

21.03.2023
rc/ct.no.551
Item No.20

CRR No. 2496 of 2017
Smt. Saroj Gond
Versus
Ranjit Ram Gond & Ors.

Mr. Madan Murari Verma
Mrs. Punam Verma
Mr. Abhishek Verma
Mr. Ritabrata Singha Roy ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record.

None appears on behalf of the Opposite Parties despite service.

The instant revisional application has been preferred against the impugned order dated 15th May, 2017 passed by the learned Additional Sessions Judge, 14th Court at Alipore in Criminal Motion No. 259 of 2016.

The short question involved in the instant criminal revisional application is that the present petitioner is the wife who filed an application under Section 125 of the Code of Criminal Procedure (hereinafter referred to as "the said application") for getting maintenance from her husband that is opposite party before the jurisdictional learned Magistrate. The matter was finally heard and disposed of. The concerned learned Magistrate by passing a judgment and order on 31st March, 2016 allowed the maintenance in favour of the petitioner herein and it has been ordered that the order of maintenance shall take effect from the date of filing of the said application by the petitioner.

Against the said order the husband preferred a criminal revision before the learned Sessions Judge, Alipore, South 24-

Parganas which was heard disposed of by the learned Additional Sessions Judge, 14th Court, Alipore, South 24-Parganas with an observation that the order of maintenance shall take effect from the date of the order.

Against the said order the instant criminal revisional application has been preferred by the petitioner.

Learned advocate for the petitioner submits that by virtue of the judgment of the Hon'ble Apex Court in the case of Rajnesh Vs. Neha reported in (2021) 2 SCC 324 it has been specifically directed that in case of an application for maintenance the order of maintenance shall be effected from the date of filing of the application and not from the date of the order. He further submits that the direction of the Hon'ble Apex Court was not considered by the learned Additional Session Judge. Thus, the impugned order passed by the learned Sessions Judge, 14th Court, Alipore, South 24-Parganas is not at all proper and liable to be set aside.

Heard the learned Advocate.

Learned Sessions Judge, 14th Court, Alipore, South 24-Parganas is of the view that by virtue of wordings of Section 125 of the Code of Criminal Procedure i.e., any maintenance or interim maintenance and expenses of proceedings shall be payable from the date of the order or, if so ordered, from the date of application for maintenance or interim maintenance and expenses of proceeding, as the case may be. Learned Sessions Judge, 14th Court, Alipore, South 24-Parganas has misguided himself in interpreting the provision of law and passed the order incorrect. It is the averment of Section 125 of the Code of Criminal Procedure that it is the option of the learned

Magistrate to pass an appropriate order in case of peculiar attending circumstances of each case. There is no specific circumstances in this case, so that the order can be directed to be implemented from the date of the order. However, considering the judgment of the Hon'ble Apex Court in the case of Rajnesh Vs. Neha (Supra) it is the specific direction that the order of maintenance should be passed to be effected from the date of filing of the application.

Thus I find there are merit to entertain this instant criminal revisional application and the same is allowed. The order passed by the learned Sessions Judge, 14th Court, Alipore, South 24-Parganas is set aside. The order and direction passed by the learned Judicial Magistrate, First Class, 9th Court, Alipore, South 24-Parganas is hereby upheld.

Thus this criminal revisional application along with connected application, if any, are disposed of.

Let a copy of this order be sent down to the learned Magistrate, Alipore, South 24-Parganas for its compliance.

(Subhendu Samanta,J)