

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta

C.R.R. No. - 3560 of 2017

IN THE MATTER OF :

Smt. Sweta Anand & Anr.

Vs.

Dr. Niraj Kumar & Anr.

For the petitioner : Mr. Omar Faruk Bazi, Adv.,

Judgment on : 16 .05.2023

Subhendu Samanta, J.

The instant criminal revision has been preferred against the order dated 5th August, 2017 passed by the learned Judicial Magistrate, 5th Court at Barackpore, 24-Parganas (North); in Misc. Case No. 173 of 2016.

The brief fact of the case is that the present petitioner No. 1 is the married wife of opposite party and petitioner No. 2 is the minor son. An application under Section 125 CrPC was filed by the petitioners for getting maintenance against the opposite party before the learned Magistrate. The learned Magistrate after hearing the present petitioners as well as after receiving the written objection on behalf of the opposite party passed the impugned order on 05.08.2017

Hence this instant revision.

It appears that learned Magistrate has passed the impugned order of interim maintenance under Section 125 CrPC.

Learned advocate for the petitioners submits that the impugned order passed by the learned Magistrate suffers illegality. Learned Magistrate has failed to consider the facts and circumstances of this case and came to an erroneous finding. The opposite party is earning more than Rs.7,00,000/-p.m. The application under Section 125 CrPC was filed for getting maintenance of Rs. 1,00,000/- p.m. i.e. Rs. 70,000/- for the petitioner No. 1 and Rs. 30,000/- for petitioner No. 2. The learned Magistrate did not consider the prayer of the petitioners and pass the impugned order.

Heard the learned advocate. Perused the impugned order passed by the learned Magistrate, it appears that the learned Magistrate has passed the interim maintenance in favour of the petitioners amounting to Rs. 6,000/- per month (Rs. 3,000/- each) from the date of the impugned order. It further appears that during the hearing the petitioners claimed that OP was earning Rs. 90,446/-per month which was denied by the opposite party. However, the parties are residing separately so the learned Magistrate passed the impugned order.

On perusal of the impugned order, I find there is no illegality in passing the impugned order. The impugned order was passed which is

interim maintenance; the matter of maintenance has to be decided carefully at the later stage after receiving evidence from both the parties. However, learned Magistrate has committed error for awarding the interim maintenance from the date of the impugned order. It is dictated of the law that the order of maintenance should be passed from the date of application if does not otherwise prove. Hon'ble Supreme Court in **Rajnish Vs. Neha** also dictated that the order of maintenance should be ordered to be paid from the date of application.

Considering the same, I find no illegality or impropriety in the impugned order except the observation made above. Accordingly, the impugned order passed by the learned Magistrate is hereby modified to that effect that the impugned order shall take effect from the date of filling of the application.

Learned magistrate is directed to dispose of the Misc. Case as early as possible after awarding opportunities to both the parties to produce their evidences.

Learned Magistrate shall dispose of the Misc. Case according to the direction given by the Hon'ble Apex Court in **Rajnish Vs. Neha**.

In view of the above observations, the CRR No. 3560 of 2017 is disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)