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C.R.R. 2798 of 2023

In Re: An application under Section 482 read with Section 401 of the  
Code of Criminal Procedure;

Shyamapada Das  
Versus  
Binapani Das

Mr. Soumyajit Das Mahapatra  
Mr. Supriyo Das  
Ms. Madhurai Sinha.

...for the petitioner.

Mr. Navanil De  
Mr. Rajeshwar Chakraborty  
Mr. Srinjan Ghosh  
Mr. Subhrajit Dey  
Ms. Monami Mukherjee.

...for the opposite party.

Affidavit of assets and liabilities for non-agrarian  
deponent so submitted by the petitioner be kept with the record.

The subject matter of challenge in the present revisional  
application relates to judgment dated 12<sup>th</sup> May, 2023 passed by the  
learned Additional District and Sessions Judge, Paschim Medinipur  
in Criminal Revision No.51 of 2022 wherein the learned revisional  
court on an application made by the opposite party/wife was  
pleased to modify and enhance the award of maintenance to the  
extent that the petitioner/wife is entitled to get Rs.8,000/- per  
month towards the interim maintenance.

Learned advocate appearing for the petitioner has drawn  
the attention of this Court to the bank statement particularly with  
regard to the pension amount which is remitted which reflects

Rs.22,655/-. Learned advocate submits that the petitioner is aged 76 years and the wife has been staying separately for the last 15 years at the upper floor of the house. There is a son who maintains wife also but unnecessarily the present petitioner is foisted with such liability.

Learned advocate in order to substantiate his claim has relied upon the judgment of Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy reported in (2017) 14 SCC 200. Reliance has been made in respect of paragraph 15 of the said judgment which is set out as follows:

*“15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent wife pursuant to the liberty granted by this Court when the earlier order dated 2-2-2015 [Rita Dey Chaudhury v. Kalyan Dey Chowdhury, 2015 SCC OnLine Cal 10447] awarding a maintenance of Rs 16,000 to the respondent wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant husband was getting a net salary of Rs 63,842 after deduction of Rs 24,000 on account of GPF and Rs 12,000 towards income tax. In February 2016, the net salary of the appellant is stated to be Rs 95,527. Following Kulbhushan Kumar v. Raj Kumari [Kulbhushan Kumar v. Raj Kumari, (1970) 3 SCC 129], in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February 2016, the net*

*salary of the husband was Rs 95,000 per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs 23,000 to Rs 20,000 per month as maintenance to the respondent wife and son.”*

Reliance has also been made in respect of a reported judgment of Ananda Ganguly VS. Latika Ganguly reported in 1983 SCC OnLine Cal 253. Emphasis has been laid down in respect of paragraphs 7 and 9 of the said judgment. Learned advocate has stressed in paragraph 9 of the said judgment wherein it has been held that since the wife was staying separately for almost 27 years the order of maintenance was liable to be set aside.

So far as 1983 SCC OnLine Cal 253 is concerned, the same is after the evidence was recorded and the final maintenance amount was decided by the jurisdictional trial court. So far as the Hon'ble Supreme Court verdict in 2017 is concerned, the same was a case which is being decided under Section 25(2) of the Hindu Marriage Act wherein there was an enhancement.

The present case for which the jurisdiction of this Court has been invoked is at the interim maintenance stage in an application under Section 125 of the Code of Criminal Procedure. So far as the provisions of Section 125 of the Code of Criminal Procedure is concerned, the same is for the purpose of parents, wife and child who are unable to maintain herself/himself. The yardstick for consideration in a proceeding under Section 125 of the Code of

Criminal Procedure obviously is on the emphasis on the word unable to maintain herself or himself.

The present case is at interim maintenance stage which has been decided by the revisional court by enhancing the sum of Rs.2,000/- per month to Rs.8,000/- per month. Admittedly, without entering into any other issues the present petitioner is getting pension of a sum of Rs.22,655/- . Naturally, the sum of Rs.2,000/- per month which was decided by the learned Magistrate was not commensurate with the pension amount which is received by the petitioner. So far as the quantum is concerned, that is, Rs.8,000/- per month, I do not find that any plea has been taken in the affidavit that there has been any sharing of pension benefits of the petitioner, to which the wife was entitled for sustaining her life. There are no materials also surfacing regarding the sharing of the assets of the parties. The learned trial court in seisin of the matter would have the opportunity to address on the issues in course of the trial of the main proceedings under Section 125 of the Code of Criminal Procedure. So far as the quantum which has been decided by the learned revisional court is approximately  $\frac{1}{3}$ <sup>rd</sup> of the amount of pension amount which is being received by the petitioner. As such, I do not think there is any ground for interference in respect of the subject matter of challenge in the present revisional application.

Petitioner would be at liberty to adduce his evidence before the learned trial court in course of the main proceedings.

With the aforesaid observations, CRR 2798 of 2023 is

disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

**(Tirthankar Ghosh, J.)**