

District: Hooghly  
In the Court of Additional Sessions Judge,  
1<sup>st</sup> Court, Hooghly

Present: Sanjay Kumar Sharma  
Additional Sessions Judge  
1<sup>st</sup> Court, Hooghly  
**J.O. Code.-WB00753.**

**Criminal Appeal no.04/2024**  
**CNR no.WBHG01-000458-2024**

1. Nasim Layek ..... Appellant  
(Learned Advocate on behalf of the appellant Mr. Sambhunath Dhar)  
Versus  
1. Mst. Sabina yasmin  
2. The State of West Bengal..... Respondents.  
(Learned Advocate on behalf of the respondents. Mr. Sanjoy Bandhopadhyay)

**Date of delivery of Judgment :- 27<sup>th</sup> day of November, 2024**

### **JUDGEMENT**

1. Being aggrieved and dissatisfied with the impugned order dated 07.12.2023 passed by the learned Judicial Magistrate, 3<sup>rd</sup> Court, Hooghly Sadar in M.C case no.100/2020, the instant criminal appeal has been preferred.
2. The grounds of the instant criminal appeal inter alia are that the respondent/wife suppressed her earlier application for interim relief and filed subsequent application as also suppressed that her earlier prayer was partly allowed and those prayers are again made in the subsequent interim application. The impugned order was passed improperly and arbitrarily without considering the actual facts and circumstances of the case. The respondent/wife claimed herself as victim of domestic violence all based on false allegations. It is the appellant who has been subjected to physical, mental and economic torture by the respondent. The impugned order dated 07.12.2023 is bad and illegal and so, it is liable to be set aside.

### **3. Point for determination**

Whether the impugned order dated 07.12.2023 ran afoul as to the facts and law and whether the said order calls for any interference by this learned Court ?

**Decision with reasons**

4. The impugned order is extracted as hereunder:-  

*“The respondent is hereby restrained from inflicting upon the petitioner and his wife any instance of Domestic Violence.*

*The respondent no.1/husband is hereby directed to pay Rs.2,500/- per month to the petitioner, with effect from the date of the filing of the instance petition i.e. 18.11.2020.*

*The respondents are hereby restrained from dispossessing or in any other manner disturbing the possession of the petitioner from any shared household.”*
  
5. Before to decide the fate of this case, let me briefly discuss the argument advanced by the parties. The learned Advocate appearing for the appellant argued in light of the appeal grounds. He argued that the petitioner/wife in the Misc case no.100/2020 approached the learned Judicial Magistrate by suppressing the facts and not came with clean hands. In the proceeding before the Hon’ble High Court being CRR no.67/2024 also they did not mention about the impugned order dated 07.12.2023. With the above submissions and contentions, he prayed for setting aside the impugned order and to allow the present appeal.
  
6. The learned P.P. in his turn submitted that the impugned order was rightly passed in favour of the petitioner/wife and against the present appellant. Therefore, the said order should be affirmed and the present criminal appeal should be dismissed.
  
7. The learned Advocate appearing for the respondent/wife argued that the interim monthly maintenance order granted in favour of the petitioner/wife u/s 125 Cr.P.C for Rs.1000/- was challenged before the Hon’ble High Court in CRR no.67/2024 and the Hon’ble High Court was pleased to enhance the same as Rs.3000/- each month. Being the higher amount, the order of the Hon’ble High Court shall prevail as against the present award money of Rs.2,500/- per month vide the impugned order. The learned Advocate prayed for straight dismissal of the present appeal and supplicated for affirming the impugned order.
  
8. Now, let me decide the appeal. After hearing the argument advanced by the parties and upon going through the materials on record, LCR and the order passed by the Hon’ble High Court at Calcutta in CRR no.67/2024, there is no scope for any kind of quarrel as regards the amount of interim monthly maintenance in favour of the wife. The higher interim monthly maintenance of Rs.3000/- as enhanced and awarded by the Hon’ble High Court has set the imbroglio at rest.

Considering the facts and circumstances of the case, the Hon'ble Court after coming to a finding regarding the inability of the wife to maintain herself and in commensurate with the income and living standard of the husband awarded the interim monthly maintenance at an enhanced amount of Rs.3000/-. In the case on hand, the appellant being a car driver has to maintain his wife and the interim monthly amount of Rs.2,500/- was nigher unreasonable and nor exorbitant. Howsoever, the appellant/husband is duty bound to pay enhanced monthly maintenance of Rs.3000/- instead of Rs.1000/- as was previously awarded u/s 125 Cr.PC or Rs.2,500/- as awarded in the PWDV case as monetary relief. As regards the protection order and restraintment order, there is no justification to give contrary view, by setting aside it at this stage. Moreover, there was no wrangle of words insofar as reliefs other than monetary relief are concerned. In my consideration, the appellant is liable to pay monthly maintenance to his wife in terms of the judgement and direction given in CRR no.67/2024. The findings of the learned Judicial Magistrate given in the impugned order needs no interference. In the impugned order, there is clear mention of the earlier award of Rs.1000/- towards interim maintenance in case u/s 125 Cr.P.C. I find no illegality and infirmity in the order under assail before me.

In the result, the present criminal appeal fails.

Memo of appeal found correctly stamped.

Hence, it is

**ORDERED**

that the instant criminal appeal be and the same is **dismissed** on contest without costs.

The impugned order dated 07.12.2023 passed by the learned Judicial Magistrate, 3<sup>rd</sup> Court, Hooghly Sadar is hereby **affirmed**.

The appellant Nasim Layek is hereby directed to pay interim monthly maintenance of Rs.3000/- each month to his wife Sabina Yasmin as per the order and direction of the Hon'ble High Court given in CRR no.67/2024 by giving effect on and from 11.10.2023.

By this judgement and order, I may direct the appellant to pay arrear maintenance, if any, to the wife.

However, the learned Judicial Magistrate, 3<sup>rd</sup> Court, Hooghly Sadar is hereby directed to proceed with the trial of this case as far as possible and practicable without granting unnecessary adjournments to the parties.

Let a copy of this order along with LCR be sent down to the learned Judicial Magistrate, 3<sup>rd</sup> Court, Hooghly Sadar for information and necessary action.

Dictated & corrected by me

Additional Sessions Judge,  
1<sup>st</sup> Court. Chinsurah  
J.O Code no.WB00753

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