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Court : Kolkata

Decided On : Jun-29-2011

Judge : Kanchan Chakraborty, J.

Acts : Code of Criminal Procedure (CPC) - Section 125, 127, 482

Appeal No. : C.R.R.2346 of 2010.

Appellant : istupada Pramanik.

Advocate for Def. : Mr. Tapas Ghosh; Mr. Tanmoy Chowdhury; Ms. Somsubhra Ganguly. Advs

Advocate for Pet/Ap. : Mr. Animesh Mukherjee; Mr. Sibashis Chatterjee., Advs

Judgement :

1. The challenge in this revisional application is to the judgment dated 19.6.2010 passed by the learned Additional Sessions Judge, 1st Court, Suri, Birbhum in Criminal Motoion No.55 of 2009 thereby affirming the judgment passed by the Judicial Magistrate, 2nd Court, Suri, Birbhum in Misc. Case No.104 of 2006 on 17.8.2009.

2. The opposite party No.2 Chhabi Pramanik (Dutta) initiated a proceeding under Section 125 of the Code of Criminal Procedure and obtained an order of maintenance in her favour to the tune of Rs.400/- per month. That monthly maintenance amount was enhanced time to time on the prayer of Chhabi

Pramanik in different proceedings under Section 127 of the Code of Criminal Procedure.

3. She had taken out an application in the Court of the learned Magistrate, 2nd Court, Suri, Birbhum under Section 127 of the Cr. P. C. which was registered as Misc. Case No.104 of 2006 praying for enhancement of maintenance allowance.

4. The learned Magistrate after recording evidence adduced by both the parties and upon consideration of the evidence so recorded as well as the facts and circumstances besides financial ability of the petitioner, was pleased to enhance the monthly maintenance to Rs.3,500/- from Rs.1,000/-. Being dissatisfied with the said order, the petitioner filed a revisional application which was disposed of by the learned Additional Sessions Judge, 1st Court, Suri, Birbhum in Criminal Motion No.55 of 2009. The learned Judge was pleased to dismiss the revisional application and affirm the order passed by the learned Magistrate. The husband/petitioner has come up with this revisional application praying for setting aside of the order passed in the criminal motion on the following grounds;

a) that the learned Additional Sessions Judge as well as the learned Magistrate failed to consider the income of the petitioner by way of proper appreciation of the evidence;

b) that the learned Magistrate as well as the learned Additional Sessions Judge erred in discarding the evidence of the petitioner regarding his landed properties;

c) that the order, being otherwise bad in law, is liable to be set aside.

5. The point to be considered in this revisional application is whether there is sufficient reason to interfere into a concurrent findings of fact and upset the order under challenge.

6. It is not disputed that maintenance to wife is her right and it cannot be denied simply because the husband/petitioner is not earning huge amount of money to provide maintenance to his wife.

“Means’ does not signify only visible means. If one is healthy and able bodied, he must be held to have means to support his wife. It includes, however, capacity to earn. Onus is on the husband to show want of means.

7. I have carefully gone through the judgment passed by the learned Magistrate as well as the learned Additional Sessions Judge.

8. It is not a fact that the learned Magistrate did not record the evidence of the witnesses adduced on behalf of the parties and considered it.

9. The learned Magistrate upon consideration of the evidence on record came to a finding that the petitioner not only a bank employee but also having landed properties wherefrom he earns money. The fact that the opposite party no.2 Chhabi Pramanik is an aged lady has not been denied. There cannot be any dispute as to the fact that she needs an extra hand to help her in household works and also to look after her. Rs.3500/- per month does not appear to be an exorbitant and astronomical amount for such an aged lady having various ailments as it has been canvassed in the evidence on record.

10. The learned Additional Sessions Judge while dismissing of the criminal motion has taken the same view. He although had no scope to reappraise the evidence categorically, came to a findings that the petitioner can afford Rs.3500/- per month for the purpose of maintenance of the opposite party No.2, his wife.

11. There is concurrent finding of fact and that fact finding was recorded upon consideration of the evidence on record. I reiterate beside what the learned lower Courts have taken into consideration, the capability of the husband is to be judged not only by his income shown in the Court but by his capacity to earn. He has the capacity to earn more money in order to support the opposite party No.2. The question only before the Courts was whether the wife was in need of that much amount of money as her maintenance or not. Both the Courts came to a concurrent finding that the wife needs badly that much money as awarded by the learned Magistrate by way of enhancement.

12. It is settled principle of law that only an exceptional cases, and in case of glaring mistake in the fundamental law, High Court may interfere into a concurrent finding of fact. In the instant case, I do not find any illegality, impropriety and incorrectness in the order passed by the learned Additional Sessions Judge. Therefore, I do not incline to exercise my revisional jurisdiction in order to upset the order under challenge.

13. Mr. Animesh Mukherjee, learned Counsel appearing on behalf of the petitioner submits that the order of maintenance at the enhanced rate be given effect from the date of order not from the date of application and as directed by the Learned Magistrate.

14. I do not find any reason to do so. The application for enhancement was filed in the year 2006 and disposed of in the year 2009. The lady has suffered a lot during this long period of three years.

15. Be that as it may, the maintenance at the rate of Rs.3500/- from the date of filing of the application to the date of order be paid by the petitioner in 18 equal monthly instalments together with the current maintenance. This revisional application, thus, stands dismissed and is disposed of.

16. There will, however, be no order as to costs.

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