

18.3.2025
Sl.34
Nandita
Court No.40

C.R.R. 4388 of 2024

In Re: - An application under Sections 401/482 of the Code of Criminal Procedure, 1974 corresponding to Sections 442/528 of the B.N.S.S, 2023 challenging the order dated August 30, 2024 passed by the Learned Additional Sessions Judge, Fast Track 8th Court Alipore, South 24 Parganas in Criminal Appeal No. 05 of 2024 setting aside order dated 28.11.2023 in A.C.M. Case No. 2139 of 2022 under Section 12 of the Protection of Women from Domestic Violence Act, 2005

And

Sangeeta Banerjee
Vs.
The State of West Bengal & Anr.

Mr. Navanil De,
Mr. Rajeshwar Chakraborty.
.... For the Petitioner
Mr. Angshuman Chakraborty,
Mr. S.S. Sana.
.... For the Opposite Party.

Affidavit-of-service filed on behalf of the petitioner be kept with the record.

The instant application is filed against the order dated August 30, 2024 passed by the learned Additional District and Sessions Judge, Fast Track 8th Court Alipore, South 24 Parganas in Criminal Appeal no. 5 of 2024.

The wife, namely, the present petitioner has filed an application praying for maintenance before the Learned Trial Court being the Court of 5th Judicial Magistrate at Alipore.

There was a specific prayer for payment of maintenance at a rate of Rs. 20,000/- (Twenty Thousand) per month. Affidavit of asset was filed in the Trial Court, which passed an interim maintenance order to the extent of Rs. 8,000/- (Eight Thousand) per month from the date of filing of the application.

Being aggrieved an appeal was preferred before the Learned Sessions Judge which was subsequently transferred to the Appellate Court being Additional Sessions Judge, Fast Track 8th Court Alipore. Although, at the initial stage of the appeal the present petitioner was allowed modified of maintenance of Rs. 5,000/ (Five Thousand) per month, subsequently the appeal was allowed and the order passed by the Judicial Magistrate 5th Court Alipore on 28.11.2023 was set aside, as a result of which prayer of interim maintenance of the present petitioner was refused. There is also an order that any amount of money after paid by the appellant as interim maintenance to the respondent no.2 may be adjusted at a later stage after final disposal of the pending application.

The Learned Counsel for the petitioner submitted that there was subsequent change of income of the wife. According to him the wife's income has been reduced to Rs. 9,400/- (Nine Thousand Four Hundred) per month necessitating enhancement. It is further submitted of maintenance. Her present income is not enough to support her or to maintain her lifestyle which she enjoyed during her matrimonial life.

The learned Counsel for the opposite party/husband submitted that the order passed by the Appellate Court was based on materials on record and should not be interfered into. It is further submitted that the wife is an earning person considering which the Appellate Court rightly allowed the appeal.

I have heard the revisional submission.

The Trial Court while passing the order did not consider the affidavit of asset.

Heard the learned Counsels for the respective parties.

The affidavit of asset duly signed by the present petitioner is on record and annexed to the present application. This clearly shows that wife has an own earning which is mentioned to be that Rs. 14,000/-(Fourteen Thousand) and her monthly expenditure of Rs. 10,000/- (Ten Thousand) per month. The Appellate Court also took into consideration the materials on record namely affidavit filed by the husband regarding the income. On perusal of the judgment of the Appellate Court no perversity or irregularity came to the notice. The Appellate Court passed order on the basis of materials on record. Therefore, this court is not inclined to interfere into the order passed by the Appellate Court.

It is made clear that these observations are tentative since in the trial is still pending. The parties shall adduce evidence and the Trial Court should come to conclusion on the basis of evidence adduced. Observations made herein are only on the

basis of document. In case of any change in the circumstances or any change in income both the parties are at liberty to adduce of evidence before the Trial Court who may pass necessary order taking into consideration the evidence adduced.

This order should not influence the trial in any manner or passing the final order. Accordingly, the application stands disposed of with a direction to expedite the order.

Copy of this order may be sent to the Learned Trial Court below.

Urgent certified photocopy of this order, if applied for, shall be supplied to the parties upon compliance of all necessary formalities.

(Sugato Majumdar, J.)