

43.

CRR 1963 of 2022

03.10.2024
Bd.

Md. Zakir Hossain @ Jakir Hossain
-vs-
Sakina Khatun & Anr.

Mr. Shabir Ahmed
Md. Kutubuddinfor the petitioner.

Mr. Prasenjit Mukherjee
Mr. Jahangir Hossain
Mr. Arghya Kamal Das
Mr. Saptarshi Chakraborty
Ms. Manisa Mondal ... for the opposite parties.

This is an application wherein petitioner has challenged the judgment dated 20th May, 2022 passed in Criminal Revision Case No. 3 of 2022 by learned Additional Sessions Judge, Fast Track Court, Rampurhat, District-Birbhum. By the order impugned learned court below has affirmed the order of the trial Court, wherein trial court has directed the petitioner to pay maintenance of Rs. 20,500/- per month to the opposite party no. 1.

It is submitted on behalf of the petitioner that the petitioner initiated a proceeding under section 125 of the Code of Criminal Procedure contending that the opposite party/husband has a monthly income of Rs. 3,00,000/- per month and thereby she has prayed for monthly maintenance of Rs. 40,000/- per month. In the said proceeding the petitioner has also prayed for ad-interim maintenance and learned Trial Court after hearing was pleased to direct to pay

interim maintenance of Rs. 20,000/- per month in Misc. Case No. 460 of 2018 by its order dated 5th August, 2019.

Challenging the said order, the husband/petitioner herein has preferred one revisional application before this Court being CRR 3038 of 2019 and this Court while disposing the said application was pleased to observe that it is evident that the husband used to make payment of E.M.I. of Rs. 14,000/- per month which is operated from the exhibited document and as such this Court held that if the husband was not earning sufficiently, he would hardly spent Rs. 14,000/- for giving EMI for a vehicle. Accordingly, this Court dismissed the revisional application being CRR 3038 of 2019.

Thereafter the trial court recorded the evidence of the parties and it appears that the parties have also filed affidavit disclosing their assets and liabilities on 3rd January, 2022. The Trial Court delivered the judgment on 3rd February, 2022 by which the trial court finally decided the said application under section 125 of the Code, directing the opposite party/husband to pay maintenance of Rs. 20,500/- per month. However, said order does not reflect clearly as to whether affidavit of assets and liabilities filed by the parties were considered or not. The relevant portion of the observation of the Trial Court may be quoted below:

“The petitioner has no independent income of her own as she has no separate property. Further she had no such separate source of income while she was residing together

with the OP. whereas it has been proved that the OP is an able bodied person and capable of earning the livelihood and having decent income through various scattered source of business. As to the income of OP, the petitioner profiles her husband having earnings of Rs. 3 lakh per month. This court on considering the proof of the owning of business by the petitioner and the background of both the parties, arrived at a definite conclusion that the OP's earnings cannot in any case be lower than Rs. 1 lakh per month. It is also proved telltale that the OP is upkeeping another wife and a son born out of their wedlock, therefore the petitioner is obviously entitled to be maintained for her upper middle class livelihood. There has been clamped an order of Rs. 20,000/- per month through an order dated 05.08.19 to be paid to the petitioner to be effective from the date of filing of this case. The case of the petitioner inter alia with most of the allegation have been proved. Therefore, this court finds no negation to be given effect from the earlier order of interim maintenance as stated above. Further this courts goes to say that it has probably come across one of the worst ever social issues of begetting a child preferably of a male issue by reopening the ligation of a woman which is utterly destructive to the society even singularly and particularly unthinkable, unbearable to the extreme for a woman like a petitioner who have swam across the thick and thin of her married life for a period of 30 years with the OP. Thus with an extension of the last earlier order of interim maintenance I am ordering RS. 20,500/- to be paid to the petitioner by the OP per month from the date of filing of this case. This court decided to add Rs. 500/- per month in addition to its earlier order of Rs: 20,000/- per month on the backdrop of the whole context of this case considering the fact that the petitioner proves her case and more so applauding the courage of the petitioner to stand up for a social and moral fight against the OP rather for a typical social cause at large. The amount already paid by the OP to the petitioner is to be set of against the instant order. Needless to mention that the OP never dropped any provision of maintenance for his wife at any point of time. So the petitioner is entitled to be maintained from the date of filing of this case."

Being aggrieved by the said order the husband/petitioner herein preferred a revisional application before the Court below and from the order of the Court below it does not appear that the affidavit of assests and liabilities filed by the parties were considered. The certified copy of the evidence adduced by the parties is also placed before this Court. It appears from the certified copy that the

wife/petitioner has stated that her husband has landed property, house, one tractor, one motor cycle, two godowns and pharmacy thereby he earns Rs. 3,00,000/- per month. On the contrary the husband also deposed before the trial court and in his evidence in chief he stated that it is not a fact that he earned Rs. 3,00,000/- per month. On the contrary, in the cross-examination he stated that his earnings is Rs. 40,000/- per month.

Having considered the facts and circumstances of the case, it appears to me that while determining the quantum of maintenance both the Courts below ought to have complied the mandatory directions passed by the Apex Court in the case of **Rajnesh Vs. Neha & Anr.** reported in **(2021)2 SCC 324.**

Since I do not find any reflection from the order of the trial court as well as in the order of the revisional Court that the amount was assessed on the basis of affidavit of assets and liabilities filed by the parties nor there is any discussion regarding the appreciation of evidence adduced by the parties during trial, I am of the view, that the orders impugned are not sustainable in the eye of law.

In such view of the matter, the order impugned dated 20th May, 2022 passed by the Court below and the order of the Trial Court dated 3rd February, 2022 passed in Misc. Case No. 460 of 2018 are hereby set aside.

The trial court is directed to hear the parties afresh and if required to give opportunity to both the parties to adduce further evidences, if any, and also, if required he may ask both the parties to file affidavit disclosing up to date assets and liabilities and thereafter to write judgment afresh on the basis of materials placed before him. However, the petitioner/husband shall go on paying an amount of Rs. 13,000/-(Thirteen thousand) per month to the opposite party/wife till deciding the matter afresh. The Court below will make every endeavour to dispose of such application within a period of four months from the date of communication of this order.

I make it clear that I have not gone into the merits of the case and the Court below will dispose of such application without being influenced by any observation herein.

CRR 1963 of 2022 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)