

01.05.2024

Sl. No.: 5

Court No.30
BM

CRR 3201 of 2022

Debanik Saha

Vs.

State of West Bengal & Anr.

Mr. Gouranga Kumar Das

Ms. Poulami Dutt

... for the petitioner

The present revision has been preferred against an order dated 14.07.2022 in connection with M. Case No.25 of 2022 under Section 125 of the Code of Criminal Procedure, 1973 passed by the learned 4th Judicial Magistrate, at Barrackpore, North 24 Parganas thereby directing the opposite party/husband who is the petitioner herein to pay a monthly maintenance of Rs.40,000/- for the wife and Rs.40,000/- for the child within the 10th day of each succeeding month.

Affidavit of service is filed showing due service but in spite of due service there is no representation on behalf of the opposite party no.2/wife.

The order under challenge is an order of interim maintenance, the learned Magistrate has held as follows :-

“ It appears that the OP has admitted marriage with the petitioner and the paternity of the child. The petitioner has filed document to show that the OP used to earn about Rs.3,50,000/- in the year 2018. The OP has not denied working in the same establishment. The income of OP must have increased over the years. The OP has also filed certain documents, which may be proved at the time of trial. The petitioner has no source of income.

All other intricacies regarding the income of the OP real reason of the petitioner no staying with the OP and all other

factors shall be considered after appreciation of evidence at the time of trial. The OP is a fit person and it is responsibility to maintain his wife and child so that they are not left destitute. Considering the beneficial legislation and the helplessness of the petitioner the following order is passed.

Hence, it is,

ORDERED

That the instant petition for interim maintenance be and same is allowed on contest.

The OP is directed to pay a sum of Rs.40,000/- for the petitioner and Rs.40,000/- for the child, i.e. a sum of Rs.80,000/- to the petitioner as monthly maintenance amount, payable within 10th day of each succeeding month and from the date of filing.”

It appears that the learned Magistrate has held that the petitioner has filed document to show that the opposite party used to prima facie earns Rs.3,50,000/- **in the year 2018.**

As such, it appears that the said amount of Rs.3,50,000/- was prima facie yearly income of the opposite party no.2.

It appears from Annexure “P-4” at page 39 which is a salary slip of the petitioner/husband for the month of December, 2021 that he is an employee of Tata Consultancy Services and his total monthly income is Rs.95,549/- and after deduction **his net pay is Rs.60,170/- per month.**

The learned Magistrate at the interim stage on considering the said material and in spite of his finding that the yearly income of the opposite party is Rs.3,50,000/- proceeded to grant interim maintenance of Rs.40,000/- each to the mother and child, total

Rs.80,000/- which is more than 1/3rd of the earning of the petitioner.

The order of the learned Magistrate granting interim maintenance thus prima facie suffers from irregularity and is accordingly, modified to the following extent.

The petitioner husband herein shall pay a monthly maintenance for a sum of Rs.10,000/- for the wife and a sum of Rs.15,000/- for the child, total Rs.25,000/- till the final disposal of the Misc. Case. The trial court shall not be influenced by the findings of this court and make an independent decision while disposing of the Misc. Case finally by following guidelines of the Hon'ble Supreme Court in **Rajnesh vs. Neha (2021) 2 SCC 324**.

The said amount of maintenance is to be paid **from the date of filing of the Misc. Case** and the amount paid will be subject to adjustment against the final amount of maintenance as decided/granted by the learned Magistrate.

The revisional application being CRR 3201 of 2022 is accordingly disposed of.

All applications connected thereto stand disposed of.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned trial court for compliance.

Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)