

D/L116
07.03.2024
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C.R.R.1052 of 2023
With
CRAN 1 of 2023

Rajesh Kumar Ram
Versus
The State of West Bengal and another

Mr. Shambhunath Ray
Ms. Tuhina Parvin
Ms. Amrita Tewari
Ms. Sonia Das
Mr. Varun Raj Tewari.
...for the petitioner.

Mr. Avik Ghatak
Mr. Fahad Imam.
...for the opposite party no.2.

The petitioner has challenged the order No.10 dated 28.02.2023 passed by the learned Sessions Judge, Paschim Bardhaman in Criminal Revisional Application No.68 of 2022 wherein the learned Sessions Judge was pleased to modify the order passed by the learned Judicial Magistrate, 6th Court, Asansol, Paschim Bardhaman dated 15.07.2022 in Misc. Case No.142 of 2015 and directed the husband/petitioner to pay a sum of Rs.10,000/- per month to the opposite party/wife from the date of filing of the application which is 7th April, 2015.

Mr. Ray, learned advocate appearing for the petitioner is aggrieved by such order being passed by the learned Sessions Judge and submits that although there is a matrimonial dispute and there are issues for which the husband and wife are staying separately but the present quantum of Rs.10,000/- per month being

implemented from the date of the application has foisted huge liability on the present petitioner and has created financial hardship. Learned advocate further submits that in addition to the aforesaid sum of Rs.10,000/- per month, another sum of Rs.4,000/- per month is being additionally paid by the husband in connection with Mat Suit No.123 of 2015.

Mr. Ghatak, learned advocate, appears on behalf of the opposite party/wife and opposes the contentions so advanced on behalf of the petitioner/husband. Learned advocate for the opposite party/wife further submits that the husband happens to be associated with CISF and the quantum of Rs.10,000/- per month was decided on the basis of salary receipt of the year 2017.

However, having considered that the revisional application was preferred at the instance of the husband, I am of the opinion that any change or alteration in the quantum should be done by the original court as the wife has never preferred a revisional application in respect of the final order passed by the learned Sessions Judge.

Having considered the submissions advanced on behalf of the both the parties, I am of the opinion that in case the husband/petitioner is paying both in Mat Suit No.123 of 2015 (A sum of Rs.4,000/- per month) and in Misc. Case No.142 of 2015 (A sum of Rs.10,000/- per month), then in that case, the same is against the principles set out by the Hon'ble Supreme Court in the judgment of **Rajnish Vs. Neha & Another** reported in **(2021) 2 SCC 324**.

The following paragraphs are relevant for the purpose of the present case which are set out as below:

“128. *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:*

128.1. *(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.*

128.2. *(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.*

128.3. *(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”*

Adhering to the settled proposition of law, I direct that so far as the quantum is concerned, the husband/petitioner will pay higher amount of Rs.10,000/- per month and so far as the amount of Rs.4,000/- per month which has been awarded in the Mat Suit No.123 of 2015 that would be deemed to be adjusted in the amount of Rs.10,000/- per month which is being paid.

The intimation would be only given to the concerned civil court in seisin of Mat Suit No.123 of 2014 that the present amount is being paid adhering to the judgment of the Hon’ble Apex Court.

With the aforesaid observations, CRR 1052 of 2023 is

disposed of.

Pending connected application, if any, is consequently disposed of.

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

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

(Tirthankar Ghosh, J.)