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31.08.2023
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C.R.R.2955 of 2023

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Sri Pijush Bhattacharjee
Versus
Smt. Rupa Bhattacharjee

Mr. Biswajit Manna
Mr. Soumya Basu Roy Chowdhury.
...for the petitioner.

Supplementary affidavit filed by the petitioner be kept
with the record.

Petitioner is aggrieved by the order dated 06.07.2023 wherein in Misc. Exe. Case No.285 of 2019 learned Judicial Magistrate, 3rd Court, Serampore, Hooghly observed that “even if the OP is paying alimony in any Mat suit, he cannot adjust such money with the maintenance amount passed in Misc. Case No.136 of 2013.” This observation of the learned Magistrate is against the spirit of the judgment of the Hon’ble Supreme Court reported in (2021) 2 SCC 324 (Rajnish Vs. Neha & Another) wherein it has been categorically observed that the wife is entitled to maintenance under different statute but will be able to get maintenance after adjustment only in respect of a single case (wherein the amount is highest). The rest of the amount would be deemed to be adjusted so far as the orders which are passed in other proceedings.

In view of the observations of the Hon’ble Supreme Court,
I am of the view that if the petitioner presents the accounts in

respect of the payment which has been made till date, the learned trial court will insist only if there is an extra amount due and pass directions for depositing the same. Learned Magistrate will not insist on double payment in respect of both the cases.

Petitioner is granted 15 days' time to place the records of all the payments made in Mat Suit No.238 of 2013. The learned Magistrate will check the records so far as the payments which have been made in connection with Misc. Case No.136 of 2013 or any execution case relating to the said case. Learned Magistrate will thereafter arrive at his conclusion whether any amount is due as arrears or whether any amount has been paid in excess. Accordingly, learned Magistrate will proceed in accordance with law by way of passing necessary orders. Till such steps are exhausted by the learned Magistrate, any distress warrant/warrant of arrest should not be issued so far as the present petitioner is concerned.

With the aforesaid observations, CRR 2955 of 2023 is disposed of.

Pending application, if any, is consequently 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.)

