

30.04.2024

Court No. 32

Item. 26

(Srimanta)

CRR/2428/2018

In Re: An application under Sections 397/401/482 of the Code of Criminal Procedure, 1973.

And

In the matter of : **Smt. Samita Joydhar (nee Naskar)**

...Petitioner.

1. Nobody appears on behalf of either of the parties on call.
2. The case is pending since 2018. As such, the matter is taken for passing order on merit considering the nature of prayer and to avoid further delay.
3. This instant revisional application filed under Sections 397/401/482 of the Code of Criminal Procedure, 1973 seeking quashing of an order dated 08.11.2017 passed by the learned Additional District and Sessions Judge, Fast Track Court – VIII at Alipore, South 24-Parganas in Criminal Revision No. 114/2017 without having no thorough inquiry or appropriate investigation and thereby the learned Judge reduced the interim maintenance amount to Rs. 4,000/- in place of Rs. 7,500/- awarded by the learned Magistrate. It is the contention of the petitioner that she is a legally married wife and their marriage was solemnized on 29th September, 2000 according to Hindu marriage and custom at her father's house situated at Police Station – Regent Park, District – South 24-Parganas. The said marriage was subsequently registered but soon after the marriage, the petitioner realized that the opposite party/husband appeared imbalanced, imprudent and sometime a bit scary. From the said wedlock, two male children were born on 5th

September, 2001 and 28th April, 2003. After birth of her children she became ill and she was unable to discharge her household work of the matrimonial house. Accordingly, the opposite party along with his family members denied providing food, cloth, drinking water etc. and they have dreadfully tortured without any fault. Serious differences have been developed between the petitioner and the opposite party. It turned to physical and mental torture upon the petitioner and finally she was driven out from the matrimonial house in the month of November, 2006 and even she went to see her children in her in-laws house, the opposite party assaulted her and did not allow to meet her children. Thereafter, she started living at her parents' house but she had no independent source of income to maintain herself. As such, she filed an application for maintenance under Section 125 of the Code of Criminal Procedure praying for maintenance to the tune of Rs.20,000/- from her husband.

4. After hearing both the parties, the learned Judicial Magistrate, 9th Court, Alipore was pleased to pass an order on 28th September, 2016 and thereby allowed interim maintenance to the tune of Rs.7,500/- per month in favour of the petitioner.

5. Being aggrieved and dissatisfied with the said impugned order, the opposite party/husband filed a Criminal Revision being No. 114/2017 before the learned District Judge and subsequently, the said case was finally disposed of on 8th November, 2017 thereby without considering the case of the petitioner reduced the said interim order to Rs.4,000/- in place of Rs.7,500/-.

6. Hence, this revisional application.

7. Having considered the case of the petitioner and on perusal of the impugned judgment dated 08.11.2017 passed by the learned Additional Sessions Judge, this Court finds the present petitioner is the legally married wife of the opposite party. She is residing

separately leaving her two children at her matrimonial home with opposite party on and from 20th November, 2007. When she has no income to maintain herself, she filed an application praying for maintenance. After hearing both the parties the learned Magistrate allowed a sum of Rs.7,500/- per month to the present petitioner though she has left her two minor children under the custody of the opposite party/husband and out of those two children, the elder son is mentally disabled boy. Now, the opposite party/husband is fully dependent upon his brother, parents and near relatives to bear the expenses of his two sons, out of whom one is mentally retarded. Be that as it may, it is settled law that the husband has obligation to maintain his wife when she has no income of her own to maintain herself while granting the interim maintenance. The learned Court should bear in mind with regard to the income of the husband, liability and other social status of both the parties. Considering all these aspects the learned Judge has reduced the sum to Rs.4,000/- from the interim maintenance awarded by the learned Magistrate which appears reasonable and the impugned order does not suffer any error, irregularity or illegality in reducing the said interim maintenance passed under Section 125 of the Code of Criminal Procedure. Apart from aforesaid facts husband has liability to maintain his aforesaid two sons, out of which one is suffering from mental retardation.

8. Under such circumstances, this Court does not find any merit in the instant case. Accordingly, CRR/2428/2018 is, thus, dismissed without order as to costs.

9. Interim order, if any, stands vacated.

10. Let the copy of this order be communicated to the learned Court below for information.

(Ajay Kumar Gupta, J.)