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C.R.R.3455 of 2022

In Re: An application under Section 401/ 397 read with Section 482 of
the Code of Criminal Procedure;

Sri Rabi Kisku
Versus
Kalpana Kisku

Mr. Tanmay Basu
Mr. Arun Shaw.
...for the petitioner.

The revisional application has been preferred challenging the judgment dated 23rd February, 2021 passed by the learned Sessions Judge, Purba Bardhaman in connection with Criminal Revision being Criminal Motion No.70 of 2019. The revisional application was preferred before the learned Sessions Judge challenging the order dated 09.04.2019 in Misc. Case No.368 of 2007 under Section 125 of the Code of Criminal Procedure passed by the learned Judicial Magistrate, 4th Court, Burdwan.

Learned advocate appearing for the petitioner submits that the learned Judicial Magistrate, 4th Court, Burdwan awarded maintenance of Rs.6,000/- per month in aggregate (Rs.3,000/- per month to the wife and Rs.1,500/- per month to each of the children). The wife preferred a revisional application before the learned sessions court and the learned sessions court in Criminal Motion No.70 of 2019 was pleased to enhance the same awarding Rs.10,000/- per month to the wife and Rs.2,500/- per month to each of the child.

The foundation of such order passed by the learned sessions court was that the husband was employed in a nationalised bank being Bank of India and there has been change of price index as the case was instituted in the year 2007 and the revisional application was preferred on or about February, 2021.

Having regard to the purpose for which the provisions of Section 125 of the Code of Criminal Procedure were incorporated and the legislative wisdom, I am of the view that the reasons so assigned by the learned Sessions Judge in the present case do not call for any interference in the facts and circumstances of the case.

Learned advocate appearing for the petitioner has resisted the reasoning of the learned Sessions Judge, firstly, by holding that the learned Sessions Judge cannot act like a original court and exercise its jurisdiction as if under Section 127 of the Code of Criminal Procedure and that the liability is of the petitioner and as the petitioner do not get more than 30,000/- a month.

It is reiterated that in case under Section 125 of the Code of Criminal Procedure a wife is entitled obviously to have a maintenance amount which would be commensurate with the earnings of the husband. If the husband by way of taking number of home loans has reduced his earnings, the same will not obviously weigh with the court of law while arriving at its findings.

Having regard to the same, I am not inclined to interfere with the order dated 23rd February, 2021 passed in Criminal Motion No.70 of 2019.

Accordingly, CRR 3455 of 2022 is dismissed.

Petitioner would be at liberty to take out an appropriate application under the statutory provisions before the learned Magistrate if he is able to show that the quantum so awarded is beyond his capacity.

Pending connected application, if any, is consequently dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Tirthankar Ghosh, J.)