

04.09.2024.
04.
Ct. No.237
Bd.

CRR 2796 of 2022
IA No. CRAN 1/2024

Smt. Kalpana Banerjee(Chatterjee)
-vs-
Sri Sajal Chatterjee

Mr. Soumyajit Das Mahapatra
Mr. Shamik Chatterjee
Ms. Madhurai Sinha
Mr. Aditya Bikram Mahata
Mr. Sahil Kabirfor the petitioner.

Mr. Kunal Ganguly ... for the opposite party.

Being aggrieved and dissatisfied with the impugned order dated 18th May, 2022 passed by learned Additional Sessions Judge, 1st Court, Suri, Birbhum, in connection with the Criminal Motion No. 22 of 2019 arising out of Misc. Case No. 02 of 2018 presently pending before learned Judicial Magistrate, Dubrajpur, petitioner/wife preferred the present application.

Petitioner's contention is that the marriage between the petitioner and the opposite party was solemnized on 10th June, 1998. Due to said wedlock a male child was born. Petitioner's further allegation is that on 24.09.2000 petitioner was driven out from her matrimonial home and since then she is residing at her elder brother's house. The petitioner having no independent source of income preferred an application under section 125 of the Code of Criminal

Procedure being aforesaid Misc. Case No. 2 of 2018 which is pending before the Learned Judicial Magistrate, Dubrajpur. She also filed one application seeking interim maintenance and upon hearing both the parties learned Judge was pleased to pass an order of interim maintenance of Rs. 3,000/- per month in favour of the petitioner and Rs. 2,000/- per month in favour of the son. The said order was challenged before the Revisional Court and the Revisional Court was pleased to set aside the said order of interim maintenance.

Being aggrieved by that order petitioner has preferred this application contending that the court below has erred in setting aside the order of interim maintenance despite the fact that petitioner has no source of income and presently leading her life on the mercy of her brother. The Court below illegally refused to consider the case of the petitioner in its proper perspective and it has caused serious prejudice to the petitioner. Accordingly, petitioner has prayed for setting aside the order impugned.

During pendency of the present application a direction was made by this Court upon hearing both the parties to file affidavit of assets and liabilities in terms of direction made in ***Rajnesh Vs- Neha & Anr.*** reported in ***(2021) 2 Supreme Court Cases, 324***. Parties have filed concerned affidavit of assets and liabilities in compliance with said order.

Having considered the submissions made on behalf of the parties and as also agreed by the parties, let the case be remanded to the learned Judicial Magistrate for making a hearing afresh in connection with the petitioner's application for interim maintenance under Section 125 of the Code of Criminal Procedure, taking into consideration the affidavit of assets and liabilities filed by both the parties before this court and also in compliance with the other terms and conditions as laid down by the Apex Court in ***Rajnesh Vs- Neha*** (supra) and to make every endeavour to dispose of such interim maintenance application under Section 125 of the Code afresh, preferably within a period of six weeks from the date of communication of this order without being influenced by any observation made earlier.

Both the orders impugned dated 02.7.2019 passed by Judicial Magistrate, Dubrajpur and the impugned order passed court below dated 18th May, 2022 are hereby set aside. It is made clear that this court has not gone into the merit of the application for interim maintenance.

Let a copy of the affidavit of assets and liabilities filed by both the parties before this court be sent to learned court below for consideration.

CRR 2796 of 2022 along with connected application are 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.)