

13.09.2024  
rc/ct.no.34  
Item No.07

**CRR No. 1018 of 2024  
with  
CRAN No.2 of 2024**

**In the matter of : Mustafizue Rahman**

**.....Petitioner**

Mr. Jayanta Narayan Chatterjee  
Mr. Supreem Naskar  
Ms. Jayashree Patra

...for the Petitioner

Mr. Sanat Kumar Das  
Mr. Sujon Chatterjee  
Mr. Rohan Bavishi

...for the O.P.

By consent of the parties the revisional application is taken up for consideration along with the application being CRAN No. 2 of 2024.

Heard learned counsels for the parties.

At the very outset it is pertinent to record that the parties are not aggrieved by the quantum of maintenance granted by the learned trial court or by the revisional court.

Learned counsel for the petitioner/husband submits that by an order passed on February 04, 2023 in M.Case No. 266 of 1029 the learned Judicial Magistrate, 2<sup>nd</sup> Court, Malda directed the petitioner to pay interim maintenance to the tune of Rs.9,000/- per month for the opposite party and Rs.7,000/- per month for her minor daughter from the date of the order. The order was carried in appeal by the private opposite party and by an order passed on December 14, 2023 in Criminal Revision No. 19 of

2023, the learned Additional Sessions Judge, Fast Track, 2<sup>nd</sup> Court, Malda modified the earlier order to the extent that the private opposite party was granted maintenance from the date of the application instead of the date of order.

Learned counsel for the petitioner submits that during pendency of the application under Section 125 of the Code of Criminal Procedure, the petitioner repeatedly attempted to pay maintenance to the tune of Rs.5,000/- per month to the opposite party by as many as 50 money orders which were refused by the opposite party, indicating that she was not in requirement of the said amount and was capable of making her both ends meet even without financial assistance of the petitioner. According to the learned counsel, the reasoned order passed by the learned Judicial Magistrate was modified by the learned revisional court without assigning any reason whatsoever and merely upon reliance on the authority in **Rajnesh Vs. Neha & Anr.** reported in **(2021) 2 Supreme Court Cases, 324**. Taking this Court through the observation made by the Hon'ble Supreme Court in the said authority, learned counsel has pointed out that several circumstances were taken into consideration by the Hon'ble Supreme Court in deciding whether maintenance should be awarded from the date of the order or from the date of filing of the application. Learned counsel further submits that in the peculiar facts and circumstances of the present case where repeated money orders were refused by the opposite party, the order of the

learned Magistrate ought to be upheld upon setting aside the order impugned passed by the learned Additional Sessions Judge.

Learned counsel for the opposite party places reliance on the observation made by the Hon'ble Supreme Court of India in *Rajnesh* (supra) and seeks necessary order.

Much has been spoken with regard to the different circumstances which ought to be considered while deciding whether an order of maintenance should be awarded from the date of the order or from the date of filing of the application for maintenance. True, several attempts to pay maintenance to the opposite party by the petitioner were refused by the opposite party but that does not necessarily indicate that the opposite party was not in need of the said amount.

Without much ado, this Court is inclined to place reliance on the ultimate observation made by the Hon'ble Supreme Court of India in *Rajnesh* (supra) . In conclusion, the Hon'ble Supreme Court has held that maintenance **in all cases** will be awarded from the date of filing of application for maintenance as held in Part B-IV of the judgment.

In view of the above, this Court is inclined to hold that the order impugned has dealt with the observation of the Hon'ble Supreme Court and has modified the order of the learned Magistrate in granting maintenance to the opposite party from the date of filing of the application instead of the date of the order. There is no illegality or irregularity in the said order which requires intervention by this Court.

In the result, the revisional application being CRR No. 1018 of 2024 is dismissed.

There shall however no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Suvra Ghosh,J)**