

CRR 3829 of 2022

Smt. Sarbani Bhowmick (Roy)
Vs.
The State of West Bengal & Anr.

Mr. Subhamoy Bhattacharya
Mr. Shankar Mukherjee ...for the Petitioner

Mr. Dedasis Kar
Ms. Jagori Mitra ...for the opposite party

Being aggrieved and dissatisfied with the judgment and order dated 6th June, 2022 passed by the learned Additional Sessions Judge in Criminal Appeal no. 5 of 2020, present applications has been preferred by the petitioner/wife. By the impugned order, learned court below has affirmed the order of the trial court.

It is submitted that the petitioner herein as wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Magistrate seeking monetary relief and initially learned Trial Magistrate was pleased to pass an order ex parte by granting monetary relief of Rs. 6,000/- per month. Subsequently, on the basis of the prayer made on behalf of the husband/opposite party, the said interim order got vacated and after contested hearing, learned trial court was pleased to grant Rs. 3000/- per month towards monetary relief in favour of the petitioner/wife.

Being dissatisfied with the said amount of monetary relief granted by the trial court, the petitioner/wife preferred aforesaid appeal before the court below and the learned court below after

hearing both the parties, affirmed the order of the trial court by the order impugned.

Being aggrieved by that order, the petitioner contended that the order is unspeaking and unreasoned and was passed in a mechanical way without taking into consideration the submissions and contentions of the petitioner/wife. Moreover, learned court below did not grant interim relief of protection or direction regarding accommodation which were granted to the petitioner/wife vide order dated 14th February, 2017. He further submits that the trial court had erred in law while recalling/modifying his own order dated 14th February, 2017, which was passed ex parte after considering all the material particulars. He further submits that both the trial court and the appellate court have failed to appreciate the status and condition of the petitioner and he further contended that the learned appellate court has erred in law by not passing necessary direction upon the parties to file affidavit of assets and liabilities for determination of quantum of maintenance as has been mandated by the Apex Court. The amount awarded towards monetary relief is a paltry sum and accordingly, the petitioner/wife has prayed for granting reasonable amount of monetary relief to the petitioner.

Learned counsel for the opposite party submits that the petitioner herein stayed at her matrimonial home for only one year and six months. The petitioner's target is only to squeeze money from her husband. He further submits that the opposite party/husband is a cardiac patient and his bypass surgery was conducted in the year 2016 but neither the petitioner nor her

family member took any initiative for his treatment and presently the opposite party no. 2 is completely unemployed and is fully dependent upon his elder brother.

He further submits that the petitioner/wife herein is an earning lady. Furthermore, the petitioner has her own property and she is the only child of her parents and he also submits that the court below did not ask the parties to file affidavit of assets and liabilities while passing the order impugned.

I have considered the submissions made by both the parties. On perusal of the order passed by the trial court dated 15th January, 2020, it appears that the order is cryptic. The court below passed the order by directing the opposite party/husband to pay monetary relief of Rs. 3000/- to the petitioner without assigning any reason as to what is the basis of determination of such quantum of monetary relief. When the matter came up before the appellate court, the appellate court came to a finding that although the marriage of the parties is admitted but the actual income of opposite party no. 1/husband has not been proved at this stage and accordingly he came to a conclusion that the magistrate has rightly fixed the quantum of interim monetary relief to the tune of Rs. 3000/- per month.

In order to avoid such anomalies and the conflict of judicial opinion, the Supreme Court in the case of **Rajnesh Vs. Neha** reported in **2021 2 SCC 324**, has laid down the procedure to be followed in such cases while determining the quantum of monetary relief in the form of maintenance. It appears that though the order impugned was passed in the year 2022 i.e. after passing of the mandatory direction of the Apex Court, but the

court below did not take into consideration of such mandatory directions and without asking the parties to file affidavit disclosing assets and liabilities has jumped to a conclusion that the trial court was justified in passing the order impugned.

While determining the quantum of monetary relief, the court ought to have asked the parties to file affidavit of disclosure of assets and liabilities to enable court to make an objective assessment of the quantum of monetary relief.

In such view of the matter, the present application being CRR 3829 of 2022 is hereby disposed of with a direction upon the trial court 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 to dispose of the petitioner's application under Section 23 of the Act of 2005 afresh preferably within a period of four weeks thereafter without granting any unnecessary adjournment to either of the parties.

The order dated 15.1.2020 passed by the trial court in Misc. case no. 126 of 2016 and dated 6th June, 2022 passed in Criminal Appeal no. 05 of 2020 are hereby set aside.

I have made it clear that I have not gone into the merits of the case. The court below will dispose of such application afresh without being influenced by any observations made herein.

It is also made clear that the opposite party/husband herein will go on paying an amount of Rs. 3000/- per month till the disposal of the aforesaid interim application by the court below.

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

(Ajoy Kumar Mukherjee, J.)

