

24.03.2023

Court No.35  
Item No. 56

D.Hira

**CRR 2057 of 2016**

**Suni Shit  
Vs.  
Purnima Shit & Anr.**

Mr. Soumyajit Das Mahapatra,  
Ms. Madhurai Sinha.

... for the petitioner

Petitioner in this case has challenged the impugned order dated 26<sup>th</sup> May, 2016 passed by the Additional Sessions Judge, 1<sup>st</sup> Court, Paschim Medinipur in Criminal Revision No. 715 of 2015. By dint of the same, the First Appellate Court, in a revision has modified the order of the Magistrate dated 18<sup>th</sup> November, 2015 passed in M.R. Case No. 97 of 2011 under Section 125 of the Code of Criminal Procedure.

The Magistrate directed the present petitioner to pay as maintenance, a monthly sum of Rs. 1000/- to the younger minor son of the parties, with effect from the date of the order till the date of the said son's attaining majority. The Additional Sessions Judge has modified the said order, by dint of the impugned order, to the effect that the petitioner shall remit a sum of Rs. 3000/- per month to the said son as maintenance, instead of Rs.1000/- and directed the same to be paid from the date of filing of the case under section 125 CrPC.

No one is appearing on behalf of the opposite parties in this case. Hence, the matter is taken up for disposal in absence of the opposite parties.

Mr. Das Mahapatra, learned Advocate for the petitioner has firstly submitted that the impugned order of the First Appellate Court dated 26<sup>th</sup> May, 2016 is beyond scope of the prayer of the opposite party no.1/wife in the Magistrate's Court, in so far as the First Appellate

Court has allowed a sum of Rs.3000/- as maintenance per month to the wife, whereas the wife/ opposite party no. 1 has prayed for maintenance of an amount of Rs.1,000/- per month in her case under Section 125 of the Code of Criminal Procedure, for her younger minor son.

Secondly, Mr. Das Mahapatra, learned Advocate submits that the First Appellate Court has not assigned any reason as to why the direction of the Magistrate for payment of such maintenance from the date of order has been modified by it to the effect that the payment of maintenance should commence from the date of filing of the case under section 125 CrPC.

According to Mr. Das Mahapatra, the order of the First Appellate Court, impugned in this revision, suffers from firstly non-application of judicious mind by the Court and secondly, is not maintainable being vague and unreasoned. He seeks this Court's interference to the same by setting aside the said order.

The opposite party no. 1/wife preferred M.R. case No. 97 of 2011 in the Court of Magistrate under Section 125 of the Code of Criminal Procedure. There she has prayed for maintenance from the present petitioner of an amount of Rs.2,000/- per month for herself and Rs.1,000/- per month for each of the minor sons, totaling an amount of Rs.4,000/- and also litigation cost of Rs.5,000/-. The Magistrate disposed of the said case vide order dated 18<sup>th</sup> November, 2015 directing the present petitioner to pay a sum of Rs.1,000/- in favour of one of the minor son of the parties and rejected the prayer for maintenance of the opposite party No. 1/wife and also the other son.

The Magistrate directed such sum of maintenance be paid with effect from the judgment dated 18<sup>th</sup> November, 2015. The Court also directed for payment of litigation cost to the tune of Rs.2,500/-. The said judgment of Magistrate was challenged by the present opposite party no. 1 in the Court of Additional Sessions Judge being Criminal Revision no. 715 of 2015. Though the First Appellate Court had not interfered into the finding of the Magistrate regarding rejection of the

prayer of opposite party no. 1/wife and that for one son of the parties, it had interfered into the finding of the Magistrate regarding maintenance amount of the other son, by fixing the sum to the tune of Rs.3,000/- per month, payable from the date of filing of the case under Section 125 of the Code of Criminal Procedure, till the date of his attaining majority.

Obviously, on consideration of the discussion as above, it appears that the impugned order so far as the quantum of maintenance allowed to the younger son of the parties, is concerned, is beyond the scope of prayer of the wife in her case under Section 125 of the Code of Criminal Procedure. On perusal of the impugned judgment no cogent reason could be seen upon which such decision of the Court is founded.

The Court, in the impugned judgment has also directed to remit such sum of money, with effect from the date of filing of the case. It is a settled law that while directing payment of maintenance, from the date of filing of the case, the Court has to assign specific reason for doing so. There should be a conscionable and justifiable ground regarding remittance of maintenance from a date earlier than the date of order to remit the same. However, in this case the impugned order is devoid of any such reason attributed by Court. To this extent the impugned order is a non-speaking one, not tenable in the eye of law.

Accordingly, it is found proper to interfere into the impugned order dated 26<sup>th</sup> May, 2016 passed by the Additional Sessions Judge, 1<sup>st</sup> Court, Paschim Medinipur in Criminal Revision no. 715 of 2015.

It is directed, in partial modification of the same, that the present petitioner shall pay an amount of maintenance @ Rs.1,000/- for the younger son till the date he has attained majority. Such payment shall be calculated from the date of the order by dint of which the Magistrate has disposed of wife's prayer under Section 125 of the Code of Criminal Procedure, that is 18<sup>th</sup> November, 2015.

Since it appears from the submissions made that the said younger son of the parties have already attended the age of majority,

therefore it is directed that the petitioner shall remit the entire maintenance amount as calculated in terms of this order, in three (3) equal installments, payable in the months of April, May and June, 2023, within 10<sup>th</sup> day of each month. Hence this revision is allowed.

With the above directions, CRR 2057 of 2016 is 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.

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CHATTOPADHYAY  
DHYAY

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**(Rai Chattopadhyay, J.)**