

19.06.2024

114

jb.

jdt.

C.R.R. 703 of 2024

In Re : Jayati Choudhuri

... Petitioner

Re: An application under Section 482 of the Code of Criminal Procedure;

Mr. Shyamal Kr. Mukherjee

Mr. Sushanta Kr. Gangopadhyay

Mr. Arun Kr. Chakraborty

Ms. Subhasree Banerjee

...For the Petitioner

Mr. Angshuman Chakraborty

Mr. S. S. Saha

... For the Opposite Party

Affidavit-in-opposition filed by the opposite party and the affidavit-in-reply filed by the petitioner are taken on record.

The petitioner who is the wife of the opposite party has prayed for an order upon the learned Judicial Magistrate, 9th Court, Alipore to ensure immediate payment of the arrear amount of maintenance due to the petitioner.

It appears from the documents annexed to the affidavit-in-opposition filed by the opposite party that the opposite party has cleared the entire dues in respect of maintenance payable to the petitioner and has also paid the entire maintenance due to minor child of the petitioner till February, 2023.

By an order passed on 12th August, 2022 in AC 2169/2021, learned Judicial Magistrate, 9th Court, Alipore directed the opposite party/husband to pay Rs.8,000/- per month to the petitioner/wife and Rs.12,000/- per month to the minor son as interim maintenance.

It is not in dispute that the opposite party has paid maintenance for the minor son to the tune of Rs. 12,000/- per month till February, 2023 since the minor son has attained majority in February, 2023.

Learned counsel for the petitioner submits that without an application for modification of the order under Section 25(2) of the Protection of Women from Domestic Violence Act, 2005 the opposite party could not have refrained from providing maintenance to the son despite the fact that the son had attained majority in February, 2023. Learned counsel has placed reliance on a judgment delivered by a co-ordinate Bench of this Court on 28th June, 2019 in CRR 3566/2018 wherein it has been held that an order passed by the Magistrate under Section 23 of the Act shall remain in force unless and until it is altered, modified or revoked either by the Magistrate under Section 25 of the Act or by the Appellate Court under Section 29 of the Act.

There is no quarrel with the proposition of law laid down under Section 25(2) of the Act. The provision clearly envisages that in the event of change in circumstances requiring alteration, modification or revocation of any order under the Act, such an order may be passed by the Magistrate on receipt of an application from the aggrieved person. The fact situation of the present case is otherwise. By the parent order dated 12th August, 2022, learned Magistrate directed payment of maintenance to the **minor son** to the tune of Rs. 12,000/- per month. In other words, the son was entitled to maintenance in terms of the order so long as he remained minor. The order would automatically be inoperative in respect of the son upon his attaining majority. Since the son attained majority in February, 2023, the opposite party has rightly

refrained from paying maintenance for the son from March, 2023. There was no occasion for the opposite party to approach the learned trial Court under Section 25(2) of the Act for any change of circumstances since the parent order itself was very clear regarding entitlement of the minor son to maintenance.

In view of the above, this Court is inclined to hold that no maintenance is due from the opposite party either to the petitioner or her son till date.

The revisional application being devoid of any merit is liable to be dismissed.

CRR 703 of 2024 is dismissed.

There shall be no order as to costs.

Urgent website certified copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)