

19.04. 2023
item No.3
n.b.
ct. no. 551

CRR 965 of 2018

Saroj Kumar Tripathy
Vs.
The State of West Bengal & Ors.

Mr. K. Ghosal
... for the petitioner.
Mr. Abhra Mukherjee,
Mr. Sauradeep Dutta,
... for the respondent.
Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose,
.....for the State.

Learned advocate for the petitioner submitted photostat copy of receipt regarding payment of Rs.24,000/-at the Judicial Cashier, CJM Purulia. Let copy of the receipt be taken on record.

The wife namely, Jhuma Tripathy is at liberty to withdraw the said amount after performing the formalities from the learned Court below.

Today, the matter was heard at length.

Learned advocate for the petitioner submitted that the impugned order passed by the learned Additional Sessions Judge is improper and illegal. The order passed by the learned Magistrate also illegal. The plea of the present petitioner regarding the fact that the no domestic violence was caused, was not at all considered. He further contended that the facts and circumstances of this case would show that the present petitioner always try to live together as husband and wife but it is the wife/opposite party who was not ready at all to live together. He further pointed out

that the matrimonial suit filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rites was allowed in favour of the husband/petitioner instead of that the present opposite party did not come back. He again argued that the reconciliation process was effected during the proceeding before the learned Magistrate and the parties lived together as husband and wife. At this juncture, the present opposite party/wife left the society of the present petitioner voluntarily. Thus, the order of interim maintenance cannot be allowed to stand.

Learned advocate for the opposite party raised strong objection and submitted before this court that everything was considered by this Court for passing the order dated 29.3.2023. He again argued that the impugned order passed by the learned Additional Sessions Judge affirming the interim order of a Magistrate in a proceeding under PWDV Act is passed in very initial stage. At this juncture, before going into the merits of the pleadings of the parties, it would be proper for this Court to send back to the entire proceeding to the learned Magistrate for consideration. He again argued that the amount which was awarded in interim stage is very minimum. So it is not necessary to alter the award.

Heard the learned advocate perused the petition along with documents. I have also perused the order passed by the learned Magistrate in a proceeding under Section 23 of the PWDV Act 2005. The learned Magistrate while passing the order is only on view that present opposite party is as aggrieved persons who live separately and monetary relief is necessary under Section 22 of

the PWDV Act. Learned Additional Sessions Judge in passing impugned order affirmed finding of the learned Magistrate. I perused the order passed by the Additional Sessions Judge.

Considering the entire aspect, I find no illegality in passing the interim order passed by Learned Magistrate and affirming by the learned Additional Sessions Judge in Criminal Appeal No. 18 of 2016. Considering the entire aspect, I find no merit to entertain the prayer of the present petitioner.

Accordingly, the instant criminal revisional application is rejected and disposed of.

The instant proceeding is pending since long, learned Magistrate is directed to dispose of the proceeding as early as possible more preferably within four months from the date of receipt of this order.

I make it clear that this Court has not gone into merit of this case. So it is open to the learned Magistrate to consider the pleading of the parties on the basis of their respective oral and documentary evidences.

CRR 965 of 2018 is disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal revision is hereby also vacated.

Learned Magistrate is at liberty to pass necessary order, so that arrear amount of monetary relief be paid by the petitioner with some reasonable instalments to be fixed by the learned Magistrate according to the law.

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

(Subhendu Samanta, J.)