

12.09.2024
SL. 39
Court No. 551
Sourav

C.R.R. 4107 of 2012

In re: An application Under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: **Raju Baital**

... petitioner.

Ms. Jonaki Saha

... for the petitioner.

Mr. Avishek Sinha

... for the State.

Ms. Pallavi Priyadarshee

... for the opposite party no. 2.

1. The legality, propriety and correctness of the judgment and order dated 26.11.2012 as passed by the learned Additional Sessions Judge, First Court at Howrah in Criminal Revision No. 03 of 2012 is the subject matter of the instant revisional application.
2. By the impugned judgment and order, the said first appellate court affirmed the order dated 13.12.2011 as passed by the learned Judicial Magistrate, 1st Court, Howrah in Misc. Case No. 138 of 2011 in a proceeding under Section 125 Cr.P.C. thereby directing the husband to pay maintenance to the tune of Rs. 1,500/- per month to his wife and Rs. 1,000/- per month to her minor daughter from the date of passing of the said order by the trial Court.
3. In course of hearing Ms. Saha, learned advocate for the revisionist/husband submits before this Court that both the trial court as well as the first appellate court failed to visualize that the present revisionist/husband has lost his

job and, therefore, he has no capacity to pay the aforementioned amount of maintenance. It is further submitted by Ms. Saha, learned advocate for the revisionist/husband that the quantum of maintenance as assessed by the trial court as well as by the first appellate court is not inconsonance with the income of the present revisionist/husband.

4. While opposing such contention, Ms. Priyadarshee, learned advocate for the opposite party/wife and Mr. Sinha, learned advocate for the State in their respective submissions contend that there is little scope to interfere with the order impugned inasmuch as the quantum of maintenance as fixed by the learned trial court is practically on the lower side and before the learned trial Court, the husband has miserably failed to discharge his onus to prove his actual income.
5. Upon consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals that the order dated 13.12.2011 as passed by the learned Trial Court in Misc. Case No. 138 of 2011 is purely interim in nature. Thus, this Court further considers that the husband would get every opportunity to prove his actual income in order to assist the trial court to come to a proper finding with regard to the quantum of maintenance if at all payable to the present revisionist's wife and/or her minor daughter.
6. This Court is in agreement with the submission of Ms. Priyadarshee, learned advocate for the opposite party/wife

and Mr. Sinha, learned advocate for the State that the quantum of maintenance as fixed by the learned trial Court and as affirmed by the first appellate Court is minimum for the subsistence of the opposite party/wife and her child considering the cost of living and other allied expenses for day to day life of a normal human being.

7. This Court thus finds no reason to interfere with the order impugned.
8. Accordingly, the instant revisional application being **CRR 4107 of 2012** is hereby dismissed.
9. Department is directed to send down the LCR of Misc. Case No. 138 of 2011 along with a copy of this order to the Court of learned Judicial Magistrate (1st Class), 1st Court, Howrah forthwith.
10. Department is further directed to send down the case record of Criminal Revision No. 03 of 2012 to the Court of learned Additional Sessions Judge, 1st Court, Howrah along with a copy of this order positively within a week from today.
11. Department is further directed to forward a copy of this order to the Secretary, Calcutta High Court Legal Services Committee also within seven days from today who on receipt of the same shall disburse the admissible amount of honorarium to Ms. Jonaki Saha, learned advocate for the petitioner and Ms. Pallavi Priyadarshee, learned advocate for the opposite party/wife preferably prior to the ensuing Puja Vacation.

(Partha Sarathi Sen, J.)

