

26.09.2024.
02.
Ct. No.237
Bd.

CRR 3285 of 2016
IA No. CRAN 3 of 2017
(Old No. CRAN 2418/2017)
CRAN 5 of 2021

Krishnendu Bikash Jana
-vs-
Smt. Sikha Jana (Mandal)

Mr. Milon Mukherjee
Mr. Biswajit Mannafor the petitioner.

Mr. Ayan Basu
Mr. Anindya Sundar Chatterjee
Mr. Sumit Routh ... for the opposite party no.2

Being aggrieved and dissatisfied with the judgment and order dated 28th July, 2016 passed by learned Additional Sessions Judge, 6th Court, Paschim Midnapore in Criminal Appeal No. 42 of 2015, the present application has been preferred. By the order impugned, learned court below has modified the order dated 19th October, 2015 passed by learned Judicial Magistrate 3rd Court, Paschim Midnapore in C.R. Case No. 584 of 2015 by enhancing the maintenance amount and other allowances. Learned Trial Court while disposing of an interim application made by the petitioner under section 23 of the Protection of Women from Domestic Violence Act, 2005, was pleased to direct the husband/petitioner herein to pay a sum of Rs. 12,000/- per month to the complainant towards her interim maintenance and Rs. 5,000/- per month as accommodation cost. The

respondent was further directed to pay Rs. 3,000/- towards litigation cost.

Being aggrieved by the said order, the wife/opposite party herein preferred an appeal before the Court below and learned Court below while disposing the Criminal Appeal No. 42 of 2015, was pleased to direct to pay interim alimony of Rs. 50,000/- per month to his wife i.e., opposite party herein and he has further directed to pay Rs. 20,000/- per month towards accommodation charges and the Court below further directed to pay the compensation to the extent of Rs. 50,000/- at a time to the wife and also to pay litigation cost of Rs. 25,000/-.

It is submitted on behalf of the petitioner that petitioner is having a yearly income of Rs. 9.87 lakhs which comes to around a monthly income to the tune of Rs. 80,000/- approximately. However, Court below without considering the same directed the petitioner to pay the maintenance plus accommodation charge to the tune of Rs. 70,000/- per month to the opposite party and thereby he has committed a serious error in law. Learned Court below did not consider that under section 22 of the Protection of Women from Domestic Violence Act, which provides compensation for aggrieved persons and for injuries including mental torture and emotional distress caused by the respondents, it is required to be brought into record that the person was tortured by the respondent during her stay with the

respondent and such act by the respondent can only be proved after the parties adduce their evidence before the Court having competent jurisdiction. However, in the instant case learned Judge failed to consider the said aspect and directed the petitioner to pay Rs. 50,000/- towards compensation to the opposite party. Accordingly, petitioner has prayed for setting aside the order impugned.

Learned counsel appearing on behalf of the opposite party no. 2 submits that the petitioner herein is a multi millionaire and he has lot of income from various sources and as such the Court below has rightly assessed the entire facts and circumstances of the case and has decided the quantum of maintenance as well as compensation amount and the litigation cost which does not call for interference by this Court invoking the jurisdiction under section 482 of the Code of Criminal Procedure.

I have considered the submissions made by both the parties. On perusal of the order impugned it appears that while the Court below disbelieved the income stated by petitioner herein/husband on the ground that petitioner is a businessman having hotel, lodge, petrol pump, stock business of mobile oil at Contai etc., so the income shown by husband in the objection petition is only the tip of the iceberg but at the same time observed that respondent therein/husband though tried his level best to show that his wife is an earning lady by producing income tax return, trade

licence, purchase deed but these are not acceptable as wife stated that all these documents are actually her husband's document created in her name to hoodwink the income tax department and other authorities

In short, from the order impugned it is clear that while Trial Magistrate was of the view that quantum of maintenance and accommodation charge will be Rs. 12,000/- and Rs. 5,000/- per month respectively, the Appellate Court held that such maintenance amount and accommodation allowance to be paid by husband would be Rs. 50,000/- and Rs. 20,000/- respectively.

To overcome and to avoid such type of conflicting orders, the Supreme Court in ***Rajnish Vs. Neha, (2021) 2 SCC 324*** held 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. For payment of interim maintenance the affidavit of disclosure of assets and liabilities annexed as Enclosure I, II and III of the judgment as may be applicable, shall be filed by both the parties in all maintenance proceeding including pending proceeding. (Paragraph 129 and 130 read with the enclosures of the judgment).

In such view of the matter, the order of the Trial Court dated 23.07.2015 and the order of the Appellate Court dated 28.07.2016 are hereby set aside.

The Trial Court will accordingly ask both the parties to file affidavit of assets and liabilities within a period of three weeks from the date of communication of this order and to decide the petitioner's application under section 23 afresh preferably within a period of four weeks thereafter following the guidelines laid down in **Rajnish Vs. Neha** (supra). However, the husband/petitioner herein will go on paying an amount of Rs. 40,000/- per month till disposal of the interim monetary relief application filed by the opposite party/wife.

CRR 3285 of 2016 is accordingly disposed of.

I make it clear that I have not gone into the merits of the case and the Court below will decide the application afresh without being influenced by any observation made therein.

In view of disposal of the main application connected applications are also disposed of.

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

(Ajoy Kumar Mukherjee, J.)

