

CRR 3740 of 2022

**Meherunessa Bibi @ Meherunessa
Vs.
Shahensha Mallick**

Mr. Dilip Kumar Chatterjee
Mr. Prabir Kr. Chatterjee
Mr. Durga Bhusan Mukherjee
Ms. A. chatterjee ...for the petitioner

Mr. Manas Kr. Das
Mr. Aritra Kumar Thokdar ...for the Opposite party

Affidavit of service filed by the petitioner is taken on record.

This is an application under Section 482 of the Code of Criminal Procedure which has been preferred against the judgment and order dated 10th August, 2022 passed by learned Judicial Magistrate, 1st Class, Kandi, Murshidabad in Misc. case no. 234 of 2017. By the impugned judgment and order, learned trial court granted Rs. 6,000/- per month towards maintenance to the petitioner/wife.

Being aggrieved by the said order, the petitioner herein submits that the marriage between the parties is not in dispute in the present context and the opposite party is a service holder and a member of armed forces. He got married with the petitioner herein on 10th July, 2016. The petitioner alleged that after marriage, she was subjected to physical and mental torture and for which she had to take shelter at her paternal house since 19th

January, 2017. It is further submitted that thereafter, she filed an application before the trial court seeking maintenance under Section 125 of the Code praying for maintenance of Rs. 30,000/- per month being Misc. Case no. 234 of 2017, since she is unable to maintain herself.

The opposite party/husband contested the said application and in his written objection, he contended that his monthly income is Rs. 25,000/-.

The petitioner in her deposition, has specifically stated that the opposite party is getting monthly salary of about Rs. 55,000/- as appearing from his pay slip for the month of August, 2018 and he has also income from landed properties and in all he was earning RS. 1,00,000/- per month at the relevant time. Such statement has also been corroborated by the mother of the petitioner who is PW2. Not only that a suggestion was even put to the petitioner during cross-examination that the monthly salary of the opposite party is Rs. 25,000/- and not Rs. 55,000/-.

His further contention is that the learned trial court relying upon the assertion of opposite party herein that his monthly salary is Rs. 31,000/- and without applying judicial mind, has passed the impugned order and judgment whereby he granted a paltry sum of Rs. 6,000/- towards maintenance to the wife. She further contended that no issue was born due to said wedlock.

Having considered the facts and circumstances of the case, it appears that though the impugned judgment was passed on 10th August, 2022 but such order did not follow the mandatory

directions passed by Apex Court in **Rajnish Vs. Neha, (2021) 2 SCC 324.**

In the said judgment, it has been held by Supreme Court that for determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part-B-III of the judgment. It was specifically held that the affidavit of disclosure of assets and liabilities annexed as Enclosures I, II, III of the judgment as may be applicable, shall be filed by both parties in all maintenance proceeding, including pending proceeding and maintenance in all cases will be awarded from the date of filing the application for maintenance.

Accordingly, the trial court ought to have asked both the parties to file affidavit of assets and liabilities before coming to a conclusion regarding the quantum of maintenance to be awarded to the petitioner/wife.

In such view of the matter, the impugned judgment and order is not sustainable in the eye of law.

The impugned judgment and order dated 10.8.2022 is hereby set aside. Learned trial court is hereby directed to ask both the parties to file affidavit of assets and liabilities within a period of three weeks from the date of communication of the order and also to give an opportunity to both the parties to adduce additional evidence if any. Upon such compliance and on the basis of such affidavit of assets and liabilities and after considering additional evidence, if any and the materials already available in record and also in strict compliance of directions passed by the Apex court in

Rajnesh Vs. Neha (supra), the court below is directed to write the judgment afresh preferably within a period of eight weeks from the date of communication of the order.

CRR 3740 of 2022 is accordingly disposed of.

Be it also mentioned that I have not gone into the merits of the case and the court below will dispose of such application without being influenced by any observation made herein.

It is further directed that the opposite party/husband shall go on paying an amount of Rs. 6,000/- per month till adjudication of the said application afresh by the court below.

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

(Ajoy Kumar Mukherjee, J.)