

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 841 of 2019

Sri Subhas Ghosh

vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar.

For the State : None.

For the Opposite Party No. 2 : None.

Heard on : 25.04.2023

Judgment on : 18.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated January 31, 2019 passed by the Learned Additional Session Judge, Fast Track Court No. V at Barasat, North 24 Parganas in Criminal Revision No.196 of 2017.

2. The petitioner's case is that the opposite party no.2 being the complainant/petitioner filed a case under Sections 125 of the Code of Criminal Procedure, 1973 vide Maintenance Case No. 20 of 2016 in the file of the learned Judicial Magistrate, 1st Class at Bidhannagar, North 24 Parganas for grant of maintenance for herself and for minor daughter.

3. That the present petitioner appeared in the aforesaid maintenance case and filed his written objection disputing the case of the wife. The husband categorically made out the case that wife has a permanent source of income from a commercial vehicle owned by her plying in Kolkata and that she ran away from her matrimonial home owing to an adulterous relations.

4. By an order dated June 30, 2017, the learned Magistrate, partly allowed the application for interim maintenance by granting a sum of Rs.5,000/- per month for minor daughter and disallowed the prayer for interim maintenance for the wife/petitioner.

5. Being aggrieved by the order dated June 30, 2017 passed by the learned Trial Court in Maintenance Case No.20 of 2016, the petitioner/opposite party/wife herein filed a Criminal Revision being No.196 of 2017 before the learned District & Session Judge at Barasat. Subsequently, it was transferred to the Court of the learned Additional Session Judge, Fast Track Court No. V at Barasat for disposal.

6. The petitioner herein produced the relevant documents i.e. Contract Carriage Permit issued by the Government of West Bengal, Motor Vehicle Department to prove the fact that the wife has a permanent source of income from a commercial vehicle. The petitioner also brought on record certain unimpeachable evidence in support of his case that the wife ran away from her matrimonial home with another man.

7. The petitioner/husband states that by the order impugned the learned Additional District Judge erroneously modified the order dated 30.06.2017 passed in Maintenance Case No.20 of 2016 and erroneously granted

maintenance to the wife of Rs.3,000/- per month overlooking the materials available on record to the extent that she has a permanent source of income from the commercial vehicle owned by her.

8. **Mr. Prantik Ghosh, learned counsel for the petitioner** has submitted that the learned Judge erred in law and fact granting maintenance to the wife and as such the order impugned is required to be set aside.

9. **Mr. Ghosh** has further submitted that the order under revision is liable to be set aside as the same has been passed without considering the fact that the wife/opposite party has an independent source of income. The said order has caused serious miscarriage of justice to the petitioner.

10. **From the materials on record it is evident that:-**

- i) The opposite party/wife has an independent source of income and the learned Magistrate rightly refused to grant interim maintenance to her.
- ii) From the letter sent by the opposite party's mother to the West Bengal Commission for Women, which was then forwarded to the Officer-in-Charge, Women's Grievance Cell by the Commission, it is seen that the opposite party left the petitioner's house **without just and sufficient reason, as she was in an adulterous relationship.**

11. Considering the said prima facie materials on record, it is seen that the order under revision has not been passed as per the guidelines of the Supreme Court in ***Rajnesh Vs. Neha & Anr., Criminal Appeal No. 730 of 2020, On 4 November, 2020*** and is thus not in accordance with law.

12. **CRR 841 of 2019 is accordingly disposed of.**

13. The order dated January 31, 2019 passed by the Learned Additional Session Judge, Fast Track Court No. V at Barasat, North 24 Parganas in Criminal Revision No.196 of 2017, **is set aside being not in accordance with law.**

14. The learned Magistrate is directed to dispose of the application under Section 125 of Cr.P.C finally, following the guidelines of the Supreme Court in ***Rajnesh Vs. Neha & Anr. (Supra)*** and also allowing the parties to file their respective affidavit of assets and liabilities, expeditiously.

15. No order as to costs.

16. All connected applications stand disposed of.

17. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)