

CRR 1155 of 2023
With
CRAN 1 of 2023

Soumyadip Das
Vs.
The State of West Bengal & Anr.

Mr. Kallol Basu
Mr. Anindya Sundar Das
Mr. Jannat Ul Firdaus
Mr. Bappaditya Roy
Mr. Ratul Deb Banerjee
Ms. Kuheli Gayen

... ... for the petitioner

Mr. Ujjwal Ray

... ... for the respondent

1. The petitioner challenges the propriety of the judgment dated 23rd December, 2022, passed in Criminal Appeal No.4 of 2022 and No.17 of 2022.
2. The petitioner is the husband of Ankita Das, the complainant in the proceedings under Sections 17 to 20 of the Protection of Women from Domestic Violence Act, 2005.
3. The petitioner has suffered an ex parte order dated 8th December, 2021, passed by the learned Judicial Magistrate, 3rd Court, Hooghly Sadar in Misc. Case No.130 of 2017.
4. By the said order, the learned Magistrate directed the husband to pay Rs.20,000/- per month to the wife towards maintenance and also directed to arrange separate accommodation for the wife and in default, to pay Rs.5,000/- per month. This was a modification of interim order of maintenance of Rs.7,000/- per month.

The husband was also directed to pay compensation to the tune of Rs.2,00,000/- for domestic violence.

5. The Sessions Court has accepted ex parte order by the learned Magistrate was in violation of procedure. The court below has set aside most of the orders and directions of the Magistrate and has directed hearing afresh of the Misc. Case No.130 of 2017. However, the payment of Rs.20,000/- per month towards maintenance of the wife has been directed to continue as an interim measure.
6. This court is of the view that the direction to continue payment of Rs.20,000/- per month as an interim measure pending formal afresh hearing and dismissal of Misc. Case No.130 of 2017, cannot be deemed as illegal or incredible.
7. Admittedly, the petitioner is a medical doctor, holding a post-graduate degree and working with a reputed hospital, called AMRI.
8. The petitioner shall pay maintenance to the wife at the rate of Rs.20,000/- per month, forthwith. The arrears prior to October, 2023 shall not be paid till a formal decision is taken by the Magistrate in the Misc. Case No.130 of 2017. The petitioner shall be entitled to lead proper evidence before the Magistrate and also cross-examine the opposite party/wife.

9. The Magistrate shall however make all efforts to dispose of the Misc. Case No.130 of 2017 within a period of two months from the date of communication of this order.
10. The issue of arrears of maintenance from the date of filing of Misc. Case No.130 of 2017 shall also be decided by the Magistrate.
11. It is absolutely clear that this court has not gone into the merits of the rival contentions of the parties. In the Misc. Case No.130 of 2017, the Magistrate shall be free to decide the matter strictly in accordance with law and based on the evidence before him.
12. In view of the aforesaid order, the execution of the orders of the Magistrate in Misc. Case No.130 of 2017, shall stand set aside.
13. Accordingly, the revisional application and the connected application stand disposed of.

(Rajasekhar Mantha, J.)