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CRR 3482 of 2022
With
CRAN 1 of 2024

Mithun Sarkar
Vs.
Mampi Majhi & Anr.

Mr. Arindam Jana
Mr. Shahan Shah
Mr. Soumen Basman ...for the petitioner

Mr. Debabrata Roy
Mr. Snehansu Majumder
Mr. Soumik Mondal
Ms. Sarbani Mukhopadhyay ...for the O.P. no. 1

This is an application under Section 227 of the Constitution of India wherein the petitioner has challenged the order passed by the court below in criminal revision no. 19 of 2022 dated 30th June, 2022. By the impugned order, the learned court below was pleased to enhance the monthly maintenance amounting to Rs. 21,000/- per month from the date of filing of the application under Section 125 of the Code of Criminal Procedure.

The petitioner's contention is that the petitioner was married with the opposite party no. 1 on 12th November, 2012. Thereafter, the opposite party no. 1 herein preferred an application under Section 125 of the Code of Criminal Procedure inter alia alleging that after the marriage, she was subjected to physical and mental torture by the petitioner and that she is not in a position to maintain herself.

Learned Magistrate while disposed of the application of the opposite party no. 1 under Section 125 of the Code of Criminal

Procedure, was pleased to grant maintenance of Rs. 9,000/- per month from the date of the order and Rs. 3,000/- per month from the date of filing of the maintenance application till the date of order.

Being aggrieved by that order, the wife/opposite party no. 1 herein preferred a revisional application before the learned Additional District Judge, Fast Track, 1st Court, Krishnanagar being aforesaid Criminal Revision no. 19 of 2022. By the impugned order, the court below was pleased to modify the order of the learned Magistrate and was further pleased to grant maintenance of Rs. 21,000/- per month towards her maintenance with effect from the date of filing of the case i.e. on 3rd December, 2018.

Being aggrieved by that order, Mr. Jana, learned counsel for the petitioner submits that the court below has enhanced the maintenance amount without any basis. The court below has passed the impugned order on the basis of surmise, presumption and personal knowledge than the materials available in the record. Learned court below ought to have considered that the petitioner is a non-practicing medical officer and he has no income except his salary. The court below also did not consider that the petitioner is looking after his ailing parents and for the purpose of treatment and maintenance of his parents, a considerable amount is required to pay regularly. Accordingly, the court below ought to have come to a conclusion that the order of learned Magistrate, awarding maintenance of Rs. 9,000/- per month, was justified and it does not call for any interference or enhancement.

Mr. Roy, learned counsel for the opposite party raised objection contending that the opposite party is an able bodied person and he is an MBBS doctor and practicing in that field and use to earn Rs. 70,000/- to 75,000/- per month. Accordingly, the learned Magistrate was not justified in awarding maintenance of Rs. 9,000/- per month and the court below correctly assessed the evidence adduced by the parties and came to a conclusion that the monthly maintenance to be paid by the petitioner, would be Rs. 21,000/-. He further submits that the order impugned passed by the court below, is well reasoned and supported by various judgments and as such it does not call for interference.

It is not in dispute in the present context that the petitioner is an able bodied person and earning sufficiently. Trial court failed to understand the significance of the term sustenance. Sustenance does not mean a mere survival. As per law she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. It is needless to reiterate that as long as wife is entitled to get maintenance within the parameters of Section 125 of the Code of Criminal Procedure, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home.

Having considered the facts of the case and also considering the fact that the petitioner herein is a medical officer by profession and attached with the health service, Government of West Bengal and on the contrary, no evidence is forthcoming that the opposite party no. 1 has any source of income, I find that the order impugned does not call for interference.

In such view of the matter, CRR 3482 of 2022 stands dismissed.

CRAN 1 of 2024 is also disposed of accordingly.

However, this dismissal order will not preclude either of the parties to pray before the concerned Magistrate for addition and alteration of the maintenance amount showing change of circumstances.

Upon Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

Later:-

After passing the order, learned counsel for the petitioner submits that a direction may be given so that the petitioner herein can pay arrear amount of maintenance in easy installment.

Having considered the prayer made by the petitioner, liberty is given to pay the arrear amount of maintenance by five monthly installments with the monthly amount of maintenance by 31.1.2025

(Ajoy Kumar Mukherjee, J.)