

30.07.2021

Ct. No. 34

Sl. No.45

akd

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C. R. R. 161 of 2019 [via video conference]
CRAN 1 of 2019 (Old No. CRAN 3750 of 2019)
CRAN 2 of 2020 (Old No. CRAN 632 of 2020)
CRAN 3 of 2021
CRAN 4 of 2021**

In Re: **Sanghamitra Mandal**

... .. Petitioner

In Re: A petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Ayan Bhattacharjee
Ms. Shrestha Bhattacharjee

... .. for the petitioner

Mr. Abhijit Basu
Mr. Arghya Kamal

... .. for the opposite party

An affidavit in terms of the order dated 20th July, 2021 has been filed by the petitioner. The opposite party was also called upon to file such an affidavit, however, the opposite party refused to file such affidavit and assigned reasons which are appearing in separate application, being CRAN 4 of 2021 in paragraph 4 which is extracted below :-

“4. That the reasons as to why the affidavit called for by this Hon’ble Court by order dated 20.07.2021 may not be required to be submitted at this stage in the present case before this Hon’ble Court in terms of the judgement of the Hon’ble Supreme Court in the case of Rajnesh-Versus-Neha & Anr. are as follows :-

- (i) That Sanghamitra Mandal, the wife of Your petitioner, who is the petitioner in the main criminal revision being CRR No. 161 of 2019, filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, DV Act) praying for various reliefs. The said case being C 9974 of 2011 has been pending

adjudication in the 5th Court of the Learned Judicial Magistrate at Alipore, South 24 Parganas.

- (ii) That Sanghamitra Mandal filed an application under Section 23 of the DV Act in connection with the main case Under Section. Initially an amount of Rs.50,000/- (fifty thousand) (30,000/- for Sanghamitra Mandal & 10,000/- each for the son and daughter) per month was directed to be paid by the Learned Magistrate's Court. Subsequently an appeal by Your petitioner, the Learned Sessions Court modified the amount to Rs.45,000/- (forty five thousand) (25,000/- for Sanghamitra Mandal & 10,000/- each for the son and daughter) per month. All these amounts have so far been paid right from the very beginning till date, subject to the fact that since the son attained majority in October, 2020, a sum of Rs.35,000/- is being paid with effect from January, 2021 and the fact has been brought to the notice of the concerned Court also.
- (iii) That the matter relating to interim maintenance has reached a finality long back as aforesaid and there is nothing pending about that.
- (iv) That this Hon'ble Court, by an earlier Order dated 15.03.2017, annexed to CRR No. 161 of 2019 and also in the affidavit in opposition filed by Your petitioner against the said CRR No. 161 of 2019, which was passed on two Criminal revisions of Sanghamitra Mandal, directed Your petitioner to pay the school fees/educational expenses for the son and daughter that are directly payable to the school and the flat maintenance charges. In this regard it may be stated here that Sanghamitra Mandal and the son and daughter have been residing at the flat at Kasba, which is owned by Your petitioner, under Court's orders. The flat maintenance charges related to the said flat of Your petitioner at Kasba.
- (v) That the said order dated 15.03.2017 was subsequently affirmed by the Hon'ble Supreme Court on 21.08.2017 as the Special Leave Petition against the said order dated 15.03.2017 was dismissed. The Hon'ble Supreme Court's order is also annexed to CRR No. 161 of 2019 and to the affidavit in opposition filed by Your petitioner against the said criminal revision.
- (vi) That all the payments that could be additionally due to Sanghamitra Mandal and the son and daughter on account of such school

fees/educational expenses payable directly to the school and the flat maintenance charges have so far been made and accounts in that regard have been filed before the concerned courts. There cannot be any legitimate dues pending on account of the directions contained in the order dated 15.03.2017.

- (vii) That Sanghamitra Mandal filed a false, baseless and unauthorised execution case being MEX 19/2017 before the Learned Magistrate's Court and she has had the habit of adding to the unauthorised claim wholly illegally by making further false, baseless and unauthorised petitions or affidavits and there has already been a number of such subsequent petitions or affidavits already.
- (viii) That in MEX 19/2017, Sanghamitra Mandal originally claimed in excess of Rs.14 lakhs. Your petitioner, as stated above, has already paid all that he was directed to pay by order dated 15.03.2017 and this is in addition to the interim maintenance fixed under Section 23 of the DV Act. In spite of all these payments, Sanghamitra Mandal has absurdly and illegally claimed a sum in excess of Rs.39 lakh before this Hon'ble Court although nothing is or can be due. The entire claim of Sanghamitra Mandal is illegal, unauthorised and was never required to be paid by Order dated 15.03.2017.
- (ix) That this criminal revision is not maintainable anymore and the reasons therefor have been stated in detail in CAN 3 of 2021 in and in your petitioner's affidavit dated 15.03.2021.
- (x) That in Rajnesh –Versus- Neha & Anr. the Hon'ble Supreme Court has directed filing of Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of the Judgement, as may be applicable, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be and this direction was passed under the heading payment of Interim Maintenance.
- (xi) That it may be stated that given the nature of the present proceeding before this Hon'ble Court being CRR No. 161 of 2019, as indicated earlier, the present proceeding is neither a maintenance proceeding, nor it is an interim maintenance proceeding, nor it is a pending proceeding inasmuch as the execution proceeding being MEX 19/2017, which was started on the basis of the Order dated

15.03.2017, is at the root of and is forming the subject matter of the present CRR No. 161 of 2019. The main maintenance proceeding is pending before the Learned Magistrate's Court and the interim maintenance amount has already been decided/fixed long back and the matter has reached a finality and there is nothing pending about it.

- (xii) That Your petitioner believes that the Hon'ble Supreme Court, in *Rajnesh –Versus- Neha*, has not said anything that requires Your petitioner to file an affidavit in terms of the said Judgement in this proceeding at this stage in this Hon'ble Court. In fact for coming to a final decision in this case, there cannot be any requirement of any such affidavit and the directions given in *Rajnesh –Versus- Neha & Anr.* do not as such apply to the case of Your petitioner.”

The very purpose in *Rajnesh vs. Neha & Ors.* reported in **(2021) 2 SCC 234**, the Hon'ble Apex Court directed for filing of such affidavits was for the purpose of the court to have a clear picture regarding the capacity of the husband to pay and there should not be any multiplicity of the proceedings and also if there were multiple proceedings the quantum of maintenance or award so granted in each of the proceedings may be adjusted. An affidavit in particular is for the aid of the court to come to a conclusion.

So far as the contention of the opposite party-applicant is concerned that the affidavit is not at all required considering the present stage of the proceedings is ruled out. **So far as the petitioner is concerned, the affidavit so filed before this court may be transmitted to the learned Magistrate, who would consider the same for the purpose of the said case for deciding the quantum.**

The opposite party is directed to file an affidavit disclosing the assets in the nature which has been provided in the judgement of the Hon'ble Apex Court in *Rajnesh vs. Neha & Ors. (Supra)*. Such affidavit must be filed before the learned Magistrate within a period of four weeks

from the first date so fixed before the learned Magistrate for the purpose of the proceeding. In case opposite party-husband is unwilling to file such affidavit within the schedule so fixed by this court, the learned Magistrate will be at liberty to take resort to the consequences as provided in the said judgement of Hon'ble Apex Court in ***Rajnesh vs. Neha & Ors. (Supra)*** including the decision to strike out the defence as stated therein. The learned Magistrate is directed to expeditiously dispose of the trial of the case and take the same to its logical conclusion within a period of one year from date as the main proceedings were filed in the year 2011. No unnecessary adjournment should be granted to either of the parties. The date for consideration of the execution case including the arrears to be decided are to be kept separately from the date fixed for evidence.

So far as the interim measure which would continue would be in terms of the order dated 29th July, 2019 passed by a coordinate Bench of this court which would be as follows :-

- (i) the opposite party-husband shall continue to pay Rs.25,000/- to the wife and Rs.10,000/- to the two minor child subject to (any of the child attaining majority) which the husband may bring to the notice of the court for modification;
- (ii) the husband would either produce documents supporting the payment or would pay the amount regarding the maintenance towards common services of the flat where the wife is residing;
- (iii) school fees of the children;
- (iv) other educational expenses of the two children.

The aforesaid payments should continue till the final disposal of the proceedings or any order being passed by the Hon'ble Apex Court.

With the aforesaid observations, CRR 161 of 2019 along with CRAN 4 of 2021 is disposed of.

Other pending applications are consequently disposed of.

Department is directed to communicate this order to the learned Judicial Magistrate, 5th Court, Alipore within a period of seven days from date.

The learned Judicial Magistrate would fix the initial date within one week of receiving intimation of the order of this court by issuing notice to either of the parties. To that extent the learned Magistrate would be at liberty to take assistance of the Officer-in-charge of the concerned police station.

Department is also directed to transmit the affidavit filed on behalf of the petitioner disclosing the assets to the Court of the Learned Judicial Magistrate, 5th Court, Alipore.

Later, Mr. Basu, learned advocate appearing for the opposite party prays for stay of the order. In view of the schedule which has been fixed, the same is refused.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)