

06-11-2024
ct no. 32
Sl. 31
sp

C.R.R. 3450 of 2023
With
CRAN 1 of 2023

Mustak Ali Mallick
-Versus-

Smt. Narunnessa Khatun (Begum) & Anr.

Md. Sarwar Jahan,
Mr. Anisur Rahaman

..for the opposite parties

1. In spite of specific direction passed by this Court on 05.11.2024, none appears on behalf of the petitioner.
2. No accommodation is sought for at the time of call.
3. Heard the learned counsel appearing on behalf of the opposite parties.
4. By filing this revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner/husband challenged the impugned order dated 31st July, 2023 passed by the Learned Additional Sessions Judge, 1st Court at Katwa, Purba Bardhaman in connection with Criminal Revision No. 64 of 2022 affirming the Judgment and Order dated 27th July, 2022 passed by the Learned Judicial Magistrate, 3rd Court at Katwa, Purba Bardhaman, thereby the Learned Magistrate directed the petitioner/husband to pay the entire

arrear of maintenance on the next date, i.e., 29th August, 2022. In default, distress warrant would be issued against him.

5. The brief fact of the instant case, leading to filing of the revisional application, is that the opposite party nos. 1/wife and 2/minor daughter approached the Learned Judicial Magistrate, 3rd Court at Katwa, Purba Bardhaman by filing an application under Section 125 of the Code of Criminal Procedure, 1973, praying for maintenance for herself and her minor daughter. Finally, the case was decided by the Learned Magistrate after considering the evidence adduced by the parties and also considered the income of the petitioner and finally allowed a sum of Rs. 7,500/- per month to the opposite party no. 1/wife and Rs. 5,000/- per month to the opposite party no. 2/minor daughter, totaling to a sum of Rs. 12,500/- per month from the date of the order, i.e., 27.04.2015 and that amount shall be paid every month within 15 days of each succeeding month.
6. Feeling aggrieved and dissatisfied with the said order passed by the learned Magistrate, the petitioner herein assailed before the Learned Additional District and Sessions Judge, 2nd Court, Katwa, Purba Bardhaman by way of a criminal revisional application being Criminal Revision No.

55 of 2015 and finally after hearing the parties, the said revisional application was disposed of on 23rd February, 2017 reducing the amount of maintenance to the tune of Rs. 5,000/- per month to the opposite party no. 1/wife and Rs. 3,000/- per month to the opposite party no. 2/minor daughter, totaling to a sum of Rs. 8,000/- per month in place of Rs. 12,500/- per month.

7. Being aggrieved by and dissatisfied with the said judgment and order passed by the Additional District and Sessions Judge on 23rd February, 2017, the opposite parties filed a revisional application before the Hon'ble High Court at Calcutta in the year 2017 being CRR No. 1697 of 2017.
8. In the meantime, the petitioner complied the order passed by the learned Additional District and Sessions Judge on 23rd February, 2017 by paying a sum of Rs. 8,000/- per month with effect from 23rd February, 2017.
9. The said revisional application came before a Co-ordinate Bench of this Court and finally heard the parties. After hearing all the parties, the Hon'ble Co-ordinate Bench set aside the order of the learned Additional District and Sessions Judge in Criminal Revision No. 55 of 2015 and affirmed the order passed by the learned Magistrate. The

Hon'ble High Court has held that the opposite party no. 1/wife is entitled to a sum of Rs. 7,500/- per month for herself and Rs. 5,000/- per month for the opposite party no. 2/minor daughter as was earlier passed by the learned Judicial Magistrate, 3rd Court, Katwa, Purba Bardhaman. It is itself clear and specific that the order passed by the learned Judicial Magistrate was affirmed and the maintenance should be paid from the date of passing of the earlier order dated 27.04.2015.

10. After such order passed by the Hon'ble Court, an application under Section 128 of the Cr. P.C. filed by the opposite parties before the learned Judicial Magistrate, 3rd Court, Katwa the same was registered as Misc. Execution Case No. 69 of 2022, praying for realization of arrear maintenance to the tune of Rs. 2,70,000/- due from the period from 23rd February, 2017 to 19th February, 2022 on the ground state hereinabove. The said application was finally decided by the learned Judicial Magistrate on 27.07.2022 and passed order, inter alia, as follows:-

“Perused closely the record. At the very outset, this Court finds that the order dtd. 27.04.2015 passed by this Court awarding maintenance to the tune of total Rs. 12,500/- per month has been affirmed by the Hon'ble High Court and the other order passed by Ld. ADJ. 2nd Court, Katwa by way of revision to the tune of altogether Rs. 8,000/- per month had been set aside. This instant Misc. Execution Case filed on 04.05.2022 is

just immediate after the passing of the Hon'ble Court's order dtd. 21.04.2022.

Now, after going through the case ruling supplied by the petitioner's side, this Court finds no slightest hesitation regarding the settled judicial principle that the petitioner is entitled to get claim of all the arrear maintenance and Section 125(3) of Cr. P.C. does not create any embargo. Further, considering the submission of both sides and in view of judicial discipline, there practically lies no scope for this Court to reconstruct any interpretation to the standing judicial order passed on previous occasion and henceforth, no ambiguity lies in the bona fide contention advanced by the petitioner lady regarding her entitlement to the schedule claim arrear as specified after due adjustment of the previous maintenance dues. As such the objections raised by the rival side is untenable under law and the claim schedule in the instant application is found maintainable under law.

OP is given one last opportunity to make the necessary payment on the next date i.d. distress warrant would be issued against him."

11. After passing such order, again the petitioner herein feeling dissatisfied filed another revisional application being Criminal Revision No. 64 of 2022 before the learned Additional Sessions Judge, 1st Court, Katwa, Purba Bardhaman and the same was decided by the learned Sessions Judge after hearing the parties on 31st July, 2023, thereby dismissed the revisional application and affirmed the impugned order dated 27.07.2022 passed by the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa. That is the subject matter of challenge herein.
12. It is the contention of the petitioner that the learned Magistrate failed to appreciate the fact that the arrear amount of maintenance which was

claimed by the opposite parties herein with effect from 23rd February, 2017 was originally not effected from that date. The Hon'ble High Court passed the maintenance amount on the basis of salary of the petitioner as on 1st April, 2022. As the same cannot be related back with effect from 23rd February, 2017. The opposite parties are not entitled to get arrear maintenance from the date which was earlier passed by the learned Magistrate on 23rd February, 2017. It would be effected from the date of passing the impugned judgment and order by the Hon'ble High Court on 21st April, 2022. Therefore, the Misc. Execution Case is not at all maintainable and that required to be considered on the basis of arrear due on and from 21st April, 2022 and not from the date of earlier order, i.e., 23rd February, 2017 because the petitioner has paid the maintenance amount as passed by the learned Judicial Magistrate on and from 22.02.2017. Accordingly, he prays for setting aside the order passed by both the Courts below.

13. On the other hand, the learned counsel appearing on behalf of the opposite parties submits and opposes the prayer of the petitioner. It is contended that the Hon'ble High Court has been pleased to affirm the order of the learned Judicial Magistrate vide its order dated 21.04.2022 passed in CRR

1697 of 2017 and directed to pay a sum of Rs. 7,500/- per month for the opposite party no. 1/wife and Rs. 5,000/- per month to the opposite party no. 2/minor daughter as was earlier passed by the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa, Purba Bardhaman on 27.04.2015. It is further submitted that for clarification, an application has been filed by the petitioner before the Hon'ble High Court in the same CRR No. 1697 of 2017 and the same was registered as CRAN 2 of 2023.

14. After hearing the parties, the Hon'ble High Court passed the order on 22.09.2023, inter alia, as follows:-

"In view of the nature of the clarification so sought by the applicant, I am not inclined to entertain this application. The order which was passed implemented before the learned court below. If the applicant is aggrieved, appropriate measures be taken by way of filing fresh revisional application.

Accordingly, CRAN 2 of 2023 is dismissed."

15. After hearing the submissions of learned counsel appearing on behalf of the opposite parties and considering the materials available in the record, it is very clear that the Hon'ble High Court has clearly stated and allowed the maintenance amount to the tune of Rs. 7,500/- per month to the opposite party no. 1/wife and Rs. 5,000/- per month to the opposite party no. 2/minor daughter as was earlier

passed by the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa, Purba Bardhaman that order is also not challenged before the higher authority as the same order was dismissed.

16. In view of the facts and circumstances, it quite clear that the order is effected from 27.04.2015. Accordingly, the arrear whatever may be due, the petitioner has to pay in view of the order passed by the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa, Purba Bardhaman on and from 27.04.2015. Accordingly, this Court does not find any merit in the instant case and the same is liable to be dismissed.
17. Accordingly, **CRR 3450 of 2023** is, thus, dismissed.
18. In view of the above, **CRAN 1 of 2023** is also disposed of.
19. Interim orders, if any, be vacated.
20. Let a copy of this order be communicated to the learned trial Court below for information and taking necessary action.
21. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Ajay Kumar Gupta, J.)