

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2187 of 2018****With****IA No. CRAN 1 of 2018 (Old No. CRAN 2907 of 2018)****IN THE MATTER OF****Lakshmi Paul.****Vs.****State of West Bengal & Anr.**

**For the Petitioner : Mr. Kollol Mondal, Adv.,
Mr. Krishan Ray, Adv.,
Mr. Souvik Das, Adv.,
Mr. Ayan Mondal, Adv.,
Mr. Samsheer Ansari, Adv.**

For the opposite Party : Mr. Pratip Kumar Chatterjee, Adv.,

Judgment on : 09.06.2023

Subhendu Samanta, J.

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure preferred against an order dated 2nd July 2018 passed by the Learned Additional Chief Judicial Magistrate Ghatal Paschim Medinipur, in connection with Misc case no. 97 of 2012.

The brief fact of the case is that the present petitioner is the wife of opposite party no. 2. Their marriage was solemnised

on 19th day of Falgoon 1404 BS, according to Hindu Rites and Customs. Out of wedlock between the parties one female child was born. The relationship between the parties became strained thus they are living separately. The petitioner being unable to maintain herself filed an application u/s 125 of Cr.P.C before the jurisdictional magistrate praying for maintenance for herself and for her minor daughter. The said proceeding was disposed of by the Learned Magistrate in favour of the petitioner on 28.02.2008 wherein the pay of maintenance to the tune of Rs. 1000/- per month for the petitioner and Rs. 6000/- per month for her minor daughter was awarded. Being aggrieved by the said order the present petitioner preferred a revision being no. CRR 1780 of 2008 before this Hon'ble Court. The said CRR was disposed by this Hon'ble Court directing the opposite party no. 2 to pay maintenance to the petitioner to the tune of Rs. 5000/- per month and 3000/- per month to her minor daughter. The opposite party no. 2 preferred an SLP before the Hon'ble Apex Court against the said judgment. However the Hon'ble Apex Court affirmed the order of the Hon'ble High Court.

The opposite party no. 2 deliberately did not pay the regular maintenance as well as the arrear maintenance to the petitioner consequently to met out the daily expenses for

herself and her minor daughter, the petitioner filed an application u/s 127 Cr.P.C. before the Learned Magistrate for enhancement of the amount to Rs. 15000/- and for herself and Rs. 15000/- for her minor daughter. The opposite party no. 2 contested the proceeding before the Learned Magistrate and the magistrate after hearing both the parties passed the impugned order and directed the opposite party no. 2 to pay the enhanced maintenance at the rate of Rs 6000/- per month for the petitioner and Rs. 5000/- per month for her minor daughter from the date of the order.

Hence this instant revision.

Learned Advocate for the petitioner submitted before this court that the award passed by the Learned Magistrate in response to the application u/s 127 Cr.P.C. is not justifiable. Learned Magistrate has failed to appreciate the facts and circumstances of this case and come to an erroneous finding. The Learned Magistrate did not consider the daily expenses of the present petitioner and her minor daughter for which there is a miscarriage of justice. The Learned Magistrate also did not consider the evidence on record regarding the income of the present opposite party no. 2 and passed an improper order. He argued that the present opposite party no. 2 is a Life Insurance Corporation Agent and regularly receiving a huge amount of

money as a commission. On the other hand present petitioner has no independent income moreover she has liability to maintain herself along with the daughter. At this juncture the meagre amount of maintenance award by the Magistrate need be set aside and enhanced.

Learned Advocate for the opposite party raise strong objection and submitted before this court that he is a Life Insurance Corporation Agent and earlier had received commission from the Life Insurance Corporation. Nowadays, after Covid 19 Pandemic his commission has been decreased, he is not a CM Club Member at present and he is only earning Rs. 147458/-(One lakh forty-seven thousand four hundred fifty eight) per year as commission. He further pointed out that the present opposite party no 2 has preferred a revision before the Learned Sessions Judge, wherein the Learned Sessions Judge has passed an order of directing the OP no. 2 to pay Rs. 5000/- each from the date of filing of application u/s 127 Cr.P.C. . It is further submission of the Learned Advocate for the opposite party no. 2 that nowadays it is not possible for him to pay maintenance to the present petitioner and her minor daughter as he has no sufficient means.

Heard the Learned Advocates perused the materials on record perused the certified copy of the impugned order. It

appears to me that the instant application for u/s 127 C.r.P.C was preferred in the year 2012. It was disposed of in the year 2017. During the course of proceeding before the Learned Magistrate some evidences were adduced of by the both the parties and it has been proved that the present petitioner has no sufficient means to maintain herself; it is also admitted fact that the present OP no. 2 is a Life Insurance Corporation Agent who used to earn more than Rs. 500000/- per year as commission. It has been also pointed out before the Learned Magistrate that before the time of final hearing i.e before the year of 2017 the OP had more income.

The application u/s 127 Cr.P.C was preferred by the destitute lady for enhancement of maintenance already awarded u/s 125 Cr.P.C. the Original maintenance so far as approved by the Hon'ble Supreme Court was Rs. 5000/- + Rs.3000/- =Rs. 8000/- in all. Admittedly at the year of 2012 the opposite party no 2 had more income than he was earning in the year 2017. Learned Magistrate has assessed the monthly income of OP no. 2 as not less than Rs. 44000/- per month at the time of final hearing. So considering the entire aspect and considering the materials on record it appears to me that the order of enhanced maintenance passed by the Learned Magistrate is not proper. The evidence of OPW 2 before the

Learned Magistrate signifies that the present OP no. 2 was not earning less than Rs. 60000/- per month. Considering the circumstances I think it necessary to modify the award passed by the Learned Magistrate.

The amount of maintenance passed by the Magistrate appears to be meagre one. It is not possible for a person to carry on his livelihood by such amount.

The Learned Magistrate also committed error by giving the effect of the award from the date of order. According to the direction of Hon'ble Apex Court in Rajnish Vs. Neha. The order of maintenance should be given effect from the date of the filing of the application.

Hence, I find merit to entertain the petitioner. The CRR is allowed. The impugned order is hereby modified to the effect that the enhanced amount of maintenance shall be Rs. 10,000/- each per month. The OP no. 2 is directed to pay the enhanced maintenance to the petitioner and her minor daughter to the tune of Rs. 10000/-each per month from the date of filing of application u/s 127 Cr.P.C.

Supplementary affidavit filed on behalf of the parties are taken on record.

Supplementary affidavit filed on behalf of opposite party no. 2 showing his recent income cannot be taken into

consideration at this stage as the proper redress is available with the jurisdictional Magistrate.

The supplementary affidavit on behalf of the petitioner is also considered and the order passed by the Learned Additional Sessions Judge in Criminal Revision- 371 of 2018 by virtue of the impugned order would be remain sub- silentio.

CRR is disposed of.

The OP 2 is directed to pay on enhanced monthly maintenance within 7 days of the each month and the arrears of maintenance should be paid within 02 months. Failing which the petitioner shall have liberty to recover the same through execution.

Connected applications if pending, are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)