

12.08.2021
Item no.3 and 6
Ct. No.34
CHC

C.R.R. No.2527 of 2018
IA NO: CRAN/1/2021
(Assigned)

(Via video Conference)

In Re: An application under Article 227 of the Constitution of India.

AND

In the matter of:-

Yashodhan Kanoria

... petitioner

Mr. Anuj Singh,
Mr. Anirban Datta,
Mr. Debabrata Das,
Mr. Pradyot Kr. Das,
Ms. Reshmi Singhee

...for the petitioner

Mr. Sabyasachi Banerjee,
Mr. Avik Ghatak,
Mr. Sagnik Mukherjee

...for the o.p. no.2

with
C.R.R. No.2829 of 2018
(Assigned)

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

AND

In the matter of:-

Neha (Banka) Kanoria

... petitioner

Mr. Sabyasachi Banerjee,
 Mr. Avik Ghatak,
 Mr. Sagnik Mukherjee,
 Mr. Soham De Dhara
 ...for the petitioner

Mr. Anuj Singh,
 Mr. Anirban Datta,
 Mr. Debabrata Das,
 Mr. Pradyot Kr. Das
 Ms. Reshmi Singhee
 ...for the opposite party

The present revisional application is heard along with C.R.R.2829 of 2018, as such, by a common order both the revisional applications are disposed of.

The subject-matter of the revisional applications deal with the judgement and order passed in Criminal Appeal No.48 of 2017, passed by the learned Additional Sessions Judge, 18th Court, Alipore, South 24 Parganas.

The appellate court was considering the order dated 3rd August, 2017, passed by the learned Judicial Magistrate, 4th Court, Alipore, South 24 Parganas, wherein by way of interim relief under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 which arose in respect of Complaint Case No.2336 of 2017, the learned Magistrate was pleased to award an interim monetary relief to the tune of Rs.4 lacs per month and Rs.75,000/- per month for alternative accommodation to the wife. The learned appellate court after taking into account the rival submissions of the parties concluded that “the appellant

Yashodhan Kanoria is hereby directed to pay an interim monetary relief at the rate of Rs.85,000/- per month and Rs.20,000/- per month towards payment of alternative accommodation to the wife from the month of August, 2018 till the disposal of the original Complaint Case No.2336/2017.....”

The grievance of the petitioner in C.R.R.2527 of 2018 is with respect to the part of the order wherein the effect of the award/quantum of maintenance which was finally adjudicated was given effect to from the month of August, 2018.

In the contrary, the petitioner in CRR 2829 of 2018 was aggrieved regarding the quantum of monetary relief as well as for alternative accommodation which was decided and reduced by the learned appellate court.

I have heard Mr. Singh, learned advocate appearing for the petitioner in C.R.R.2527 of 2018. According to whom the wife has suppressed material facts, disobeyed the order of NewYork Court, adopted forum shopping as also narrated figures for escalating the quantum of maintenance which has been awarded.

Mr. Banerjee, learned advocate appearing for the petitioner in C.R.R.2829 of 2018 has on the other hand submitted that the cases filed by him so far as Section 498A of Indian Penal Code is concerned, have not been carried out in its proper spirit by the police authorities, the Streedhan articles are still lying with the members of the matrimonial home and there are dues which are

to be cleared by the husband and the lady is unable to maintain herself.

It would not be out of place to state that after much debate the basic earning of the husband which has been submitted before the Court today is one lakh ten thousand US Dollar.

Mr. Singh, learned advocate appearing for the petitioner in C.R.R.2527 of 2018 on this score relied upon the judgement of the Delhi High Court reported in **MANU/DE/1002/2019** in the case of **KN vs. RG** and tried to emphasise that there cannot be a relationship between a husband's earning in dollars which would be the criteria for deciding maintenance, it has been settled by the Delhi High Court that if a person earns in dollars the expenditure are in dollars also.

Learned advocate also relies upon the judgment of Delhi High Court reported in **MANU/DE/3255/2016** in the case of **Bindu Chaudhary vs. Deepak Suga** and submits that it is not open to the wife to just convert the income of the husband in Indian currency while seeking remedy under the matrimonial laws.

The Delhi High Court judgement referred by the learned advocate for the petitioner was in a fact situation where the lady was earning Rs.1 lakh per month and she claimed an amount of interim maintenance of two and half lakh of rupees. The issue which was considered and the conclusion arrived at by the court was that, if the lady was earning a good amount of salary she would not be entitled to any interim maintenance as per lifestyle

of the husband. The other judgement relied upon was an issue relating to enhancement of maintenance. In this case, till now, there is no document before this Court which has been placed to show that a quantum of salary is being earned by the lady. What has been contended by the petitioner is that the lady is sufficiently qualified and she was earning at one point of time. The other issue which Mr. Singh, learned advocate has canvassed is regarding the rent which is paid monthly by the husband at New York being US Dollars 1961.89 per month (approximately 2,000 US Dollars).

I have taken into account the submissions advanced by both the parties.

Having regard to the stage at which the issue is being considered and the fact that both the parties have not adduced any evidence in spite of the case being initiated in the year 2017 and has been contesting on the issue of interim maintenance since the inspection of the case, I am of the view that the observations made by this Court should be restricted to the stage at which it is being considered for the purpose of interim monetary relief and/or for alternate accommodation.

Before deciding on the quantum, I pass the following directions for being adhered to by the Judicial Magistrate for further progress of the case:

- (a)** Both the parties would file their affidavit of assets before learned Judicial Magistrate, 4th Court, Alipore, South 24

Parganas, in connection with the complaint case within a period of four weeks from the date of communication of this order.

- (b)** The learned Magistrate would thereafter, proceed with the case calling upon the complainant to adduce evidence and on regular basis fix dates on each and every month so that the trial can be taken to its logical conclusion within a year from the date of examination of the complainant.
- (c)** So far as the husband/in-laws are concerned they may be allowed to be represented through their learned advocates in course of the trial provided they file affidavits before the court that they will not be prejudiced if the evidence is recorded in their absence.
- (d)** So far as the evidence of the husband or their relations are concerned, the learned Magistrate will not insist on physical appearance if by other means recording of evidence is possible.
- (e)** If the husband changes his address, then in that case same must be informed to the learned Magistrate.
- (f)** The Passport and Visa details must be furnished by the husband and other relations before the learned Magistrate while praying for exemption from appearance.

Lastly, so far as the quantum of maintenance is concerned, having regard to the basic earning of the husband which has been referred to above and the fact that the amount which is now being

fixed is an interim measure till the final determination of the rights are adjudicated by the learned Magistrate, I am of the view that the following reliefs should be extended to the wife/Neha (Banka) Kanoria:

- (i)** Interim monetary relief of Rs.1,60,000/- per month to be paid from August 2017;
- (ii)** Alternative accommodation of Rs.40,000/- to be paid from August 2017;
- (iii)** Dues which are accruing should be adjusted towards arrears to a fixed sum of Rs.50,000/- per month. The same would be considered for the present to be within the aggregated amount of Rs.2,00,000/- (Rs.1,60,000/- + Rs.40,000/-). The total dues would be calculated and determined by the trial court on 30th September, 2022.
- (iv)** The final judgement should be pronounced by the Court on or before 30th September, 2022.

With the aforesaid observations, the revisional applications being C.R.R.2527 of 2018 and C.R.R.2829 of 2018 are disposed of.

All pending applications are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)