

Misc. Case No.48 of 2013 in directing the petitioner to pay a sum of Rs.10,000/- (rupees ten thousand) per month to the opposite party towards maintenance under section 20 of the P.W.D.V. Act, 2005, inter alia, with other reliefs. The judgment passed by the learned J.M.F.C., Cuttack was confirmed in appeal by the learned Sessions Judge, Cuttack vide judgment and order dated 24.12.2015 in Criminal Appeal No.126 of 2013 and Criminal Appeal No.132 of 2014, both the appeals were filed by the petitioner which was disposed of by a way of common judgment.

Learned counsel for the petitioner contended that the petitioner is an Auto rickshaw driver and the amount of maintenance which was fixed is on the higher side and there was no proper assessment of the income of the petitioner by both the Courts below and the order of maintenance has been passed in a mechanical manner. He further contended that no proper opportunity has been provided to the petitioner to adduce evidence regarding his income.

Learned counsel for the opposite party on the other hand contended that the petitioner is doing business and had landed properties and he is earning in lakhs in every month and

therefore, the learned Courts below are justified in fixing the quantum of maintenance at Rs.10,000/- per month.

Perused the judgment of learned Magistrate where the income side of the petitioner has been discussed. It seems that the learned Magistrate has accepted the statement of the opposite party even though no corresponding documents relating to the income of the petitioner has been filed and no clinching oral evidence has been adduced in that behalf. The monetary relief in the form of maintenance for the aggrieved person as well as her children as per section 20 of the P.W.D.V. Act, 2005 should be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The amount should not be so fixed which would enable the aggrieved person as well as her children to live in luxury. The needs/requirements of the claimants, the income of the husband of the aggrieved person, the status of the husband's family and the standard of life which the claimants would have led had they continued to live in the house of the respondent should also be considered. The mechanical way of fixation of maintenance at the whim and pleasure of the Court is not permissible. The decision should not be arbitrary but judicious.

Considering the submissions, it is felt proper to remand the matter to the Court of learned J.M.F.C., Cuttack to give an opportunity to both the sides to lead evidence regarding the income of the petitioner and thereafter assess the quantum of maintenance.

It is pointed out by the learned counsel for the opposite party that even though the interim maintenance of Rs.3000/- per month was awarded but the petitioner has not complied with the same to which the learned counsel for the petitioner objected and stated that the entire interim maintenance award amount has already been paid by the petitioner to the opposite party and Rs.50,000/- which was directed to be deposited as per the order of this Court dated 04.04.2016 in Misc. Case No.96 of 2016 has already been complied with.

In view of such submissions made by the learned counsel for both the parties, it is directed that if the petitioner makes payment of the entire arrear interim maintenance, if any outstanding to the opposite party before the learned J.M.F.C., Cuttack in Criminal Misc. Case No.48 of 2013 on or before 20th January 2017, both the parties shall be provided with opportunity to adduce evidence regarding the income of the

petitioner and the learned Magistrate shall pass a fresh order in accordance with law. The entire exercise shall be completed by the end of February 2017 and the parties shall cooperate with the Magistrate in concluding the proceeding within the stipulated period.

It is made clear that this Court has not expressed any opinion relating to the income of the opposite party and the quantum of maintenance to be awarded which will be decided strictly in accordance with law as per the evidence sought to be adduced by the respective parties. Only in case of payment of arrear interim maintenance, if any, by the petitioner to the opposite party by 20th January 2017, the opportunity of adducing evidence on income aspect of the petitioner shall be provided.

It is further made clear that if the arrear interim maintenance amount is not paid by 20th January 2017, the impugned judgments and orders passed by the Courts below shall stand confirmed.

With the aforesaid observation, the CRLREV is disposed of.

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S.K. Sahoo, J.

