

16.01.2024

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(pk)

**C.R.R. No. 2786 of 2023
with
I.A. No. CRAN 1 of 2023**

Abhishek Barua
Vs.
The State of West Bengal and another

Mr. Ayan Bhattacharjee,
Mr. Suman Majumder

...for the petitioner.

Mr. Asis Bhattacharyya,
Mr. B. Mitra,
Ms. Nilam Shaw

...for the opposite party no. 2.

1. Affidavit-of-service filed in Court today be taken on record.

2. The instant revisional application is directed against a warrant of arrest, issued against the petitioner in execution of Judgement dated 14.08.2019 passed by the ACJM, Chandannagore, Hooghly in connection with Misc. Case No. 636 of 2015 which has merged into the judgement of the revisional court (ADJ) dated 22nd June, 2023 in Criminal Motion No. 38 of 2019.

3. The principal argument of the counsel of the petitioner is that while the revisional court below found impropriety in the procedure followed by the Magistrate in ordering maintenance of Rs.40,000/- to the wife and Rs.5,000/- to the child, the revisional court went on to confirm the said order based on the evidence produced by his client.

4. While the ACJM, Chandannagore found the petitioner who has income of Rs.2,50,000/- to Rs.3,00,000/-, without any evidence whatsoever the revisional court found on the basis of the

evidence of the petitioner that he has income of about Rs.90,000/- per month.

5. The order of the revisional court has been put in execution. The petitioner did not appear and warrant has been issued.

6. This Court notes that the ACJM, Chandannagore found that the petitioner as well as the opposite party/wife come from families with sound financial backgrounds.

7. This Court has carefully considered the orders passed by the revisional court as also the first court. Admittedly, there is no evidence based on which the ACJM, Chandannagore came to the conclusion that the petitioner had the income of Rs.2,50,000/- to Rs.3,00,000/-. The revisional court ought to have remanded the matter back to the first court for consideration afresh. Instead the revisional court below chose to sit in appeal over the order of the ACJM, Chandannagore.

8. This Court finds the procedure adopted by the revisional court not in accordance with law.

9. In that view of the matter, the impugned order passed by the revisional court dated 22nd June, 2023 shall stand set aside. The order of the ACJM, Chandannagore dated 14.08.2019 passed in Misc. Case No. 636 of 2015 shall also stand set aside. Misc. Case No. 636 of 2015 is restored to the file of the ACJM, Chandannagore for consideration afresh.

10. The petitioner submits and produces a document before this Court that he has resigned from the service of the BPCL on 4th June, 2022. The opposite party/wife vehemently submits that the petitioner is working elsewhere in Siliguri or other parts of the

country. These are matters required to be dealt with by production of appropriate evidence.

11. The matter shall be considered afresh and both parties shall be entitled to lead evidence afresh before the court of ACJM, Chandannagore.

12. The aforesaid order shall take effect upon the petitioner paying maintenance of interim sum of Rs.30,000/- per month. The first payment whereof shall be made by 1st February, 2024. The arrears of maintenance of Rs.30,000/- from the date of judgement of the ACJM, Chandannagore i.e. 14th August, 2019 till December, 2024 shall be paid in three equal monthly instalments. The first of such instalments shall be paid by 25th of January, 2024. The next two instalments shall be paid on or before the 25th day of each succeeding month.

13. In default of payment of monthly interim maintenance amount or the instalments of arrears, as indicated herein above, the warrant of arrest and the orders of the revisional court dated 22nd June, 2023 shall automatically revive.

14. With the above directions, CRR 2786 of 2023 and CRAN 1 of 2023 are disposed of.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

