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**CRR 3692 of 2022
IA No.CRAN 1 of 2023**

**Md. Jamal Hossain
Vs.
The State of West Bengal & Anr.**

Mr. Tapan Dutta Gupta
Mr. Parvej Anam
Ms. Rituparna Ghosh ... for the petitioner

Mr. Sujoy Sarkar
Mr. Musharaf Alam ...for the private opposite party.

Being aggrieved by and dissatisfied with the order regarding enhancement of maintenance passed under section 127 of the Code of Criminal Procedure by the court below in Misc. Case No. 04M of 2019 arising out of case no. 117M of 2012 present application has been preferred by the petitioner/husband.

It is submitted on behalf of the petitioner that the opposite party/wife herein initially filed an application seeking maintenance under section 125 of the Code of Criminal Procedure being aforesaid Case No. 117M of 2012 and learned Judicial Magistrate by an order dated 3rd May, 2017 was pleased to pass an order directing the husband/petitioner herein to pay Rs. 2,000/- per month to the opposite party no. 2 towards her maintenance. Thereafter the opposite party 2 herein filed an application for enhancement of the said maintenance amount under section 127 of the Code of Criminal Procedure, on 10th April, 2019 claiming an amount of Rs. 10,000/- per month towards monthly maintenance. The learned court below by the

order impugned dated 10th June, 2022 has enhanced the said maintenance amount from Rs. 2,000/- to Rs. 5,000/- per month.

Being aggrieved by that order of enhancement by the court below, learned counsel appearing on behalf of the petitioner submits that the order impugned is cryptic and devoid of any reasoning and as such it is liable to be set aside. The court below did not consider that the opposite party no. 2 has her own personal income which she suppressed and obtained the order impugned. The court below also failed to consider that the opposite party/wife herein deserted the petitioner without any just and proper reason and as such she is not entitled to get any amount of maintenance.

Learned counsel appearing on behalf of the opposite party raised objection contending that the petitioner/husband has sufficient income and he is a government employee and his net income was Rs. 30,860/- as reflected from the pay slip for the month of February, 2022. Thereafter his income also substantially increased. Accordingly, the order impugned does not call for interference by this Court.

I have considered the submissions made by both the parties.

It appears that when the order was passed by the court below the court below did not take into consideration the mandatory direction made by the Apex Court in the case of ***Rajnesh -vs- Neha & Anr. reported in (2021) 2 SCC 324*** where it was held that for the determination of quantum of maintenance both the parties are duty bound to file affidavit of assets and liabilities before the Court below, which has not been complied in the present context.

In such view of the matter, it appears that the order impugned directing the enhancement of maintenance has not been passed in compliance with the direction made in the aforesaid judgment passed in ***Rajnesh –vs- Neha & Anr, (supra)***.

In such view of the matter, the present application being CRR 3692 of 2022 is hereby disposed of with a direction upon the court below to ask both the parties to submit affidavit of assets and liabilities within a period of one month from the date of communication of this order and to dispose of the opposite party's application under section 127 of the Code of Criminal Procedure afresh within a period of sixty days thereafter.

The order impugned dated 10th June, 2022 thus, stands quashed.

However, the petitioner herein shall go on paying Rs. 4,000/- per month from May, 2025 till disposal of the application under section 127 afresh by the Court below.

It is also made clear that the court below will decide the prayer for enhancement of maintenance made under section 127 of Code, without being influenced by any observation made hereinabove.

In view of disposal of main application connected application is also disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)