughter aggregating to a sum of Rs.5000/- per month.

Taking into account the settled proposition of law, I am of the view that the husband/petitioner is entitled to adjustment of maintenance and is obliged to pay the higher amount in respect of the proceedings relating to maintenance. In case, the husband/petitioner pays Rs.5000/- in aggregate in respect of the proceedings under the provision of Protection of Women from Domestic Violence Act, 2005, the husband/petitioner is entitled to claim complete adjustment in the proceedings under Section 125 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 438 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)