

02-03-2023
Subha
Item. 38 to 40
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 302 of 2021

Shri Partha Bhatta
-versus-
The State of West Bengal & Ors.
With

CRR 305 of 2021

Shri Partha Bhatta
-versus-
The State of West Bengal & Ors.
With

CRR 477 of 2021

Dalia Bhatta
-versus-
The State of West Bengal & Ors.

Re : An application under Section 482 of the Code of Criminal Procedure.

Mr. Ankit Agarwal
Ms. Alotriya Mukjherjee
Ms. Sonal Agarwal
...for the petitioner in CRR 302 of 2021, CRR 305 of 2021 & O. P.
no. 2 in CRR 477 of 2021.

Mr. Aniruddha Bhattacharya
Ms. Ritwika Ghosh
Mr. Uttam Mukherjee
Mr. Oishik Chatterjee
.....for the O. P. No. 2 in CRR 302 of 2021, CRR 305 of 2021 and
petitioner in CRR 477 of 2021.

All the revisional applications being CRR 302 of 2021, CRR 305 of 2021 and CRR 477 of 2021 are taken up together and disposed of by a common order.

In CRR 302 of 2021, the husband has prayed before this court challenging the judgement/order dated 2nd September, 2020 passed

by the learned Sessions Judge, Hooghly in Criminal Motion No. 69 of 2019.

In CRR 305 of 2021, the husband has challenged the order dated 15th January, 2021 passed by the learned Judicial Magistrate, 3rd Court, Hooghly in M. C. Ex. No. 374 of 2019.

In CRR 477 of 2021, the wife challenged the order passed by the learned Sessions Court in Criminal Motion No. 69 of 2019 wherein the learned Sessions Court denied her any maintenance.

The learned Judicial Magistrate, 3rd court, Chinsurah in Misc. Case No. 403 of 2014 after analysis of the evidence was pleased to pass its judgement and ordered the husband/petitioner to pay Rs.10,000/- per month to the wife for her maintenance and Rs.10,000/- per month for the maintenance of the minor son aggregating to a sum of Rs.20,000/- per month from the date of filing of the application under Section 125 of the Code of Criminal Procedure being 19.11.2014.

The said judgement and order was challenged in Criminal Motion No. 69 of 2019 before the learned Sessions Judge, Chinsurah and the learned Sessions Judge by its order dated 2nd September, 2020 was pleased to hold that the wife was not entitled to maintenance. However, by the same judgement/order, the learned Sessions Judge was pleased to fix an amount of Rs.20,000/- per month towards educational expenses of the minor child under Section 125 of the Code of Criminal Procedure.

CRR 477 of 2021 has been preferred at the instance of the wife who is aggrieved by the order of the learned Sessions Judge dated

2nd September, 2020 in Criminal Motion No. 69 of 2019 wherein the learned Sessions Court set aside the order of maintenance which was awarded by the learned Judicial Magistrate.

Mr. Agarwal, learned advocate appearing for the petitioner in CRR 302 of 2021 and CRR 305 of 2021 submits that the petitioner is aggrieved by the enhancement of maintenance amount so passed by the learned Sessions Court in the revisional application, wherein the learned Sessions Court failed to take into account the earning capacity of the petitioner, his physical ability and the reasons which were assigned by the learned Sessions Judge while enhancing the quantum of maintenance from Rs.10,000/- so awarded by the learned Magistrate to a sum of Rs.20,000/- and that too which is supposed to be paid from 19th November, 2014, the date on which the application under Section 125 of the Code of Criminal Procedure was filed.

The second contention advanced by the learned advocate for the husband/petitioner was that an amount of Rs.9.5 lakhs was transmitted by the petitioner to the account of the wife, of which 9 lakhs was invested in fixed deposits and the said amount should be adjusted in respect of the quantum which has been awarded by the learned Magistrate and enhanced by the learned Sessions Court in respect of the maintenance awarded to the minor son.

The other two issues which are canvassed by the learned advocate are that the husband is paying EMI towards the flat which is an amount of Rs.17,500/- per month approximately, although he happens to be fifty per cent owner of the said flat and the said flat is enjoyed by the wife and the minor son.

Lastly, learned advocate submits that the nature of the evidence so adduced in the present case disentitles the wife from claiming any maintenance in view of the provisions of sub-section 4 of Section 125 of the Code of Criminal Procedure.

Mr. Bhattacharya, learned advocate appearing on behalf of the wife/opposite party in CRR 302 of 2021, CRR 305 of 2021 and for the petitioner/wife in CRR 477 of 2021 submits that there are huge arrears and the husband has been paying erratically for which the sustenance of the wife and the minor son and their regular expenditure was impossible. Major part of the period from 2014 onwards have been sustained by the wife by meeting the ends from the acquaintance and relations.

Additionally, it has been submitted that execution cases were filed for recovery of the amount which was awarded by the court.

It has further contended by Mr. Bhattacharya, learned advocate for the wife that if any amount which is disproportionate to the regular transactions taking place is reflected in the bank account of the wife, the same was because of the payment of the flat and the said amount had nothing to do with the regular expenses of the said quantum of money or enjoying the interest or usufructs of such quantum of money.

Both the learned advocates, however, do admit that since 2014 when the application under Section 125 of the Code of Criminal Procedure was filed at the instance of the wife, an aggregated amount of Rs.10,000/- was awarded to the wife and the minor son for their maintenance(Rs.6,000/- to the wife and Rs.4,000/- to the minor son).

There are no complaints regarding the amount till the final order was passed by the learned Magistrate. The Sessions Court in its order was of the opinion that the wife failed to prove that there was any willful negligence on the part of the petitioner or she was driven out from Delhi or from a joint flat at Keota and/or she was ever subjected to any negligence and, therefore, she was entitled to any maintenance.

For the limited purpose of ascertaining the reasons so assigned by the learned Sessions Court, I have considered the evidence from the perspective of the allegations made in the application under Section 125 of the Code of Criminal Procedure, the evidence of PW 1 as well as the OPW 1.

The three issues relating to willful negligence, driven out from Delhi and/or from the joint flat at Keota and/or subjected to any negligence, which has been held in favour of the husband and against the wife, do not appear to me to be commensurate with the evidence which is appearing in this case.

There are issues which are to be decided by the civil court and the criminal court while considering the sustenance/maintenance of a person is to consider the source of funds of sustenance of an individual which is the primary condition in a marriage where the parties are living separately and the wife and the child are entitled to maintain themselves or they have any source of income for sustaining themselves.

There may be proper cases where the said issue may come in but here the documents which have been placed, if considered, is a

reason given by the wife for the child to stay in the area and the said purpose has been shown for not going to Delhi.

The said reason cannot be thrown away by holding that without any justified reason, the wife refused to stay with the husband.

The word 'negligence' in the background of Section 125 of the Code of Criminal Procedure is to be considered in the anvil of regular sustenance of an individual. Mere providing of a flat or even of luxury equipments without providing the regular day to day necessities in cases, may call for interference by the court for providing maintenance in day to day life. .

There is nothing on record to show that the wife had a separate source of income from which she could have maintained herself. As such, the order of the learned Magistrate awarding maintenance to the wife and the child did not call for interference.

I also do not agree with the part of the order of the learned Sessions Judge that the amount which was awarded to the wife could be compensated by doubling the amount of the child. Each individual have their own needs to be considered in the day to day life.

Having considered the overall facts involved in the three revisional applications while include the grievance of the petitioner and the opposite party, I direct as follows:-

- a) As the wife and the child were receiving interim maintenance for the period from November, 2014 till 9th September, 2019 and there were no grievance regarding the quantum so expressed, I am of the opinion that there is no reason to saddle the husband with liability to

pay the enhanced amount of final maintenance of Rs.20,000/- (aggregate) from 2014. Accordingly, the part of the order of the learned Magistrate which directs the husband to pay quantum of maintenance from the date of the filing of the application is modified to the extent that the husband will pay the maintenance of an aggregated amount of Rs.20,000/- on and from 9th September, 2019 i.e., the date of the final order.

- b) The order of the learned Sessions Judge in Criminal Motion No. 69 of 2019 is hereby set aside.
- c) In addition to the amount of Rs.10,000/- so awarded to the son by the learned Magistrate additionally the education expenses relating to the school should be paid by the husband/father of the minor son. The said amount may be directly transmitted to the school or paid to the court from where the wife/mother may withdraw and reimburse the amount. The said expenditure to the school should be calculated from January, 2023. The same is not adjustable to any amount earlier paid towards the tuition fees/expenditure for the school in any manner whatsoever.
- d) For the purposes of calculation in execution case Rs.10,000/- per month should be the amount till September, 2019. From October, 2019 the amount per month should be Rs.20,000/- towards maintenance.

- e) The learned Magistrate will consider and quantify relating to the amount which may surface or may not surface in tune with the directions given above and thereafter issue process in the execution case. If an amount is quantified which is to be paid by the husband as dues, the same may be divided in four equal installments for payments to be diluted. To that effect, the amount which was paid by the husband pursuant to the directions passed by this court should be included and adjusted from the total quantum of the amount so decided.
- f) Mr. Agarwal, learned advocate for the petitioner intends to adduce evidence to prove that the sum of Rs.9.5 lakhs which was transmitted in the account of the wife was generated or transmitted from the account of the husband. Mr. Bhattacharya, learned advocate for the opposite party intends to adduce evidence to show that the said amount, if any, was paid for the construction of the flat which belongs both to the husband and the wife. If an application is taken out by the husband and rebutted by the wife, the learned Magistrate by way of an application under Section 127 of the Code of Criminal Procedure would entertain the same and decide the same in accordance with law.
- g) The warrant of arrest so issued in connection with Misc. Execution Case No. 374 of 2019 and all other execution

cases be stayed for a period of thirty days. Parties would appear before the court on 14th March, 2023 either personally or through their pleaders and present their respective claims and denials.

- h) Once the learned court finds that the husband is regularly participating and the quantification is done by 31st March, 2023, the trial Court will grant further thirty days to the husband to pay the first installment of the amount which are due, if any, and thereafter decide regarding the fate of the warrant.

With the aforesaid observations, the revisional applications being CRR 302 of 2021, CRR 305 of 2021 and CRR 477 of 2021 are disposed of.

Pending applications, if any, are consequently disposed of.

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]

