

06.05.2024
Serial no. 29
[G.S.D]

CRR 3232 of 2023

In the matter of : Rekha Pandey

... .. Petitioner

Mr. Abhishek VErma
Ms. S. Naskar

... for the petitioner

Mr. Ashis Kumar Chowdhury
Mr. Rajib Ghosh
Mr. B.B. Bera
Mr. Avisek Chatterjee

... for the o.p.

The petitioner is aggrieved by the order dated 4.8.2023 in M-570 of 2022, wherein the Id. JM, 2nd Court, Barrackpore refused to grant interim maintenance to the petitioner/wife. The reasons so assigned by the Id. Magistrate was on the basis of the judgment of the Hon'ble Supreme Court in [*Rajnesh Vs.- Neha*, reported in **(2021) 2 SCC 324**].

The Id. Court relied upon the part of the judgment wherein it related to the overlapping of jurisdiction and avoidance of conflicting orders being considered by the court as well as set-off in respect of successive claims including the adjustment thereof.

What weighed with the Id. Magistrate was that there was a proceeding under the provisions of PWDV Act and an interim monetary relief of Rs.20,000/- was awarded by an order dated 24.11.2022 (in connection with Misc. Case No. 156/2022).

On the aforesaid premise, the prayer for interim maintenance was rejected by the Id. Magistrate. If the Id. Magistrate is of the opinion that in the background and facts of the case under the provisions of Section 125 Cr.P.C., a case is made out or the cause of action is made out, the Id. Magistrate ought to arrive at a finding of interim relief.

Therefore, what the Court, at the conclusion, can do is that the amount which it has decided in the proceeding under section 125 of the cr.p.c. can be adjusted with the reliefs granted under the provisions of the PWDV Act. The principle is that, higher amount should be paid. The Id. Magistrate should take into account that with the introduction of the provisions of PWDV Act, the provisions of Chapter IX of the C.P.C. were never repealed. The purpose of the Act and Code are completely different.

No law bars a litigant to invoke the jurisdiction of the Cr.P.C. or a particular provision of the PWDV Act, where issues relating to maintenance are concerned. The object of over lapping jurisdiction, adjustment and set-off were pronounced by the Hon'ble Supreme Court because of the

fact that the husband should not be foisted with double or repeated with additional amount being granted in each of the proceedings.

The Id. JM, 2nd Court, Barrackpore is directed to come to its own finding whether the amount should be granted by way of interim maintenance and, in case, it grants the interim maintenance, it would compare with the amount granted under the provisions of the PWDV Act and, thereafter, decide in which proceeding the adjustment is to be made.

The findings or the order thereby rejecting the prayer for interim maintenance is set aside. The Id. Magistrate will afresh consider the same within a period of 60 days from the date of communication of this order.

With the aforesaid observations, CRR 3232 of 2023 is disposed of.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

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

(Tirthankar Ghosh, J.)