

(2023) 06 CAL CK 0065

In the Calcutta High Court

Case No : Criminal Revision No. 181 Of 2019, CRAN 1 Of 2019, (Old No. CRAN 258 Of 2019)

Dr. Asim Kumar Bera @ Ashim Kumar Bera

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(4), 127, 248(1)

Indian Penal Code, 1860 — Section 307, 406, 498A

Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2023) 06 CAL CK 0065

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Angshuman Chakraborty, Shashanka Sekhar Saha

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against a judgment and order dated 21.03.2017 passed by the Learned Additional Session Judge, Fast Track Court, Haldia, Purba Medinipur in Criminal Revision No. 32/2015 whereby the Learned Judge was pleased to allow the revisional application in part on contest against the State and ex parte against the petitioner herein and directed that the opposite party No. 2 herein is entitled to get maintenance from the petitioner herein at the rate of Rs. 5000/- per month and the petitioner was directed to pay the said amount per month with effect from the date of order and also directed that the opposite party no. 2 herein in the event of non payment will be at liberty to recover it by way of execution and that the ordering portion passed by the Learned Judicial Magistrate, Haldia as regards award of maintenance to the minor son passed in the final order and judgment dated 26.08.2015 in connection with Misc. Case No. 214 of 2010 shall remain the same and the petitioner herein was directed to go on depositing the same.

2. The petitioner's case is that the Petitioner is the husband of the opposite party no. 2 herein and had been a Research Fellow in the Institution of Bio-Science and Bio-tech, Research State of Marry Land, Sadyagrove, U.S.A. The petitioner and the opposite party no.2 here in after their marriage used to reside at 440 North Summit Avenue, Apartment 204, Marry Land U.S.A.

3. The opposite party no. 2 is an advocate by profession. A male child was born on 22.08.2006 out of the said wedlock.

4. On the basis of a written complaint filed by opposite party no. 2 before the Officer-in-charge, Durgachak Police Station on 25.11.2010, Durgachak Police Station case no. 150 of 2010 dated 25.11.2010 was started under Sections 498A/406 of the Indian Penal Code. When the investigation of the case was under progress, the opposite party no. 2 made another written complaint bringing out totally a new story on the basis of which Section 307 of the Indian Penal Code was added in the charge sheet along with Section 498A/406 IPC, against the petitioner and another.

5. By a Judgment and Order dated 02.12.2012 passed by the Learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur, the petitioner and another were acquitted from the charge under Section 498A of the Indian Penal Code in terms of Section 248(1) of the Code of Criminal Procedure.

6. The opposite party no. 2 then filed an application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 and the petitioner and others prayed for quashing of the proceeding being case no. C-278/2013 under Section 12 of the Protection of Women From Domestic Violence Act which was pending before the Learned Judicial Magistrate, 1st Class, Haldia, Purba Medinipur before the this Hon'ble High Court being CRR No. 3408/2013. By an order dated 15.06.2017 in the said revision, the proceedings being C-278 of 2013 under Section 12 of the Protection of Women From Domestic Violence Act was quashed against the petitioner.

7. The opposite party no. 2 then filed an application under Section 125 of the Code of Criminal Procedure before the Learned Trial Court being Misc. Case no. 214/2010. The petitioner entered his appearance and filed his written objection therein.

8. By a judgment and final order dated 26.08.2015, the Learned Judicial Magistrate, 1st Court, Haldia, refused to grant maintenance to the opposite party no. 2 (wife) but directed the petitioner to pay Rs. 7000/-per month as maintenance to his minor son Ankit Bera till he attained his majority and disposed of the Misc. case finally.

9. Challenging the aforesaid order the opposite party no. 2 filed a Revisional Application before the Additional District and Session Judge, Haldia, Purba Medinipur, being Criminal Revision No. 32/2015. By a judgment and order dated 21.03.2017 passed by the Learned Additional Session Judge, Fast Track Court,

Haldia, Purba Medinipur in connection with Criminal Revision No. 32/2015, the Learned Judge was pleased to allow the revisional application in part on contest against the state and ex parte against the petitioner and directed that the opposite party no. 2 (wife) is entitled to get maintenance of Rs. 5000/- per month from the petitioner with effect from the date of order and the opposite party no. 2, in the event of nonpayment was given liberty to recover it by way of execution and that the ordering portion passed by the Learned Judicial Magistrate, Haldia, as regards award of maintenance to the minor son passed vide order dated 26.08.2015 in Misc case no. 214 of 2010 was affirmed and the petitioner was directed to go on depositing the same.

10. The wife/opposite party no. 2 then filed an application under Section 127 of the Code of Criminal Procedure and also a few execution cases, though the petitioner is almost regularly paying the sum as directed. Sometimes the opposite party no. 2 has also refused to accept the sum for their minor child from the petitioner.

11. Mr. Angshuman Chatterjee, learned counsel for the petitioner has submitted that Learned Judge failed to appreciate that this Hon'ble Court in its order dated 15.06.2017 in CRR no. 3408 of 2013 has quashed the proceedings under Section 12 of the Protection of Women From Domestic Violence Act and the petitioner was also acquitted from the charges of 498A of Indian Penal Code.

12. That Learned Judge failed to appreciate that the Magistrate has in its order dated 26.08.2015 observed the reason for which the opposite party no. 2 was not entitled to maintenance and as to why, the Son of the petitioner and opposite party no. 2 was entitled to get maintenance.

13. That Learned Judge failed to appreciate that the petitioner has filed an application for custody of the minor child and has also filed for divorce against the opposite party no. 2

14. It is submitted that the impugned judgment and order is baseless since it is silent as to how and on what basis the revisional court inferred that the opposite party no. 2 herein has no income despite she being a practicing advocate and the court also did not appreciate the provision of Section 125(4) of the Code of Criminal Procedure while modifying the order of Magistrate and thus the impugned order being bad in law is liable to be quashed.

15. In spite of due service there is no representation on behalf of the opposite party no. 2.

16. From the materials on record the following facts are before this court:-

i) The Learned Magistrate granted a sum of Rs. 7000/- as maintenance for the minor son but refused maintenance to the wife/opposite party no. 2, while disposing of the application under Section 125 Cr.P.C. finally.

ii) On revision, the Sessions Court granted maintenance of Rs. 5000/- per month

to the wife, considering the fact that the husband is a qualified and an able bodied person and also considered that as the wife is also qualified, having a LLB degree and though can join the profession, it would take a while to start earning, thus an amount of Rs. 5000/- was granted in her favour.

17. This court finds that the Judgment/Order under revision has been passed by following the guidelines required to be applied in cases of this nature and is in accordance with law. The amount granted as maintenance is the bare minimum.

18. Thus the Judgment under revision requires no interference by this court being in accordance with law.

19. CRR 181 of 2019 is dismissed.

20. The judgment and order dated 21.03.2017 passed by the learned Additional Session Judge, Fast Track Court, Haldia, Purba Medinipur in Criminal Revision No. 32/2015, is affirmed.

21. No order as to costs.

22. All connected applications, if any, stands disposed of.

23. Interim order, if any, stands vacated.

24. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.