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2024
Ct. No. 3

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

C.R.R. 125 of 2024
Sri Bikash Karmakar
Vs.
The State of West Bengal & Ors.

Mr. Jaydeep Kanta Bhowmik
Ms. Sayantani Das

...For the Petitioner

Mr. Aditi Shankar Chakraborty
Mr. Arjun Chowdhury

...For the State

Mr. Gopal Sah

...For the Private Opposite Parties

Petitioner herein being aggrieved by an order dated 4th January, 2024 passed by the learned Chief Judicial Magistrate, Jalpaiguri in Misc. Petition No. 22 of 2023 has preferred the present application. By the impugned order learned Trial Court heard the matter ex parte and passed an order directing the petitioner herein to make payment of Rs. 14,000/- per month to the petitioner and her two children towards maintenance.

Being aggrieved by that order, petitioner herein submits that he did not get opportunity to contest the said application and the Court below without considering the financial position of the petitioner / husband has passed the order and he has fixed the maintenance amount abruptly. He further submits that while passing the order impugned in the year 2024 the Court below did not follow the mandate laid down by the Hon'ble Apex Court in the case of *Rajnish Vs. Neha & Anr.*, reported in (2021) 2 SCC 324. Accordingly the order impugned is liable to be set

aside.

Mr. Gopal Sah, learned Counsel appearing on behalf of the private opposite parties submits that the petitioner has made the aforesaid prayer for maintenance of herself and her two children, who are under her custody and the petitioner has no income of her own. Accordingly the order impugned is justified and does not require interference by this Court. Accordingly, he has prayed for rejection of the present application.

I have considered the submissions made on behalf of both the parties. On perusal of the order dated 5th June, 2023, it appears that the notice of the said Misc. Case was served upon the opposite party but the opposite party did not turn up and as such the Court was pleased to fix the said proceeding ex parte. However, now it appears from the submissions made by the opposite party that the opposite party/husband wants to contest the proceeding. In such view of the matter and also considering the fact that while passing the order impugned the Court below had come to a final conclusion regarding maintenance amount without following the mandate laid down in the case of *Rajnish Vs. Neha (Supra)*, the order impugned dated 29.9.2022 passed in Misc. Case No. 170 of 2018 is hereby set aside.

The Court below is directed to give opportunity to both the parties to file affidavit of assets and liabilities in terms of the directions made in *Rajnish Vs. Neha (Supra)* within a period of four weeks from the

date of communication of this order and to adjudicate the proceeding filed by the petitioner under Section 125 of the Code of Criminal Procedure afresh preferably within a period of four week thereafter giving opportunity to both the parties to contest.

However, the petitioner herein will go on paying an amount of Rs. 10,000/- per month till disposal of the application under Section 125 afresh by the Court below and such payment shall be made without prejudice to the rights and contentions of the parties. In case of default in paying the aforesaid amount, the Court below will be at liberty to pass appropriate order in accordance with law.

I have also made it clear that I have not gone into the merits of the application and the Court below will dispose of the application under Section 125 of the Code of Criminal Procedure, afresh in terms of the directions made in the case of *Rajnish Vs. Neha (Supra)* and also without being influenced by any observations made herein.

The application, being C.R.R. 125 of 2024 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)