

13.02.2023

Court No.35
Item No. 76

D.Hira

CRR 3224 of 2016

**Sriparna Sarkar
Vs.
The State of West Bengal & Anr.**

Mr. Phiroze Edulji,
Ms. Rajnandini Das.

... for the petitioner

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.

... for the State

In this revision, the petitioner has challenged the order of Principal Judge, Family Court, Calcutta dated 19th August, 2016 , by dint of which the Court has directed as follows:-

“The Opposite Party is hereby directed to pay Rs.2000/- per month as maintenance to the Petitioner with effect from the date of filing of the case i.e. from 5-3-2012. The amount of maintenance for the months from August 2016 onwards is to be paid within 15th day of each succeeding English calendar month. Opportunity is hereby given to the Opposite Party to pay the amount of maintenance for the period from 5-3-2012 to July, 2016, which have fallen in arrears, in installments.

The amount paid by the Opposite Party, so far in connection with this case, will be adjusted with the arrears amount of maintenance payable by the Opposite Party as mentioned above.”

Petitioner’s grievance is that the Trial Court has perceived her case in a wrong perspective and has passed an erroneous order as above, in so far as previously thereto the Hon’ble High Court in various litigations had directed the present opposite party no.2 to remit a sum of Rs.4000/- per month as maintenance amount to the present petitioner.

In support of her submissions learned Advocate appearing for the

petitioner has referred to this Court's orders dated 3rd February, 2012, 17th September, 2012 and 25th July, 2016.

She has urged that the impugned order of the Trial Court is in violation of all the previous orders of the Hon'ble Court as mentioned above so far as the quantum of maintenance be granted to the petitioner is concerned. The Trial Court's order is not sustainable and that the same may be modified appropriately.

In spite of service of notice, no one appears for the opposite party no. 2.

State is represented.

On behalf of the State, it is accepted that previously, on various occasions, the Hon'ble Court has directed payment of maintenance to the petitioner to the tune of Rs.4000/- per month which has not been considered by the Trial Court while disposing of petitioner's prayer under Section 125 of the Code of Criminal Procedure by dint of the impugned order.

For the rest, Mr. Agarwala, learned Advocate appearing for the State has left the matter at the discretion of the Court.

The impugned order has been passed by the Trial Court in Misc. Case No. 87 of 2015 i.e., a case preferred by the present petitioner before the Trial Court under Section 125 of the Code of Criminal Procedure.

However, during pendency of the same on various other litigations, this Court has directed the husband/present opposite party no. 2 to pay a sum of maintenance to the present petitioner to the tune of Rs.4000/- per month, which has, however, not been complied with ever, as records reveal.

After careful perusal of the impugned order, it is found that the

Court while disposing of the case of the present petitioner under Section 125 of the Code of Criminal Procedure have not taken into consideration, the order of the Hon'ble Court as above which were in force at the said point of time, though without being complied with.

Hence, there is no hesitation for this Court to find that while delivering the impugned order the learned Trial Court has proceeded on an erroneous premise thereby not being guided by the directions of the Hon'ble Court. On this score, the impugned order is legible to be interfered with, by exercising jurisdiction by this Court under Section 482 of the Code of Criminal Procedure.

Hence, the revision succeeds.

The impugned order is set aside, to the extent, that the petitioner shall be paid maintenance to the tune of Rs.4000/- per month instead of Rs.2000/- as was granted by the Trial Court.

Rest of the directions remain as it is.

All pending applications, if any, are consequently disposed of.

Accordingly, CRR 3224 of 2016 is disposed of.

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

(Rai Chattopadhyay, J.)