

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

CRR No. 3428 of 2018

CRR No. 1267 of 2019

(CRAN 1 of 2021)

Kaushik Ghosh

Vs.

Shatarupa Ghosh @ Shatarupa Brahma

And

CRR No. 2264 of 2019

Shatarupa Ghosh @ Shatarupa Brahma

Vs.

Kaushik Ghosh

For the petitioner
in CRR 1267 of 2019,
CRR 3428 of 2018/for
the O.P. in CRR 2264 of 2019

: Mr. Sekhar Kr. Basu
Mr. Soubhik Mitter
Ms. Arushi Rathore
Ms. Rajnandini Das

....Advocates

For the petitioner
in CRR 2264 of 2019/
for the O.P. in CRR 1267
of 2019 and CRR 3428 of
2018

: Mr. Ayan Bhattacharyya
Ms. Sreeparna Das
Mr. Supreem Naskar

.....Advocates

Lastly heard on

: 07.09.2021

Judgment on

: 01.10.2021

JAY SENGUPTA, J:

1. The three revisional applications at hand pertain to a proceeding under Section 23 of the Protection of Women from Domestic Violence Act. CRR No. 3428 of 2018 is an application under Article 227 of the Constitution of India filed by the husband challenging an order dated 19.09.2018 passed by the Learned Metropolitan Magistrate, 16th Court, Calcutta in Misc. Case No. 108 of 2017, thereby directing the husband to pay a sum of Rs. 50,000/- as monetary relief and a sum of Rs. 25,000/- as expenses for alternative accommodation per month to the wife from the date of application, i.e. 20.09.2017. CRR 1267 of 2019 is a revision preferred by the husband under Sections 401 and 482 of the Code challenging an order dated 15.02.2019 passed by the Learned Chief Judge, City Sessions Court, Calcutta in Criminal Appeal No. 95/2018, thereby directing him to pay interim maintenance to the tune of Rs. 40,000/- per month to the wife and Rs. 50,000/- per month for her alternative accommodation from the date of passing of the order by the learned Magistrate, i.e. 19.09.2018 and further directing the husband to pay Rs. 4 lakhs as a lump sum as arrear maintenance along with the current maintenance. On the other hand, the wife filed a revisional application being CRR No. 2264 of 2019 under Sections 397 read with Section 401 of the Code challenging the order passed by the learned Chief Judge, City Sessions Court in Appeal No. 95 of 2018, thereby modifying the order passed by the learned Magistrate.

2. As the three revisional applications relate to the same original proceeding under the Protection of Women from Domestic Violence Act between the same parties, the said applications were taken up for hearing together, one after the other.

3. The admitted facts relating to the present case may be enumerated as follows. On 20.07.2016 a marriage was registered between the two under the Special Marriage Act. On 05.02.2017 a social marriage took place as per the Hindu rites and customs. On 21.02.2017 the couple arrived at New Jersey, United States. Soon thereafter, the wife lodged a complaint against the husband there alleging ill-treatment and harassment. The police enquired into the matter and filed a report. On 11.03.2017 the wife approached the police and the husband was arrested. The troubles continued between the parties. On 22.03.2017 the husband applied for a decree of divorce before a Court in the US. On 03.07.2017 the wife's father brought her back to India and since then she had been residing at her parental home.

4. On 20.09.2017 the wife filed an application under Section 23 of the Protection of Women from Domestic Violence Act. Among other things, she alleged that her family gifted expensive presents to the husband and his family members on the betrothal ceremony and the reception held at Arambagh, Hooghly. After the marriage ceremony on 05.02.2017, the husband misbehaved with the wife's father. He also misbehaved with her family members on 07.02.2017 at the reception. Immediately after the reception on 17.02.2017, the mother-in-law asked her to hand over all the jewellery received on her wedding. She had to comply with such directions.

On 12.02.2017 (on Ashtamangala) the husband refused to stay at the wife's parental home and booked a room at Lalit Great Eastern, Kolkata. Even in Ghaziabad, the husband did not let the wife sleep on the same room. On 19.02.2017 the husband, in an inebriated state, insulted the wife's family members. In fact, he misbehaved with his wife and her family members on various occasions. Although the wife expressed her desire not to travel with her husband to US, she changed her mind on an assurance by the husband's family that he would not misbehave with her any more. Being unable to bear the torture inflicted by the husband in the US, the wife filed a complaint before the US police on 21.02.2017. Following the call given to the police, the husband left apartment and did not provide any food or water. He came back on a next day with his senior colleagues who threatened the wife. The husband continued to harass the wife both physically and mentally. On 11.03.2017 the husband bought air tickets for the wife and tried to compel her to fly back to India with her belongings. The wife again called the police. After this incident, the husband did not return and left the wife with no food or money. On 16.03.2017 suddenly the mother-in-law came to the US from Dubai. She forced the wife to withdraw her police complaint. On 27.03.2017, the husband came back to the apartment with police to take his belongings. The wife asked her for money, which he refused to give. The wife had to admit herself to a shelter home (Manvi) where she stayed from 31.03.2017 to 17.06.2017. During her stay there, the wife called up the mother-in-law to know the whereabouts of the husband but she refused to respond. The father-in-law threatened the lady that they would move the US authorities

against the wife on a false charge of immigration fraud. Her father had to send money to make her survive. On 30.04.2017 the lady was admitted to a hospital in the US. On 30.05.2017 her father went to the US and on 03.07.2017 he brought her back to India.

5. Mr. Mitter, learned counsel, led by Mr. Basu, learned senior counsel, appearing on behalf of the husband, submitted as follows. The facts alleged by the wife in her application under the Protection of Women from Domestic Violence Act (the “DV Act”, for short) had purportedly occurred in India and in the United States of America. So far as the incidents that purportedly occurred in the USA were concerned, the wife lodged a complaint against her husband with the New Jersey City Police Department and a report was submitted by the police in which it was unequivocally stated that the wife had confirmed that she was not physically assaulted by her husband. Quite like a foreign judgment, even a report submitted by the foreign agency could be taken into consideration for determining the guilt of an accused. On this, reliance was placed on a decision of the Hon’ble Bombay High Court in *Harikishin Ajwani vs. S.G. Rajedhyaksha & Anr.*, reported in 1982 SCC Online Bom 123. Moreover, under Section 188 of the Code of Criminal Procedure, offences allegedly committed outside India could not be investigated or dealt with without prior sanction of the Central Government. In the present case, no such sanction was sought by the wife. Besides, the Superior Court of New Jersey Chancery Division Family Part was pleased to dissolve the matrimonial bond between the couple with effect from 28.12.2017. This foreign judgment was very much binding on an Indian

Court. So far as the alleged incidents that occurred in India were concerned, the same did not come within the meaning of 'domestic violence' as defined in the D.V. Act. Here, the specific allegations were, *inter alia*, that the husband's father misbehaved with the wife's family members, the mother-in-law requested the lady to hand over her wedding gifts and jewellerys to her for safe custody and the husband did not want to live in his in-law's house on Ashtamangala. The learned Magistrate while directing payment of monetary interim relief and sum for expenses for alternative accommodation to the wife, did not take into consideration the written objection filed on behalf of the husband. The learned Sessions Judge, in revision, erroneously opined that the wife was subjected to physical torture, which was never the case. The periods for which the couple stayed together should also be a consideration while adjudicating the case under the D.V. Act. The couple hardly lived together for any considerable length of time in the instant case. In *Shalu Ojha vs. Prashant Ojha*, 2018 (7) Supreme 121, the Hon'ble Supreme Court observed that proceedings under the D.V. Act were summary in nature and it was not expedient that an amount of maintenance be awarded in such proceedings on the basis of affidavits filed by the parties. The husband was employed at a financial institution in New York, USA and drew a salary of Rs. 4,85,180.397/- (when converted into Rupees), which is per month, which is equivalent to about Rs. 85,872/-, considering the cost of living and high price index of living in New York vis a vis Kolkata. Therefore, the sum granted as interim relief to the wife, even by the Learned Revisional Court, is far too excessive. At the stage of interim relief, the

criteria should not be 'the same standard of living', but should only be to avoid vagrancy of the party seeking relief. Section 23(2) of the DV Act and Column 10 of Form III clearly indicate that specific averments were required to be made in the application and only then monetary relief could be granted on an ex parte ad interim basis. Moreover, the learned Courts below failed to appreciate that the wife was well educated, having a degree of M.A. in English and a Diploma in editing from Jadavpur University and she earned her livelihood by editing books. In fact, during her stay in the USA, she used to work with an organisation called 'Manvi' as a translator. Since the wife had independent income of her own, she could not claim any maintenance from the husband. Reliance was placed on a decision of the Hon'ble Apex Court in *Rajnish vs. Neha*, reported in (2021) 1 SCC (Cri) 749 and it was argued that a quantum of maintenance has to be determined after taking into account the income and assets of the wife and, therefore, a direction must be passed upon the wife to file an affidavit disclosing therein her income and assets.

6. Mr. Bhattacharyya, learned counsel appearing on behalf of the wife, submitted as follows. First, there was sufficient prima facie case for domestic violence committed by the husband on the wife. Incidents of cruelty that occurred in India were clearly enumerated in the application. This is besides the misdemeanour by the other family members of the husband like taking away stridhan articles from a married woman by the mother-in-law. There were clear averments about abusive and aggressive behaviour of the husband on a numerous occasions and insult and abuse in front of family

members. Even in the US, during the short stay with the husband, the wife faced misbehaviour from the husband. Such was the torture that she had to seek help from the police. The context was required to be analysed here. It was the work place of the husband. But, the wife had gone there for the first time. Not only was the lady tortured mentally, after she sought help from the police authorities, she was deserted and was compelled to take refuge at a shelter home. In fact, after some time, the lady had to be admitted at the Robert Wood Johnson University and Hospital and subsequently, brought back by her father. The abuse, ill-treatment and mental torture and even physical violence that occurred in the USA have also been enumerated in the application. Even the mother-in-law came to compel her to withdraw the police complaint. Thus, a prima facie case of domestic violence was clearly made out against the husband. Section 188 of the Code dealt with an offence. But, 'domestic violence' vis-a-vis 'reliefs' as contemplated under the DV Act could not be termed as 'offence' as defined under Section 2(n) of the Code. Therefore, the bar under Section 188 of the Code was not applicable in this case. Reliance was placed on a decision in *Milap Chand Choraria @ Milap Choraria & Ors. vs. The State of West Bengal*, 2013 SCC Online Cal 5213. Moreover, the incidents of domestic violence were continuous acts that happened in continuation with the act incidents that occurred in India. Although the decree of divorce between the couple as ordained by a Foreign Court may be binding on an Indian Court in certain circumstances, reports filed by an Investigating Agency of a foreign country could not have any relevance in a proceeding before an Indian Court. Incidentally, the reporting

of the incident before the police in the USA only showed that there could be an incident of domestic violence. Compliance with Form 2 or Form 3 under the DV Act was merely directory and not mandatory. On this, reliance was placed on *Siladitya Basak & Ors. vs. The State of West Bengal & Ors.*, 2010 (2) Crimes 858 (Cal). So far as the income of the husband was concerned, he was working as the Vice President of Goldman Sachs Group, a reputed multinational financial organisation. He drew salary to the tune of US \$ 166928 excluding incentives, which were more than four times of the salary. The salary would come to about Rs. 7 lakhs per month. The contention of the husband that this would amount to about Rs. 85,000/- per month as per the relative price indices is absolutely preposterous. The wife had to be maintained by her husband as the same standard whether at a final stage or the interim stage. It was the husband's problem that he earned so much and stayed in the US for that matter. If he wanted to pay any less than, as per the rule of $1/5^{\text{th}}$ to $1/3^{\text{rd}}$, then he had to come back to India and earn less. Quite commensurately, simply that a wife was alleged to be earning something was not a valid ground to reject her claim for maintenance. On this, reliance was placed in *Sri Satyaki Sen vs. State of West Bengal*, 2019(2) CLJ 380. The Learned Appellate Court, in fact, committed an error in fixing rather mechanically the operation of the interim maintenance from the date of the order, thereby modifying the order of the learned Magistrate who had awarded the maintenance from the date of the application. Such modification is *ex facie* bad in the face of law laid down by the Hon'ble Apex Court in *Rajnish vs. Neha* (supra).

7. I heard the submissions of the learned counsels appearing on behalf of the parties and perused the applications, affidavits and written notes filed on behalf of the respective parties.

Effect of Section 188 of the Code on domestic violence under the DV Act:

8. Section 188 of the Code of Criminal Procedure lays down as follows:

“188. Offence committed outside India. -When an

offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

9. Therefore, it is abundantly clear that the provision relates to an ‘offence’ as defined in Section 2(n) of the Code. However, for seeking reliefs under the Domestic Violence Act, a definition of domestic violence has been provided in the DV Act and the same has not been described as an offence in

the said Act. It is another thing that the facts which constitute domestic violence as contemplated under the DV Act may also amount to an offence under the Penal Code or any other law. But, that does not bring a 'domestic violence' as envisaged under the DV Act within the ambit of an offence as defined in the Code of Criminal Procedure. Therefore, Section 188 of the Code would have no application on a 'domestic violence' as defined under the DV Act or on the reliefs sought under the said Act.

Effect of a prayer under the DV Act not being in the suggested form:

10. It is now well settled that compliance with the forms under the DV Act is merely directory and not mandatory. On this, reliance is placed on the case of *Siladitya Basak* (supra). The forms are only meant to aid an aggrieved woman to claim reliefs in clear terms. Departure from the same cannot have the effect of disentitling an aggrieved woman from claiming reliefs under the said Act.

Relevance of an enquiry in a foreign land by a foreign agency:

11. Foreign judgments may be relevant in proceedings before Indian Courts subject to certain conditions. The first and foremost condition is that the corresponding laws are similar in both the countries. However, there is no law which renders the result of an enquiry or investigation done by a foreign agency in a foreign land automatically relevant before an Indian Court. In fact, this is not what the Hon'ble Bombay High Court held in the case of *Harikishin Ajwani* (supra). However, there is no bar to collecting evidence from abroad or from examining witnesses in such respect. That is why our law provides for issuance of letter rogatories. But, the result of a

foreign investigation, de hors any judicial order passed even by a foreign Court on a similar law, cannot be binding on an Indian Court. In the instant case, there is nothing to show that the purported enquiry by the police authorities in the US culminated in any order passed by a competent Court of law. Apart from the technical bar in relying on such document, one thing is quite striking in the purported enquiry proceeding. The way the US police officer infers that the sari clad woman was necessarily an 'Indian' smacks of an urge to stereotype individuals even before getting into the facts. Besides, the report only shows that there was no physical assault on that particular occasion. It does not care to throw any light on the question of mental cruelty.

Domestic violence in the case at hand:

12. Section 3 of the DV Act encompasses within itself several forms of domestic violence. This can include physical abuse, sexual abuse, verbal and emotional abuse and even economic abuse. Quite significantly, 'verbal and emotional abuse' includes insults, ridicule, humiliation, name calling and insults or ridicule, especially with regard to not having a child or a male child. Therefore, the insults, ridicule and humiliation as contemplated in this provision is not limited to for not having a child or male child. In the present case, the incidents of alleged cruelty that occurred in India are clearly enumerated in the application filed by the wife. This is in addition to the misdemeanour by the other family members of the husband. Taking away stridhan articles from a married woman, albeit by the mother-in-law, amounts to a serious domestic violence, apart from constituting an offence of

criminal breach of trust under the Penal Code. Humiliation and ridicule cannot be compartmentalised in such a fashion that a humiliation of the wife's father would not amount to mental cruelty to the wife herself. There are clear averments about abusive and aggressive behaviour by the husband on numerous occasions and misdemeanour in front of family members. Even in the US, the wife allegedly had to put up with misbehaviour from the husband. In fact, she was constrained to seek police help. This was a place where the husband worked and everything was new to the wife. Instead of taking adequate care of the wife, the husband allegedly inflicted mental cruelty on his wife for which the wife had to seek police help. The wife was deserted and finally compelled to take refuge at a shelter home. After some time, she also had to be admitted in a hospital there and it was the wife's father who had to go all the way to the US to bring her back. The allegation that the mother-in-law compelled the wife to withdraw her police complaint is an additional fact that throws light upon the troubles the wife had to put up with. Without going into the merits of the allegations any further, this Court is of the view that a prima facie case of commission of domestic violence is made out in the present case. Therefore, the wife is entitled to claim monetary relief and expenses for alternative accommodation from her husband.

The quantum of monetary relief:

13. The husband was admittedly an executive of a reputed multinational company earning about Rs. 4,50,000/- per month in Indian currency. The wife's case was that the husband earns about Rs. 7 lakhs from his job at the

said Goldman Sachs, a big multinational investment organisation where he worked as a Vice President. His incentives were allegedly more than the actual salary. The husband claimed that his income of 4,50,000/- and odd in the US amounted to about Rs. 85,000/- per month in India considering the relative purchasing power of money. The wife denied it vehemently.

14. First, there is nothing on record to show that at the time of marriage, the husband made it apparent to the wife and her relatives that his earning in dollars if converted into rupees should be duly and adequately compensated for in terms of the purported difference in purchasing power of the two currencies. The contention of the husband of bringing down his actual income in the US in terms of the relative purchasing power of currencies is quite preposterous. It is totally the husband's discretion as to where he wants to live and earn. However, when the husband is liable to maintain his wife, he has to part with portions of his income regardless of the purchasing power of any currency and regardless of where his wife chooses to stay. Therefore, whether one applies the time tested principle of $1/5^{\text{th}}$ to $1/3^{\text{rd}}$ of one's income for payment of maintenance or not, the amount of monetary relief payable to a wife would be a portion of the husband's income, in whichever currency the husband wishes to describe the same.

15. The learned Magistrate passed a reasoned order granting Rs. 50,000/- as interim monetary relief and a sum of Rs. 25,000/- as expenses for alternative accommodation per month, effective from the date of application. However, the learned Sessions Judge scaled it down to Rs. 40,000/- as

interim maintenance and Rs. 15,000/- for her alternative accommodation. Even if a person seeks alternative accommodation in the city of Kolkata and not in New York, Rs. 15,000/- would hardly fetch an accommodation which is befitting a wife of a Senior Executive of US banking concern, who earned at least Rs. 4.5 lakhs per month. The learned Sessions Judge further erred in granting such relief from the date of the order. This clearly goes against the ratio laid down by the Hon'ble Supreme Court in *Rajnesh Vs. Neha* (supra).

16. I refuse to accede to the submissions made on behalf of the husband that at the stage of interim relief, only vagrancy is to be taken into consideration de hors the question of similar standard of living. Even if a prima facie view is to be taken in arriving at an interim relief, there is no difficulty in considering the standard of living and income of the two individuals in doing so. When this exercise can be done by a judicial forum, why should a wife be made to live a life a little better than a destitute in the interregnum? Moreover, it may take quite some time to finally dispose of an application under Section 125 of the Code.

17. Here, it is germane to quote what was held by the Hon'ble Supreme Court in *Rajnesh vs. Neha* (supra) while deciding the criteria for fixing quantum of maintenance—

“....The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living....”

18. In *Shalu Ojha* (supra), the facts of the case and the context were quite distinguishable from the instant case inasmuch as there a final order of

maintenance was passed on the basis of affidavits filed by the parties. Here, the case is of interim relief. Besides, in *Shalu Ojha* (supra), the Hon'ble Apex Court was pleased to grant liberty to the aggrieved lady to move an appropriate application under the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Code and made it clear that any maintenance allowance fixed there shall not be less than the amount (Rs. 50,000/- per month) fixed under the DV Act.

19. Here, it may not be out of place to again rely on the decision of the Hon'ble Supreme Court in *Neha vs. Rajnesh* (supra). There appropriate guidelines were laid down, inter alia, for dealing with an application under the DV Act.

20. This Court also fails to appreciate the husband's contention that the period for which the couple stayed together could be an important consideration while adjudicating a case under the DV Act. The period as alleged may be very insignificant for an errant husband, but for the wife it may be a case of an entire future life wasted.

21. The issue whether the wife also earns something can very well be finally taken into consideration by the learned Trial Court. But one thing is quite certain that if the wife earns something which is very nominal, it does not preclude her from claiming maintenance from the husband. On this, reliance is also placed on decisions of the Hon'ble Apex Court in *Chaturbhuj vs. Sita Bai*, (2008) 2 SCC 316 and *Sunita Kachwaha vs. Anil Kachwaha*, (2014) 16 SCC 715 and of this Court in the case of *Sri Satyaki Sen* (supra). So far as the qualification and the earning potential of the wife in the instant

case is concerned, the same need not necessarily fetch a substantial return. Moreover, there is nothing on record to show that the wife actually earned a sum that could sustain her.

22. In view of the above discussions, this Court is of the view that it will be expedient in the interest of justice to revive the order of interim relief passed by the learned Magistrate.

23. Accordingly, the order dated 15.02.2019 passed by the learned Sessions Judge in Appeal No. 95/2018 is set aside and the order dated 19.09.2018 passed by the learned Magistrate in Misc. case No. 108 of 2017 is affirmed. In the result, the husband shall continue to pay monthly interim monetary relief to the wife at the rate of Rs. 40,000/- per month and a sum of Rs. 25,000/- as expenses for alternative accommodation, effected from the date of application filed by the wife before the learned Trial Court.

24. The parties shall be at liberty to raise all the points taken in these applications before the learned First Court in the proceeding under the DV Act and the said Court shall not be swayed by any observations made herein, which were meant only for deciding the question of interim relief. The learned Trial Court is requested to conclude the proceeding as expeditiously as possible.

25. With these observations, the three revisional applications being CRR 1267 of 2019 with CRAN 1 of 2021, CRR 2264 of 2019 and CRR 3428 of 2018 are disposed of.

26. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

P. Adak