

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1859/2008

RAJEEV PREENJA Petitioner
Through Mr. Sanjay Jain, Advocate

versus

SARIKA & ORS Respondents
Through Mr. Manish Kapur, Advocate
for R-1 & 2.
Mr. Sanjay Lao, APP for State.

and

CRL.M.C. 3089/2008 & CrI M A 11390/2008 (stay)

RAJEEV PREENJA Petitioner
Through Mr. Sanjay Jain, Advocate

versus

SARIKA & ORS Respondents
Through Mr. Manish Kapur, Advocate
for R-1 & 2.
Mr. Sanjay Lao, APP for State.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER
26.02.2009

1. Both these petitions arise out of the same set of facts and are being disposed of by this common order.

2. CrI M C No. 1859 of 2008 is directed against the order dated 28th November 2007 passed by the learned Additional Sessions Judge

(‘ASJ’) Delhi dismissing Criminal Revision No. 47 of 2007 filed by the Petitioner husband thereby affirming an order dated 29th August 2007 passed by the learned Metropolitan Magistrate (‘MM’) Delhi directed the Petitioner to pay interim maintenance @ Rs.2,000/- per month to his wife Respondent No.1 Sarika and Rs.1,500/- per month to his minor son Respondent No.2 Master Anurag from 8th February 2004 till the disposal of the petition on merits.

3. Crl M C No. 3089 of 2008 also by the petitioner husband is directed against the order dated 14th August 2008 passed by the learned MM in execution proceedings directing issuance of warrant of attachment of the moveable property of the Petitioner towards realization of the interim maintenance awarded against him.

4. On the first date of hearing of Crl M C No. 1859 of 2008 on 28th May 2008 this Court had directed that “the petitioner shall continue to pay interim maintenance as awarded by the trial court” during the pendency of this petition. However, despite two adjournments since then, the Petitioner has not complied with this direction. As a result despite, succeeding in her petition for interim maintenance before the learned MM and in the revision petition by the husband before learned ASJ, Respondents 1 and 2 date have till date not received any amount whatsoever from the Petitioner. Further, till date there has never been a stay of the order of the learned MM. The reason offered for non-

compliance is the petitioner's financial incapacity. This is the same ground urged before and rejected by the learned ASJ. Also, it is not as if the petitioner has made payment of a portion of the amount due to Respondents 1 and 2 and is willing to pay the balance in a reasonable time. It is a blunt refusal to make any payment whatsoever, even to the minor son. This conduct of the petitioner in making no attempt whatsoever to comply with this Court's direction is unacceptable and should disentitle the petitioner to relief. Nevertheless learned counsel for the Petitioner has been heard at length on the merits of the case as well.

5. The petitioner and Respondent No.1 were married on 23rd November 2000. The child Anurag was born to them on 4th October 2001. According to Respondent No.1 soon after the marriage she began to be harassed by the Petitioner husband and his family members for dowry. In particular they demanded that her parents should give a residential flat. Respondent No.1 was beaten several times and left at her parents' place. Later a compromise was effected on 15th July 2002 but this was short lived. On 11th June 2003 after being beaten up by her in-laws, Respondent No.1 along with her minor son again came to her parents' house. For a second time a compromise appears to have been reached before the police on 6th August 2003 with the Petitioner agreeing that he, respondent No.1 and the child would live in a separate flat within six months. On this assurance, Respondent No.1 agreed that her complaint made to the police should be treated as closed. Subsequently the Special

Executive Magistrate also closed the proceedings under Sections 107/151 CrPC by an order dated 21st September 2003. Even this apparently did not work out. Respondent No.1 was back in her parents' house on 8th February 2004 with the child.

6. In the meanwhile in Complaint Case No.445/3/03 was filed by Respondents 1 and 2 against the Petitioner under Section 125 CrPC seeking maintenance. Respondent No.1 stated that she was not earning and also had no source of income whereas the Petitioner was employed in a book publication house earning around Rs. 12000 per month. Accordingly Respondent No.1 claimed maintenance of Rs. 4,000 per month for herself and Rs. 3,000 per month for the child (Respondent No.2). The Petitioner filed a written statement not denying the relationship with Respondents 1 and 2 but pleading financial incapacity as he was without employment since 23rd December 2003 on account of the threats received from Respondent No.1 and her family members. His father had retired from a private job and was not earning pension. His mother was working in the MTNL.

7. During arguments before the Learned MM, Mahila Courts in the application for interim maintenance filed by Respondent No.1, the Petitioner's counsel submitted that Respondent No.1 had left the matrimonial home of her own accord and was therefore living separately "without any sufficient reason." It was submitted that she was not

entitled to even interim maintenance in terms of Section 125 (4) CrPC. It was further submitted that due to the behavior of Respondent No.1, the Petitioner was under mental depression. Medical certificates dated 15th March 2005 and 25th July 2005 issued by the Psychiatrists at the Institute of Human Behaviour and Allied Sciences (IHBAS) to that effect were produced. The learned MM after perusing the certificates noticed that it had not been stated therein that the Petitioner was behaving in an abnormal way or that his situation was such that he was incapacitated from taking up any employment. While the certificates showed that he underwent treatment till 25th July 2005, they did not indicate that he required to be treated even thereafter. On the basis of the earning capacity of the Petitioner as evidenced by his recent employment, the learned MM, by the impugned order dated 29th August 2007 directed him to pay interim maintenance of Rs.2000 per month to Respondent No.1 wife and Rs. 1500 per month to the Respondent No.2 child from 8th February 2004 (excluding the period between 15th March to 25th July 2005 when the Petitioner was receiving treatment at IHBAS). The aforementioned order was affirmed by the learned ASJ by the dismissal of the revision petition filed against it by the Petitioner by the impugned order dated 28th November 2007.

8. It is first submitted by learned counsel for Petitioner that under Section 125 (4) CrPC no order for interim maintenance can be passed if the Court is satisfied that the wife is, “without any sufficient reason”

refusing to live with her husband. It is submitted that in the instant case, although the Petitioner has always been willing to take back Respondent No.1, it is she who has been unreasonably refusing to come back to the matrimonial home.

9. This argument is without merit. At the outset it requires to be noticed that the above argument would be relevant, if at all, only in the context of the grant of interim maintenance to Respondent No.1 wife. In fact, the Petitioner offers no justification whatsoever for not paying till date any interim maintenance to the child as directed. The learned MM while deciding the question of payment of interim maintenance to a wife is only expected to form a prima facie opinion whether such wife was staying away from the husband without any sufficient reason. If the argument of the Petitioner has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in Section 125. What the learned MM is required to determine at the stage of grant of interim maintenance is to be prima facie satisfied, on the basis of the pleadings and any other material on record, that the wife has not stayed away from the husband without sufficient reason. Applying such yardstick, it cannot be said that in the instant case the respondent No.1 wife stayed away from the husband without sufficient reason. On the other hand, even on the petitioner's own showing, she came back to the matrimonial home after two

attempted compromises, both of which unfortunately did not last long. Without at this stage determining which of the parties was responsible for the situation in which they were unable to stay together, it is held that the pleadings do not prima facie show that the Respondent No.1 stayed away from the husband without sufficient reason. This submission of the learned counsel for the Petitioner is therefore rejected.

10. As regards the financial incapacity, and the mental unsoundness of the petitioner, this Court finds that these grounds were rejected by the learned MM for cogent reasons. The view taken by the learned MM and affirmed by the learned ASJ on this aspect cannot be said to be perverse and warranting any interference. The grant of interim maintenance to Respondent No. 1 wife and Respondent No.2 minor son as ordered by the learned MM cannot be said to be excessive or unreasonable.

11. For these reasons, there is no merit in any of the grounds raised in Crl.M.C No. 1859 of 2008 and it is accordingly dismissed with costs of Rs.10,000 which will be paid by the petitioner to Respondent No.1 within a period of four weeks from today.

12. This brings for consideration the next issue concerning the implementation of the order of the learned MM directing the payment of interim maintenance. This is the subject matter of challenge in the other petition Crl.M.C. No. 3089 of 2008. Court finds that the Petitioner by his

conduct of refusing to comply with the orders of interim maintenance passed against him, particularly when there was no stay of those orders, has driven the Respondents 1 and 2 to further despair. It would be indeed be a travesty of justice that an indigent wife who has been awarded interim maintenance on merits by the learned MM, and has thereafter succeeded before the learned ASJ with the dismissal of the husband's revision petition, is unable to get the order implemented for over eighteen months.

13. The facts as far as the present case is concerned are stark. The wife filed an application for interim maintenance way back in 2003 when the relationship with her the petitioner husband was already in trouble. Admittedly she has not been living with the petitioner since 8th February 2004. The burden of looking after the child has been entirely hers since then. She could get an award of interim maintenance only after three and a half years i.e. on 29th August 2007. Yet, till date she has not been able to get the said order implemented. The Respondent No.1 has therefore been compelled to go back to the court of the learned MM in 2007 itself for implementation of the order of interim maintenance passed in her favour by that court. Those proceedings were resisted by the petitioner for over a year. Ultimately by the impugned order dated 14th August 2008 the learned MM, after noting that no payment had been made by the petitioner till then, issued warrants for attachment of the moveable property of the petitioner.

14. The petitioner questions the device of an execution petition before the learned MM as being without the authority of law and with no statutory backing of the CrPC. While it is true that the legislature has not provided for a separate execution proceedings to enable the wife in whose favour an order of interim maintenance has been passed to get the said order implemented, the provision contained in Section 125 (1) CrPC indicates that the learned MM is expected to keep the proceedings pending before that court for the purpose. In Section 125 (1) CrPC the words used are:” ...a Magistrate ...may, upon proof of such neglect or refusal, order such person to make a monthly allowance...at such monthly rate ...as the Magistrate may **from time to time** direct.” A similar expression is used in the second proviso to Section 125 (1) CrPC in the context of interim maintenance. The expression “from time to time” is intended to enable the Magistrate to monitor the implementation of the orders passed by the learned MM including the orders awarding interim maintenance. That is the only way that the orders awarding interim maintenance can be expected to be implemented. Otherwise, an unscrupulous husband will be under no pressure of compliance despite suffering an adverse order. To regale such a remedy to the wife will defeat the very purpose of the provision. Therefore the objection raised by the petitioner husband on the ground of lack of jurisdiction in the learned MM to entertain an execution petition is without merit and is rejected as such.

15. The other phenomenon that requires to be discouraged is that a mere filing of a revision petition by a husband against an order granting interim maintenance to the wife and/or child is construed as an implied stay of that order. As a result the wife has to wait for an even longer period for the implementation of the order in her favour. The method that should be deployed to overcome this hurdle is for the revisional court to insist that the husband's revision petition will not be entertained till such time the husband against whom the order of interim maintenance has been passed, deposits the entire arrears of interim maintenance up to date in terms of the said order of the learned MM in the court of the learned ASJ. Otherwise the husband will be able to indefinitely postpone the implementation of the orders of interim maintenance by driving the wife from one court to another without her receiving any payment whatsoever. This only compounds the agony of the wife and serves to defeat the interest of justice. This situation ought not to be allowed to continue if justice in the real sense should be done to an Indian wife who is in dire straits and unable to survive with her child for want of economic means of subsistence. Given the huge pendency of work in the courts of the learned MM, an application under Section 125 CrPC is unable to be disposed of within a year. Even an order of interim maintenance is able to be passed only after a year.

16. It is accordingly directed that when a revision petition is filed by husband in the court of the learned ASJ against an order of interim maintenance passed by a learned MM in favour of the wife, the said revision petition will not be entertained by the learned ASJ till the entire amount of interim maintenance due under the order of the learned MM up to the date of filing of the revision petition is first deposited in the court of the learned ASJ. The respondent wife and child, if any, should be permitted by the learned ASJ to withdraw the whole or part of the said sum, upon such terms and conditions as may be determined by the learned ASJ.

17. This Court has, in the decision of *Gaurav Sondhi v. Diya Sondhi 120 (2005) DLT 426* in the context of an application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 ('HMA') issued certain guidelines. This Court finds that the said guidelines could be implemented by learned MM dealing with application under Section 125 CrPC seeking enforcement of orders awarding interim maintenance or maintenance. The relevant guidelines read as under:

“4. The matrimonial courts should follow the following procedure while granting interim maintenance/ maintenance:

(i) Whenever maintenance/interim maintenance is ordered, the Court will direct that it will be paid on or before 10th day of every month

unless the Court finds that the nature of the employment of the husband and his manner of income makes such monthly payments impractical. In such a situation appropriate orders may be passed which shall take into account the circumstances of the husband which warrant departure from the time bound monthly payment directions contained in this order. ;

(ii) whenever the wife has a bank account and indicates it, such payment may directly be deposited in such bank account every month before the 10th day of the month.

(iii) The payment shall be made to the wife/child and in case of any difficulty in receiving or tendering the payment, it should be made through counsel. The order of deposit in Court needlessly makes it difficult for the wife to withdraw sums from the registry of the concerned court, apart from adding unnecessarily to the burden of the Court's registry. If for good reasons upon finding difficulty in payment to a wife and her counsel the deposits in Court are made such deposits should be in the name of the wife by a draft/crossed cheques, which may be retained on the court file for retrieval by the wife without the time consuming process of deposit in the Court account and subsequent withdrawal by the recipient;

(iv) In case there is first default for payment of maintenance, the Court may condone it. However, in case of second default without justification, it will be open to the Court to impose a penalty up to 25% of the amount of monthly maintenance awarded;

(v) In case there is third or fourth default, the penalty may go up to 50% of the monthly amount of maintenance upon the court finding that the default was not condonable or contumacious in nature.

(vi) The Court must ensure that the orders of maintenance are not a mere rhetoric and are meaningful and effective and give real sustenance and support to the destitute wife and/or the child.

(vii) In case interim maintenance is being paid and adequate litigation expenses have been awarded to the wife, it should be ensured that the written statement/reply is filed within a reasonable time.

(viii) However, in judging the nature of default the relative affluence of the husband and the regular nature of his occupation and income will be taken into account. Obviously husbands having irregular employment and/or daily wages or those having casual employment would be entitled to have their defaults viewed more liberally.”

The above directions are reiterated and it is expected that the learned MMs dealing with applications under Section 125 CrPC will ensue their compliance.

18. In the context of the desired time limit for disposal of application for interim maintenance, *Radhika Narang & Ors. v. Karun Raj Narang & Anr (decision dated 16th January 2009 in FAO (OS) No. 139 of 2006)* the Division Bench of this Court has observed as under:

“14. in matrimonial disputes, the interim maintenance and custody issues deserve the most expeditious disposal. We are further of the view that maintenance and custody cases must take precedence over matters of property or money claims. The learned Single Judge in the above judgment had rightly recorded the expectation that period for award of interim maintenance to be one month from the date of filing the application. However, in view of the pressure of work on matrimonial courts due to proliferation of matrimonial disputes and considerable shortage of judicial manpower, a more realistic time frame has to be prescribed. In our view the interim maintenance applications in matrimonial disputes ought to be disposed of with dispatch and certainly should not take in any event more than 1 year at the highest. The very purpose of interim maintenance is defeated if it takes about 3

years, as in the present case as an interim application for maintenance filed on 23rd May, 2003 came to be disposed of only on 16th February, 2006. We therefore direct that all the Courts in Delhi, therefore, must keep the need for urgent disposal of such applications in mind, and ensure the disposal of the interim maintenance applications within one year from the date of filing of such applications in matrimonial matters.”

19. Keeping in view the fact that interim maintenance applications are likely to take a year for being disposed of and that the payment to the wife is likely to be made only thereafter, it is only just and fair that the revisional court should insist on the deposit in Court of the interim maintenance payable in terms of the order under challenge as a pre-condition to entertaining the revision petition. Otherwise a recalcitrant husband can, despite suffering an adverse order, defeat that order merely by filing a revision petition and not being burdened with the responsibility of complying with it.

20. Keeping in view the facts and circumstances of the case, this petition is dismissed with cost of Rs.10,000/- which will be paid by the Petitioner to Respondent No.1 within four weeks from today. The learned MM will ensure that these costs are paid and a proof of deposit of payment be furnished to the learned MM by the Petitioner.

21. Accordingly, both these petitions are dismissed with costs of Rs.10,000/- each in the manner as indicated hereinabove. The costs will be paid by the Petitioner to Respondent No.1 within four weeks from today and a proof of the same be furnished to the learned MM.

22. The directions issued in paras 16 to 19 of this judgment should be followed strictly by the courts of the learned MMs and learned ASJs. A copy of this order be sent to the learned District Judge for issuing appropriate directions and for being circulated to all the courts hearing matrimonial matters for information and compliance.

S. MURALIDHAR, J.

FEBRUARY 26, 2009

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