

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 41 of 2022

Dipsankar Sinha

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Susanta Kumar Pal,
Mr. Kamalesh Chandra Saha,
Ms. Payel Mitra

For the Opposite Party : None.

Hearing concluded on : 05.11.2024

Judgment on : 08.11.2024

Shampa Dutt (Paul), J.:

1. The present criminal revision has been preferred praying for quashing of the impugned proceedings to prevent its abuse in impugned judgment dated 15.12.2021 passed by the Additional Sessions Judge, 1st Court, Serampore, Hooghly in Criminal Motion No. 168 of 2019 between Antika Mitra, Petitioner-versus- Sri Dip Sankar Sinha and Another, Opposite parties, presently pending its operation before 5th Court, learned Judicial Magistrate, Serampore, Hooghly.
2. It is the case of the petitioner/husband that on 20.06.2019 the opposite party No. 2 filed an application under Section 125 of the Code of Criminal Procedure, 1973 before the Court of Learned Additional Chief Judicial Magistrate at Serampore, District: Hooghly against the petitioner, craving inter-alia to direct upon the present petitioner for payment Rs. 15,000/- per month as maintenance. The opposite party No. 2 herein also filed a separate application for interim maintenance against the present petitioner, praying for direction upon the present petitioner for payment of Rs. 12,000/- per month as interim maintenance. The said application was registered as Misc. Case No. 200 of 2019 and transferred before the 5th Court of Learned Judicial Magistrate, Serampore, Hooghly for its final adjudication. The present petitioner on 19.08.2019 duly appeared before the said 5th Court of Learned Judicial Magistrate, Serampore, Hooghly and contested the same having filed written-objection wherein categorically denied and disputed each and every fabricated, vexatious

allegations, contained on the said applications filed by the opposite party No. 2, Antika Mitra.

3. On 24.09.2019 Learned Judicial Magistrate, 5th Court, Serampore, Hooghly, heard the said application for interim maintenance in presence of both the sides and fixed 27.09.2019, for order, wherein it has been directed as follows:-

*“.....that the petition filed by the petitioner praying for interim maintenance is hereby allowed in part on contest.
That the Opposite Party is hereby directed to pay to the petitioner to the tune of Rs. 2,500/- (Rupees Two Thousand and Five Hundred only) for herself as monthly interim maintenance from this date within the Seventh (07th) day of every succeeding month.....”*

4. On 14.02.2020, the Opposite Party No. 2 filed an application under Sections 397/399 of the Code of Criminal Procedure, 1973 against the present petitioner, being Opposite Party No. 1 and the State of West Bengal, being Opposite Party No. 2 before the 1st Court of learned Additional Sessions Judge, Serampore, Hooghly, craving inter-alia to increase the amount of maintenance in favour of the Opposite Party No. 2, Antika Mitra herein, while the present petitioner duly appeared and contested thereon having filed Written-Objection, categorically denied and disputed each and every vexatious, fabricated allegations, contained thereon and prayed for dismissal of the said applications with exemplary costs.

5. On 08.12.2021, the 1st Court of learned Additional Sessions Judge, Serampore, Hooghly heard the said case numbered as Criminal Motion No. 168 of 2019 and fixed 15.12.2021 for passing Judgment.
6. On 15.12.2021, in the Judgment, the Court held as follows:-

“..... The interim maintenance of Rs. 2500/- per month granted by Ld. Magistrate is 1/10th of monthly income of O.P. No. 1 and as such, the same is insufficient and it cannot be expected that the petitioner should be able to lead her life by such meager interim maintenance, considering the fact that prices of essential commodities have increased to a large extent at the relevant time. In my view, the Ld. J.M. should have granted interim maintenance to the petitioner at the rate of at least 1/4th of the net income of O.P. No. 1.

In view of above, I find that the impugned order made by the Ld. J.M., 5th Court, Serampore, is not sustainable in law and is liable to be set aside.

The impugned Order dated 27.09.2019, passed by the Learned Judicial Magistrate, 5th Court, Serampore, is hereby set aside.

Learned Judicial Magistrate, 5th Court, Serampore is directed to hear the application for interim maintenance afresh as early as possible and make an Order on the basis of observation contained in the body of the Judgment.....”

7. Learned counsel for the petitioner/husband has been heard but in spite of service there is no representation on behalf of the opposite party No. 2.
8. Learned counsel for the petitioner has brought the notice of the Court to the findings of the learned Additional Sessions Judge, which has aggrieved the petitioner/husband.
9. **The relevant portion of the finding is as follows:-**

“.....In my view, the Ld. J.M. should have granted interim maintenance to the petitioner at the rate of at least 1/4th of the net income of O.P.No. 1.....”

10. It is further submitted that the learned Additional Sessions Judge was wrong in not deciding the quantum (specific amount) and has avoided deciding the case on merit. The Judge has shifted the matter to the learned Judicial Magistrate, 5th Court, Serampore, by given his opinion, as to the quantum which is against the principle of natural justice and has thus seriously prejudiced the petitioner as the same shall influence the learned Magistrate who shall be bound to carry out the specific observations.
11. On hearing learned counsel for the petitioner and considering the materials on record, this Court finds that the said direction of the learned Additional Sessions Judge, 1st Court, Serampore is clearly against the principle of natural justice, which thus amounts to an abuse of the process of law and accordingly the said order under revision dated 15.12.2021 is hereby set aside and the matter is remanded with the direction that the learned Additional Sessions Judge, 1st Court, Serampore shall hear the matter afresh on hearing both the parties and decide the same in accordance with law, on giving an opportunity of hearing to both parties and also **following the guidelines as laid down by the Hon'ble Apex Court in *Rajnesh-vs- Neha & Anr., Criminal Appeal No. 730 of 2020, Arising out of SLP (Crl.) No. 9503 of 2018.***
12. The learned Additional Sessions Judge shall complete the hearing preferably within a **period of three months** from the date of communication of this order.

13. Pending disposal of the appeal by the learned Additional Sessions Judge, the petitioner/husband shall continue to pay the amount as directed by the learned Magistrate which shall be subject to the final adjudication by the learned Additional Sessions Judge, who shall decide on the entitlement and the quantum of maintenance in accordance with law.
14. **Criminal Revision being CRR 41 of 2022 is disposed of.**
15. Pending applications stand disposed of.
16. Interim order, if any, stands vacated.
17. Let a copy of the judgment be sent to the learned trial Court for compliance.
18. Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)