

02.05.2023

Court No.35
Item No. 30

D.Hira

CRR 1674 of 2016

**Smt.Sanchita Dutta (Sen)
Vs.
Sourendra Nath Sen & Anr.**

Ms. Afreen Begum,
Mr. Amit Ranjan Pati.

... for the petitioner

Mr. Saptarshi K. Mal,
Mr. Sounak Mukherjee.

... for the OP no. 1

In this case the petitioner has challenged the order of Judge, Special Court cum Additional District and Sessions Judge, Alipore dated 21.09.2015. The Trial Court has delivered the said order in Criminal Appeal No. 47 of 2015. The appeal was to challenge the order of the Magistrate dated 17.02.2015, in Complaint Case No. 1445 of 2011 under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

By dint of the order dated 17.02.2015 the Magistrate granted interim maintenance to the present petitioner to the tune of Rs.3,000/- per month.

Ms. Begum, learned Advocate appears for the petitioner and submits that the ground on which the First Appellate Court has dismissed the said order of the Magistrate dated 17.02.2015 was principally that the Court believed the present opposite party no. 1/husband to have advanced to the present petitioner, an one-time maintenance amount, to the tune of Rs.15,00,000/-.

In defiance of any such fact, as held by the Sessions Judge, in his order dated 21.09.2015, Ms. Begum has placed reliance to an order of this Court, dated 20.06.2022, in a proceeding for alimony between the parties. In C.O. No. 722 of 2019 this Court held in order dated 20.06.2022, that the finding of the trial Judge regarding the present

petitioner's receiving a sum of Rs.15,00,000/- is based on no evidence. The said case was related to alimony pendente lite, between the same parties.

She submits that the fact is otherwise than it was held by the Court and no such one-time maintenance amount of Rs.15,00,000/- have ever been remitted by the present opposite party no. 1 to the present petitioner. She says that her client has never been provided with any amount of maintenance by the opposite party.

Mr. Begum, learned Advocate has prayed on behalf of her client for setting aside the impugned judgment of the Sessions Judge dated 21.09.2015.

The Opposite party no. 1 is also represented.

It has been emphatically submitted that the petitioner having disharmonious and hostile relationship in her marriage with the present opposite party no. 1, has been manipulating and extracting money from him in other ways. In the guise of a settlement, she has duped the opposite party/husband for an amount of Rs.15,00,000/- taking advantage of development of his properties.

It has also been submitted that the Trial Court including the Civil Court has never awarded any amount of maintenance but only the litigation cost to the present petitioner.

Considered the documents available on record and also the submissions made by the respective parties. There is no cogent document available on record to show that any amount of Rs.15,00,000/-, as one-time maintenance, has ever been advanced by the present opposite party to the petitioner. Since we are dealing with the case between the parties under the provisions of the Protection of Women from Domestic Violence Act, 2005, this Court will not travel beyond considerations under the provisions made therein and issue order in terms of the said statutory provisions.

So far as the order to grant maintenance to the present petitioner, to the tune of Rs.3,000/- per month, is concerned, the order of the Magistrate appears to be well-reasoned and based on cogent materials. The reason propounded by the Sessions Judge, as stated above, to nullify the same, shall not successfully stand the tests of legality and propriety.

Therefore, the impugned order passed by the Sessions Judge appears to be based on wrong perspective as regards the facts of the case and erroneous grounds. The same is liable to be set aside.

Hence, the impugned order dated 17.02.2015 is set aside.

Let the present opposite party/husband continue to pay the maintenance amount as granted in Complaint Case No. 1445 of 2011 by the Magistrate from the date and in the manner as stipulated therein. The opposite party shall comply with the said order immediately, by paying the current amount of interim maintenance as well as the arrears thereof, as stand due, on the date.

Since this case is with regard to the interim order of the Court, findings of this Court in this order shall not influence the Trial Court while adjudicating the matter finally.

With the aforesaid observations, this revision is allowed and disposed of.

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

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)