

01.04.2026
Court No.34
Item No. 3
sg

CRR 3237 of 2023
in
IA. CRAN 2 of 2026

In the matter of: **Smt. Sankari De**

...Petitioner.

Mr. Mahammad Mahmud

...for the petitioner.

1. This is an application filed under Section 482 read with Section 401 of the Code of Criminal Procedure against an order dated 4th April, 2023 passed by the learned Sessions Judge, Fast Track, 2nd Court, Hooghly in Criminal Motion 102 of 2022 whereby the order dated 4th June, 2022, passed by the learned Judicial Magistrate, Additional Court, Hooghly was modified and the quantum of maintenance granted initially was reduced.

2. The present petitioner is the wife of the opposite party no.2 and an application under Section 125 of the Code of Criminal Procedure was filed for having maintenance against her husband before the court of learned Chief Judicial Magistrate, Hooghly along with the application for interim maintenance in the said case.

3. Learned Chief Judicial Magistrate transferred the said case to the Court of 5th, Judicial Magistrate, Hooghly where matter was heard and considering written objection filed by the present opposite party and ground made therein Court passed an order of Rs. 3,000/- to be paid as interim maintenance to the present petitioner by 10th of each succeeding month.

4. Challenging the said order criminal revisional application was filed where grounds taken by the husband that he has no income and aged about 75 years of age and younger son of the opposite party/wife is a Primary School teacher which was suppressed. Accordingly learned Court of Additional Session Judge, Fast Track 2nd Court, Hooghly reduced the maintenance to the tune of Rs. 1,500/- per month. Being aggrieved thereby this revisional application has filed.

5. It is the contention of the Learned advocate representing petitioner that she is an aged lady of more than 65 years of age and having no means of income of her own to sustain herself. Her eldest son is mentally challenged whereas the husband is having landed properties. That apart he earned more than Rs. 15,000/- from pension as he was a retired School teacher and has business of pisciculture whereby he earned of Rs. 50,000/- per month. Despite that the amount has been reduced to Rs. 1,500/- which is meager amount to sustain livelihood.

6. None appears on behalf of the opposite party no.2 despite service being affected, therefore matter is taken up for hearing in absence of the opposite party considering the long pendency of the matter.

7. The learned appellate court while allowing the prayer of the opposite party considered the submission that the younger son of present petitioner is also School teacher and having income of Rs. 60,000/- per month which has been suppressed and hence wife is not entitled to claim maintenance for her. Accordingly reduced the

amount of maintenance as was granted by the learned Court of Judicial Magistrate.

8. Admittedly order is passed as an interim maintenance. Whether the husband is having landed property or his income of Rs. 50,000/- or not or the present petitioner is entitled to get maintenance or not can only be decided in course of trial by the respective parties considering the assets and declarations to be filed before the Court in terms of the decision of the Hon'ble Supreme Court in ***Rajnish Vs. Neha***.

9. Learned Appellate Court primarily considered the age of the husband without considering the age of the wife and as to whether wife is having means of maintaining herself or not, while dealing with the application for interim maintenance. While modifying the quantum of maintenance already decided by the learned Magistrate, reason cannot be the income of the younger son being a School teacher. The learned revisional court was of the view that the learned Magistrate while passing such order decided certain rights of the parties and the consequences thereof cannot be termed as interlocutory order but on close scrutiny this court do not find whether rights were decided when the scope of the learned court is limited to the affidavits filed by the parties. The learned Magistrate passed such order considering the written objection filed by the opposite party. It was observed that the elder son who was mentally challenged was engaged in 100 days work scheme and further considered the affidavit of asset and declaration but the order of the learned revisional court is silent about such aspect and reduced the quantum drastically to

Rs.1500/-from 3000/- without assessing whether such amount would be sufficient to maintain herself who has admittedly no income.

10. Therefore, this Court is of the view the order passed the learned Court is liable to be set aside as it is really difficult to maintain herself with that amount.

11. Accordingly the order passed by the learned Appellate Court is set aside. The opposite party no.2 is directed to continue to pay Rs. 3,000/- per month as initially directed by the learned Court of Magistrate as an interim maintenance. It is pertinent to mention herein that it could be gathered from the submission of the learned advocate appearing on behalf of the petitioner that opposite party no.2 is paying of Rs. 1,500 per month regularly and also paid arrear dues as directed. However, opposite party no.2 is further directed to pay balance amount of Rs. 1,500/ per month from the date of the order as passed by the learned Magistrate.

12. He is given liberty to pay arrear amount of maintenance calculating at rate of Rs. 1,500/- per month further from the date of order passed by the learned Magistrate in 15 equal installments till such arrear is exhausted.

13. Hence this revisional application stands allowed in absence of the opposite party.

14. Parties are to act on the server copy of this order downloaded from the official *website* of the Calcutta High Court.

16. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]