

25 28.02.2023  
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**CRR 2935 of 2016**  
**with**  
**I.A. No. CRAN 1 of 2019 (Old No. CRAN 2710 of 2019)**  
**with**  
**CRR 2936 of 2016**  
**with**  
**I.A. No. CRAN 1 of 2019 (Old No. CRAN 2709 of 2019)**

In the matter of: **Sushil Kedia**

... petitioner

Mr. Sushil Kedia

... petitioner (in-person)

Mr. Arnab Das  
Ms. Epsita Bhattacharyya  
Mr. Vinay Kr. Chakraborty  
Ms. Akansha Yadav

... for the opposite party

Ms. Sreyashee Biswas

... for the State

Learned Advocates appearing for the petitioner retire in the midst of hearing and the petitioner takes up to argue the matters personally.

The order of the learned Additional Sessions Judge, Alipore, South 24 Parganas dated 25.05.2016 is under challenge in this matter. In the said revision case, by the impugned order, the Court upheld the order of the Magistrate passed in A.C. case no. 2400/2012. As an effect, the order of the Magistrate to pay an enhanced interim maintenance amount of Rs. 8000.00 p.m. by the present petitioner to the present opposite party no. 2 remained in operation, being upheld by the first appellate Court. It is pertinent to mention that the proceeding in which these orders were passed, was under Section 12 and Section 23 of the Prevention of Women from Domestic Violence Act, 2005.

Petitioner's grievances are manifold. Firstly, he stated that before calculating the quantum of interim maintenance, the trial Court has not taken into consideration his capacity, i.e. failed to take note of the fact that the petitioner has not been sufficiently earning to provide the amount of maintenance as directed. The petitioner has thereafter argued that the written notes of argument submitted by him was not considered by the Court while awarding the maintenance against him. It is also submitted that, had the Court taken into consideration in due course, his statement and submissions, the Court would have come to an appropriate finding and the present order of both the earlier Courts lacks propriety and fairness.

It is further submitted that the impugned judgment and order of the Magistrate as well as the first appellate court being devoid of due consideration of his case is prejudicial to his interests and also illegal. The petitioner has forcefully argued regarding the long standing chequered history of his matrimonial disharmonies, resulting into filing of various cases allegedly for victimizing him by "extortion" of money from him, by the opposite party no. 2. Petitioner informs about alleged frivolous previous cases by the opposite party under Section 498A IPC, which were subsequently withdrawn but motivatedly been suppressed in the Courts, in the present proceeding to mislead and misrepresent in Courts, with the ulterior motive of victimizing him. It is submitted that unless this Court exercises power under Section 482 of the Criminal Procedure Code and interferes with the judgment of the Magistrate and the first appellate Court, the

petitioner shall suffer irreparable loss and injury.

On the contrary, learned counsel for the opposite party no. 2 submitted that, firstly, the impugned order in this revisional application i.e. that of interim maintenance granted to the opposite party no. 2 under a proceeding under the Prevention of Women from Domestic Violence Act, 2005 has already been merged in an order of the Court, finally determining the case filed by the present opposite party no. 2 under the provisions of the said Act. By handing over a photocopy of the Court's order dated 30.11.2019 in complaint case no. A.C. case no. 2400/2012, he submits that the case under the Act of 2005 has been disposed of by the trial Court with the directions which are as follows:

*“that the prayer made by the aggrieved person is allowed ex parte in part and*

*1. the respondent husband is specifically and individually directed to arrange at his personal expense separate alternative accommodation for the aggrieved person which shall be at par with the accommodation she enjoyed at her shared household in all respect with all facilities and amenities which she relished there and if the respondent husband fails to arrange for such a separate alternative accommodation he is to pay to the aggrieved person Rs. 12000/- per month as rent and related living expenses for the rental accommodation of the aggrieved person in addition to and following the directions laid down elsewhere in this order towards monetary relief, if the aggrieved person continues to reside in her present or other rental accommodation.*

*2. that the prayer for monetary relief U/S 20 of PWDV Act is allowed in part on contest. The petitioner does get an order of monetary relief of Rs. 20,000/- for herself and Rs. 10,000/- for each children per month as monetary relief. The respondent husband is hereby directed to make the payment under this section amounting of Rs. 40,000/- per month within the 10<sup>th</sup> of every month for the preceding month falling due. The effect of this order shall be from the date of this order. In case of default, the complainant is at liberty to apply to this court to execute the order.*

3. *the respondents is also restrained from committing any acts which falls into the category of domestic violence, upon the aggrieved person and her children.*

*Considering the facts and circumstances of the present case, this court is not inclined to pass an order U/S 22 of PWDV Act in this case.*

*A copy of this order may be given to each of the parties to this case free of cost, if applied for. As per the provisions U/S 24 PWDV Act, a copy of each of this order is to be sent to the concerned Protection Officer, South 24 Parganas, the Officer in charge of the Police Station/s within the local limits of whose jurisdiction the shared household and paternal house of Aggrieved Person and the residence of the respondent are located, who are hereby directed to ensure that no domestic violence may take place and provide all necessary assistance to the aggrieved person so as to get the instant order enforced.*

*Note in the Register.”*

Therefore, according to him, this revisional application has become infructuous.

Secondly, it has been submitted that the petitioner has been constantly evading compliance of the Court's order and payment of maintenance to the wife. It has been submitted that after much persuasion when the petitioner was on the verge of arrest, pursuant to an order of the Court, only then the petitioner has come up to pay a part of the amount from the total of that which fall due as maintenance, as directed by the Court.

It is further submitted that in the trial Court since after the order dated 25.05.2016, the petitioner has chosen not to appear and, therefore, finally ex parte order was passed in the case. Photocopies of the certified copy of the order of the learned trial court on various dates have been referred, to emphasize on the point that the Court left no stone unturned to make the

petitioner appear before it in the matter but to no avail. Learned counsel for the opposite party no. 2 submits that the case of the petitioner has no merit and should be dismissed at the threshold.

I have perused the impugned interim order as well as the final order passed in A.C. case no. 2400/2012, that is, the proceeding preferred by the present opposite party no. 2 under the provisions of Prevention of Women from Domestic Violence Act, 2005. At the outset, it is notable that though the case was initially started in the year 2012, ultimately, culminated into a judgment dated 30.11.2019. Before that, challenging the impugned order dated 25.05.2016, the present revision was preferred, which remains pending till date. In the interregnum, by dint of a judgment in the case of *Rajnesh vs. Neha & anr.* reported in (2021) 2 SCC 324 the Hon'ble Supreme Court, has framed some specific guidelines, to render complete justice to the parties marred with long standing matrimonial disputes. It is now well settled that in a case of this nature, the Court has to seek the affidavit of assets of the respective parties upon which the Court would found its reasons and decision regarding maintenance. The learned trial Court proceeded ex parte. Since at this moment, the new law, through the judgment as above is reigning the field, it is found proper that Court's determination as regards maintenance should be based on facts disclosed in terms of the directions, made therein. It is also learnt from the petitioner appearing in-person, that he is willing to contest the case upon submission of affidavit of assets in terms of the said law, though he contends that for previous few years he has not

appeared in the trial Court, as the present revision, filed by him has been sub-judice, during this period.

Under such circumstances, I find it proper to remand back the matter to the learned trial Court for consideration afresh, upon the evidence which are already on record and the additional evidence which the trial Court would find necessary to bring on record both oral and documentary, in accordance with the settled principles of law in a case of this nature. It shall follow all other formalities and consider the matter in its entirety afresh and pass a final order on the basis of the materials on record as aforesaid. Since the petitioner has appeared before this Court, he is directed to appear in the trial Court also, without any deviation, on each date of hearing to contest over there excepting on unavoidable circumstances. In this respect, the earlier orders of the trial Court are noted where the absence of the petitioner has been dealt with strictly.

The directions as stated herein above shall be complied by the trial Court and the trial shall be concluded within a period of six months from the date of receipt of copy of this order. Any absence of the petitioner without any justifiable cause may prompt the trial Court to proceed in accordance with law against him. It shall also be cautious, similarly, as regards the present opposite party.

It is further directed that during the aforesaid period of six months, the petitioner shall proceed to comply with the order of the trial Court dated 25.05.2016 in A.C. case no. 2400/2012. The petitioner shall also remit the entire arrear amount of

maintenance in three equal instalments payable within 7<sup>th</sup> Day of each succeeding English Calendar month, starting from the month of April, 2023. Needless to mention that the payment of interim maintenance and its arrear shall be subject to adjustment, if at all, at the time of final determination of the case upon hearing the parties on merit.

Hence, with the above directions, both the revisional applications being CRR 2935 of 2016 and CRR 2936 of 2016 stand **disposed of**. Consequently, all the connected applications, if any, also stand disposed of.

There will be however no order as costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Rai Chattopadhyay, J.)**