

Court No. - 91

Case :- CRIMINAL REVISION No. - 1739 of 2024

Revisionist :- Smt. Roohi Naaz

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Rakesh Dubey

Counsel for Opposite Party :- G.A., Sanjay Pratap Singh

Hon'ble Ram Manohar Narayan Mishra, J.

This criminal revision has been preferred against the judgement and order dated 19.12.2023 passed by learned Additional Sessions Judge, court no. 19, Kanpur Nagar in Criminal Appeal No. 119 of 2023 as well as order dated 4.9.2023 passed by learned Metropolitan Magistrate, Kanpur Nagar. By the impugned order, learned revisional court has affirmed the order dated 4.9.2023 passed by learned Metropolitan Magistrate whereby Rs. 1,000/- per month as interim maintenance has been awarded to the respondent no. 2 in proceeding under section 23 of Protection of Women from Domestic Violence Act.

Heard learned counsel for the revisionist, learned AGA for the State and learned counsel for the respondent no. 2.

Learned counsel for the revisionist submitted that the interim maintenance awarded to the revisionist is paltry sum of Rs. 1,000/- per month. This meagre amount is absolutely insufficient for respondent no. 2 to maintain herself. Both the courts below have committed legal and factual error while awarding such a paltry sum towards maintenance. He further submitted that this is admitted fact that the respondent no. 2 was working in Dubai prior and now he states that he left his job due to litigation between the parties. He is supposed to have earned sufficiently by working in Dubai (UAE) earlier. The respondent no. 2 is an able bodied person and there are catena of decisions that an unemployed person, who is able bodied, is bound to maintain her wife and minor children. Prior to passing of impugned order, Rs. 3,000/- per month interim maintenance was awarded in proceeding under section 125 Cr.P.C. to the revisionist. However, neither respondent

no. 2 has paid any sum pursuant to previous interim maintenance order passed in proceeding under section 125 Cr.P.C. nor towards the compliance of the impugned order. As a matter of fact, the respondent no. 2 has paid nothing to the revisionist as yet. He next submitted that the respondent no. 2 has leveled allegations against the revisionist of living adultery without any evidence. The revisionist has filed a criminal case under section 498-A, 323, 504, 506 IPC and 3/4 of D.P. Act against the respondent no. 2 vide Case Crime no. 50 of 2016 at police station Chamanganj, district Kanpur Nagar but same was closed during investigation on the basis of settlement entered between the parties on 28.10.2016. However, respondent no. 2 continued high handedness towards and practicing cruelty against the revisionist and for that reasons she again registered an FIR against him vide Case Crime no. 16 of 2019 under section 498-A, 323, 504, 506 IPC and 3/4 of D.P. Act at police station Mahila Thana, District Kanpur Nagar. She is victim of domestic violence.

Only Rs. 5,000/- were paid by the respondent no. 2 while entering into a compromise on 08.11.2016 in furtherance of previous criminal case. Due to non payment of maintenance amount, revisionist is devoid of any means to maintain herself, therefore, it is prayed that amount of maintenance awarded in the impugned order passed by the courts below be enhanced substantially so that the revisionist may be able to make her both hands needs. The amount awarded towards maintenance is too meagre and insufficient.

Learned counsel for respondent no. 2 submitted that respondent no. 2 was working as labourer in Dubai and his wife-revisionist was living at her native place. However, during course of time, she developed illicit relationship with caretaker and Mohd. Imran Khan and when the respondent no. 2 came to this fact, he came back to his native place in India and left his job in Dubai. At present he is jobless and earns nothing. The interim order passed in proceeding under section 125 Cr.P.C. was ex-parte and was passed during the time when mediation proceedings were vogue in mediation center, High Court. The respondent no. 2 has filed recall application before the court below for setting aside ex-parte interim maintenance order. Inasmuch as fact of interim maintenance awarded under section 125 Cr.P.C. has been

concealed by the revisionist in present proceeding under the Domestic Violence Act. The application for interim maintenance under section 23 of the Act was moved before the court of Magistrate on 5.8.2022. The interim maintenance was awarded vide order dated 8.3.2021 by the family court. The respondent no. 2 is himself victim of infidelity of his wife and is not in a position to provide amount of maintenance which is higher than that awarded in the impugned order. The revisionist has independent source of income and earns sufficiently to maintain herself by engaging in job of stitching and embroidery.

If we examine statutory provision in connection with monetary relief recognized to the aggrieved victim of Domestic Violence Act. We find relevant to reproduce the provisions under section 20 of the Act:-

"20. Monetary reliefs.-

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include, but is not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require." (emphasis supplied) Section 20(1)(d) provides that maintenance granted under the D.V. Act to an aggrieved woman

and children, would be given effect to, in addition to an order of maintenance awarded under Section 125 of the Cr.P.C., or any other law in force.

Under sub-section (6) of Section 20, the Magistrate may direct the employer or debtor of the respondent, to directly pay the aggrieved person, or deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit

of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

Section 22 provides that the Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence perpetrated by the respondent.

Section 23 provides that the Magistrate may grant an ex parte order, including an order under Section 20 for monetary relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an ex parte order on the basis of the affidavit of the aggrieved woman.

Section 26 of the D.V. Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a Civil Court, Family Court or Criminal Court. Sub-section (2) of Section 26 provides that the relief mentioned in sub-section (1) may be sought in addition to, and alongwith any other relief that the aggrieved person may seek in a suit or legal proceeding before a civil or criminal court. Section 26 (3) provides that in case any relief has been obtained by the aggrieved person in any proceeding other than proceedings under this Act, the aggrieved woman would be bound to inform the Magistrate of the grant of such relief.

Section 36 provides that the Domestic Violence Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

Hon'ble Supreme court in **Rajnish vs. Neha and another, 2020 0 Supreme (SC) 648**, considered the question of conflicting judgement on maintenance when aggrieved wife victim with regard to grant of maintenance and held that It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the Domestic Violence Act and section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is

awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

Hon'ble Court further held that an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash Bodhraj v Shila Rani Chander* (2018) 12 SCC 199. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

Hon'ble Supreme Court in *Manish Jain v Akanksha Jain* held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support.

Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

In present case respondent had pleaded before the Court of first instance in his objection an application under section 23 of Protection of Women from Domestic Violence Act that the applicant is possessed of sufficient means to maintain herself, she alongwith her family members had visited the place of respondent and had stolen Riyal (Saudi Arab currency) worth Rs. Four lakhs and several valuables forcibly from the residence, she had concealed the fact of grant of interim maintenance @ Rs. 3,000/- per month by the family court as interim maintenance under section 125 Cr.P.C.

Apart from bald allegation made by the respondent against the revisionist regarding her infidelity, personal income, theft committed by her in the house of her husband, there is nothing to establish these allegations at this stage and grant of interim maintenance in proceeding under section 12 of Protection of Women from Domestic Violence Act is under challenge before this Court as original applicant is aggrieved by the quantum of maintenance order of the court of Magistrate which has been affirmed by the court of session. Both the orders passed by the courts below are assailed in present revision.

Although the income of respondent no. 2 is not proved at this stage yet this is admitted fact that he was working in Saudi Arab (UAE) prior to the matrimonial discord between the spouse, therefore, stand of respondent that he has been reduced to penury, at present, cannot be subscribed, the amount of maintenance awarded Rs. 1,000/- per month by the court of first instance and affirmed by the appellate court is too meagre and in present market condition it is not possible for women to get her both hands needs by such a meagre amount of monthly maintenance. The respondent being able bodied person is obliged to maintain his estrange wife even by engaging in manual labour, the grant of interim maintenance in proceeding under section 125 Cr.P.C. will create no impediment in grant of interim maintenance in proceeding under the Domestic Violence Act as held by Hon'ble Apex Court in the judgement cited as above. The respondent will have an opportunity to prove

allegations made by him against the revisionist and also to prove the fact contended by him that she is possessed of sufficient means to maintain herself because no evidence in support of this fact has been led as yet.

In my considered opinion, the amount of Rs. 1,000/- is too meagre and paltry by which the revisionist could not be able to maintain herself. The amount of Rs. 1,000/- awarded by the court below is liable to be enhanced to Rs. 3,000/- per month from the date of filing of application under section 23 of the Act, which will be enforced from each of calendar months as directed in the impugned order.

The amount of interim maintenance is accordingly enhanced to Rs. 3,000/- per month. The revision is **partly allowed** and the impugned order dated 19.12.2023 passed by Additional District and Sessions Judge, Court no. 19, Kanpur Nagar stands modified in terms of the order passed by this Court in present revision subject to same condition.

It is needless to observe that in case of default of payment of maintenance awarded by the courts below and modified by this Court, the revisionist will have every right to move before the court of Magistrate and the court below shall ensure the enforcement of maintenance order as modified in present revision.

Order Date :- 5.9.2024

Dhirendra/