

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. 2266 of 2018****With****IA No. CRAN 2 of 2020(Old No. CRAN 43 of 2020)****IN THE MATTER OF****Lakshmi Paul****Vs.****The State of West Bengal & Anr.**

**For the petitioner : Mr. Kollol Mondal, Adv.,
Mr. Krishan Ray, Adv.,
Mr. Souvik Das, Adv.,
Mr. Shamser Ansari, Adv.**

For the State : Ms. Baisali Basu, Adv.,

**For the Opposite Party : Mr. Pradip Kumar Chatterjee, Adv.,
Ms. Priyanka Saha. Adv.**

Judgment on : 16.01.2023

Subhendu Samanta, J.

This is an application u/s 401 read with section 482 of Criminal Procedure Code against an order on 09.07.2018 passed by the Learned Sessions Judge, Paschim Medinipur in Criminal Revision no. 371 of 2018.

The brief fact of the case is that the present petitioner is the wife and OP No. 2 is the husband. Their marriage was solemnized on 9th Falgun 1404 BS as per the Hindu Rites and Customs. There are torture upon the

petitioner at her matrimonial home consequently she left for her paternal house; one female child was born due to wedlock between the parties. One application u/s 125 Cr.P.C praying for maintenance for herself and her minor daughter was preferred by the present petitioner before the Learned ACJM Ghtal. The said proceeding was ended with an award of maintenance to the tune of Rs. 1000/- per month for the petitioner and Rs. 600/- per month for her minor daughter. This petitioner approached this Hon'ble Court with a revisional application being CRR No. 1788 of 2008 challenging the said order of maintenance. This Hon'ble Court vide the Judgment dated 24.06.2010 directed the opposite party No. 2 to pay maintenance to the tune of Rs. 5000/- per month for the petitioner and Rs. 3000/- per month for minor daughter. Against the said order of this Hon'ble Court OP No. 2 preferred SLP before this Hon'ble Court. However, the judgment of Hon'ble High Court had been affirmed by the Hon'ble Supreme Court. The amount of maintenance was not paid regularly by the OP accordingly several execution proceeding was filed by the present petitioner before the jurisdictional Magistrate.

It became difficult for the petitioner to maintain herself and her daughter due to the high rise of the daily expences. So, he filed an application u/s 127 of Cr.P.C. before the ACJM, Ghatal. However, Learned Magistrate has passed the final order in respect of proceeding u/s 127 CR.P.C. filed by the petitioner wherein the maintenance amount was enhanced at the rate of Rs. 6000/- per month to the petitioner and Rs. 5000/- per month to the minor daughter from the date of the order.

Being aggrieved by and dissatisfied with the said order, the OP No. 2 has preferred the revisional application before the Learned Sessions Judge, Paschim Medinipur being Criminal Revision No. 218 of 2017 praying for rejection of the amount of maintenance. Learned Sessions Judge, vide Judgment on 30th August 2017 has set aside the award passed by the Learned Additional Chief Judicial Magistrate, Ghatal and remitted the matter back to the Magistrate for fresh order.

Again the matter was taken up by the Learned Magistrate and after considering the entire matter and he again passed a final order on 02.07.2018 directed the opposite party No. 2 to pay monthly maintenance allowance of Rs 6000/- to the petitioner Rs 5000/- to her minor daughter from the date of filing of the application. The opposite party No. 2 again preferred a revisional application before the Learned Magistrate vide Criminal Revision No. 371 of 2018 along with an application for stay of order of ACJM Ghatal. On 09.07.2018 the matter was taken up by the Sessions Judge Paschim Midinipur and he passed the impugned order of staying operation the order Dated 02.07.2018 passed by the Learned ACJM Ghatal till disposal of the revisional application provided the OP No. 2 goes of making payment of 50% of the amount awarded. Hence this revision.

Learned Advocate for the petitioner submitted before this Court that the impugned order passed by the Learned Court below suffers illegality and impropriety. He further submitted before this court that the Learned Court below should have considered the entire matter before him before passing the impugned order. He again argued by passing the impugned order Learned Sessions Judge, has violated the order of the Hon'ble Apex court as well as the order of Hon'ble High Court. He pointed out that the award of maintenance towards the petitioner and her minor daughter was affirmed up to the Hon'ble Apex court to the tune of Rs 5000/- per month and Rs. 3000/- per month respectively, the said award cannot be set aside or reduced by the order of Sessions Judge. The 50 % of the awarded amount comes to Rs $[6,000 + 5,000 = 11,000 \times 50\%]$ 5,500 only while the maintenance was awarded by the Supreme Court totalling of Rs. $5,000 + 3000 = 8000/-$ per month. Actually the interim order of stay passed by the Learned Sessions Judge is violative to the direction of the Hon'ble Supreme Court. So, it is liable to be set aside. He prayed for setting aside the impugned order.

Learned Advocate appearing on behalf of the opposite party argued a length. He submitted that the impugned order passed by the Learned Sessions Judge, suffers no illegality. The order of maintenance was passed

in a proceeding u/s 125 Cr.P.C.. The order of Learned Sessions Judge was passed in a proceeding u/s 127 Cr.P.C. So there is no bar or any illegality in passing the impugned order by the Learned Sessions Judge. He again argued that application u/s 127 Cr.P.C. was filed for enhancement of maintenance amount. At the time of hearing several factors was placed regarding present income of the OP 2 but the Learned Magistrate has not considered the entire aspect and passed the award which was palpably illegal in the eye of law. He again argued the present opposite party No. 2 is the LIC agent. Before the time of Covid the opposite Party No. 2 had huge income from the interest of the collected LIC premiums. But due to Lock down the Payment of LIC premium became is very low. So, the income of the present petitioner was consequently lower to that of the earlier position. This mater was not considered by the Learned Magistrate in passing the award. Learned Sessions Judge, has considered the matter and reduce the award which is actually not barred in the eye of law. So he prayed for rejection of the Criminal revision.

Heard the Learned Advocates perused the materials on record, perused the impugned order passed by the Learned Court below. The argument of the Learned Advocate on behalf of the opposite party No. 2 regarding the issue that the proceeding u/s 125 Cr.P.C. and 127 Cr.P.C. are different, is not a correct submission. The application u/s 127 Cr.P.C. depends upon the award passed by a proceeding u/s 125 Cr.P.C. The provision of 127 Cr.P.C. is being initiated in changed circumstances to enhance/reduce the award passed in a proceeding u/s 125 Cr.P.C.

In this case the award in favour of the petitioner and her minor daughter was upheld up to the Hon'ble Apex court to the tune of Rs. 5000/- and 3000/- per month payable by the OP 2. The application u/s 127 of the Cr.P.C. was preferred by the petitioner for enhancement of that award. The amount of award which was affirmed up to Supreme Court, in any way, cannot be reduced in a proceeding u/s 127 of Cr.P.C.

The certified copy of award dated 02.07.2018 passed by the ACJM, Ghatal has clearly depicted the amount of maintenance was affirmed by the Hon'ble Apex Court.

In passing the impugned order Learned Sessions Judge, has failed to appreciate the facts and circumstances of this case. Thus, there is a miscarriage of justice. Learned Senior Judge did not at all consider even the certified copy of the award dated 02.07. 2018 and mechanically passed the impugned order.

The impugned order passed by the Learned Sessions Judge, in response to an application for stay filed by the OP 2 is appears to me illegal and improper. Thus it is liable to be set aside. I find merit to entertain the instant criminal revision and it is liable to be allowed.

CRR is allowed.

Impugned Order passed by the Learned Sessions Judge, on 09.07.2018 is hereby modified to the effect that the award of maintenance in response to the petition for stay of operation of the order of ACJM, Ghatal would be Rs 8,000/- (Rs. 5,000/- for petitioner and Rs. 3,000/- for minor daughter) per month. Learned Sessions Judge, is also directed to dispose of the revisional application pending before him as early as possible most preferably within 8 weeks from the date of receiving of this order.

CRR is disposed of.

Pending connected CRAN applications, if any, are also disposed of; order of stay if any, passed by this court during the continuation of this criminal revision is also vacated.

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.)

