

04.09.2023
Serial no. 16
[G.S.D]

CRR 2482 of 2023
With
CRAN 1 of 2023

In the matter of : Amarendra Singh

... .. Petitioner

Mr. Sandipan Ganguly
Ms. Priyanka Sarkar

... for the petitioner

Mr. Animesh Paul

... For the O.P. No.1

This revisinal application along with the application for Stay, are taken up together for final disposal.

Mr. Ganguly, Learned Senior Advocate, appearing for the petitioner draws the attention of this Court to the order passed by a Co-ordinate Bench of this Hon'ble Court in CRR 668 of 2019, wherein the order of the Learned Chief Judge, City Sessions Court, Calcutta, in Criminal Appeal No. 108 of 2018 was called in question. But the said appeal was under Section 29 of the PWDV Act. The Co-ordinate Bench after considering the pros and cons of the issues, which were addressed therein, came to a finding with a direction to pay interim monetary relief of Rs.5,000/- to the minor child and Rs.4,000/- to the wife/o.p. with other directions.

The present revisional application has been preferred challenging the order dated 30th May, 2023 passed by the Learned Additional Principal Judge, Family Court, Calcutta in Miscellaneous Case No. 05 of 2022 under the provisions of Section 125 of the Cr.P.C., wherein the Learned Judge was pleased to award the interim maintenance to the tune of Rs.10,000/- to the wife and Rs. 15,000/- to the school going child, aggregating to a sum of Rs.25,000/- per month to the child and the wife, with additional litigation cost of Rs.35,000/-.

Mr. Ganguly submits that the materials which were placed before the Court depicts the ailment of the present petitioner and the incapacity of the present petitioner to perform any job for the purposes of regular earning.

According to the Learned Advocate, the same was interpreted by the Family Court as a drug addicted person and thereafter finding was arrived at regarding the quantum so awarded.

Learned Advocate also submits that when the Hon'ble High Court in PWDV Act awarded the maintenance fixing a quantum and the same was brought to the notice of the Family Court, it could have been fit and proper in the circumstances, to take into account and assign reasons, as to why the amount which is more than the quantum, as settled by the Hon'ble High Court, is being awarded by the

Learned Family Court in a proceeding under Section 125 of the Cr.P.C, as interim maintenance.

Learned Advocate appearing for the O.P., on the other hand, disputes such contention.

Learned Advocate submits that the child presently is studying in a school at Class-II and there are educational expenses. The wife is bearing the expenditure and till the proceedings are taken to its logical conclusion, the evidence and the materials cannot be produced before the Court. The order which has been passed is by way of an interim measure.

I have taken into account the submissions advanced by both the parties. One of the initial objections taken up by Mr. Ganguly, Learned Senior Advocate for the petitioner, was regarding the maintainability of the proceedings under Section 125 of the Cr.P.C. In regard to that, I am of the opinion that the proceeding under Section 125 of the Cr.P.C. can be filed by the wife. Both the courts, the Court adjudicating the provisions of PWDV Act and the Court adjudicating the provisions under Section 125 of the Cr.P.C., can finally proceed and deliver their respective judgments, so far as the maintenance award and reliefs under the respective provisions are concerned the same are to be adjusted.

Obviously, higher quantum is to be paid by the husband in such cases. So far as the quantum is concerned, having regard to the totality of the circumstances, I find that there has been change of circumstances of the case. The case is under the provisions of PWDV Act and was filed in the year 2018 and the order has been passed in the year 2023. In the meantime, almost five years have elapsed and the child has grown up. Further, there is alteration in the cost/market price, as such, the amount which should be awarded for sustenance, must be commensurate both with the market price and the status of the parties.

Although, it has been contended on behalf of the petitioner that the petitioner, at present, is unable to work, but, at the relevant point of time, when the marriage took place, the representation shows that the petitioner was an employee of the Union Bank of India/Punjab National Bank.

Accordingly, I direct that the interim alimony so passed by the Learned Family Court be modified to the extent that so far as the interim alimony of the child is concerned, the same should be Rs.10,000/- per month and so far as the wife is concerned, it would be to the extent of Rs.7500/- per month, aggregating to a sum of Rs.17,500/- per month. The cost of litigation, at this stage, is kept in abeyance, which the Learned Court would impose at the time of delivery of final judgment of the case.

This being the higher quantum, the petitioner would either pay the additional sum along with the amount which is being paid before the Court adjudicating litigation under the provisions of PWDV Act, 2005 or, in the alternative, the petitioner can only pay in the Family Court the aggregated sum and produce the receipt before the Court adjudicating under the provisions of PWDV Act.

With the aforesaid observations, CRAN 1 of 2023 along with CRR 2482 of 2023 is disposed of.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court at Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)