

12-09-2023
Subha
Item no. 19
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 1063 of 2023
With
CRAN 1 of 2023

Suman Patra
-versus-
Arpita Patra

Mr. Debasis Kar
Mr. Subhajit Chowdhury
...for the petitioner.

Mr. Shankar Mukherjee
Mr. Utsab Ganguly
...for the opposite party.

Mr. Kar, learned advocate for the petitioner has challenged the order dated 17th March, 2023 passed by the learned Judicial Magistrate, 5th Court, Serampore, Hooghly in number of execution cases which arose out of MC Execution Case No. 375 of 2016.

Learned advocate appearing for the petitioner submits that there were two cases, one under Section 125 of the Code of Criminal Procedure and the other under the provisions of Section 12 of the PWDV Act. The maintenance and monetary relief, which were granted are Rs.5000/- in the proceedings under the provisions of Section 12 of the PWDV Act and Rs.6000/- in the case of the provisions of Section 125 of the Code of Criminal Procedure.

Learned advocate submits that in spite of bringing it to the notice of the learned Judicial Magistrate, 5th court, Serampore, Hooghly who is in seisin of both the cases, no adjustment has been granted and the execution cases have been filed by adding the maintenance order passed in Section 125 of the Code of Criminal

Procedure as well as the monetary relief granted under the provisions of PWDV Act.

It is a settled proposition of law that an adjustment should be granted and the husband is entitled to pay only the higher amount.

Learned advocate for the opposite party has contested by submitting that the amount which has been awarded in both the cases are not commensurate with the earning of the husband who is working as Assistant Teacher in a government school/government aided school.

Be that as it may, the opposite party/applicant wife before the learned trial court will be at liberty to bring the same to the notice of the learned court so that the award is commensurate with the earning of the husband. However, with regard to the ambit of the present case which is before this court which are execution cases, I am of the view that the amount of Rs.6000/- which has been awarded being the highest amount all calculations in the execution cases must be made by taking Rs.6000/- as the amount. If there are dues/arrars they are to be paid by the husband. If there are excess payment, the adjustment is to be awarded in favour of the husband.

With the aforesaid observations, the revisional application being CRR 1063 of 2023 is disposed of.

The connected application being CRAN 1 of 2023 is accordingly 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]