

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 3508 of 2019

Neha Sonthalia

-Vs-

State of West Bengal & Ors.

With

CRR 2856 of 2019

Anubhav Sonthalia & Anr.

Vs.

Neha Sonthalia

For the Petitioner:

(in CRR 3508 of 2019)

Ms. Meenal Sinha,

Ms. Jagriti Bhattacharya.

For the Petitioner:

(in CRR 2856 of 2019)

Mr. Koushik Gupta,

Mr. Javed Majid.

Heard on: 18th January, 2021.

Judgment on: 08 April, 2021.

BIBEK CHAUDHURI, J. : –

1. Both the revisional applications were heard analogously and the court delivers the following judgment on conclusion of hearing.

2. Parties to both the revisions are married couple and their marital tie is still subsisting. In CRR No.3508 of 2019 the aggrieved person/wife is the petitioner, while in CRR No.2856 of 2019 the respondent and her mother are the petitioners. The dispute between the parties cropped up as a result of marital discord following filing of application under Section 12 read with Sections 17, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act) filed by the aggrieved person/petitioner in CRR No.3508 of 2019.

3. The application under Section 12 read with other coordinate provisions of the said Act was registered as MISCN 4 of 2019 in 20th Court of the learned Metropolitan Magistrate at Calcutta. By an order dated 29th June, 2019 the learned Metropolitan Magistrate passed an order on an application under Section 23(2) of the said Act which runs thus:

“That the prayer under Section 23 of this Act is allowed on contest. Petitioner do get an interim protection order under Section 18 of the said Act and respondents are restrained from committing, aiding or abetting any act of domestic violence upon the petitioner. Petitioner is entitled to get an interim order under Section 19(f) of the said Act and the respondent No.1 is directed to secure same level of alternate accommodation for the petitioner as enjoyed by her in the shared household or to pay the rent for the same as per the choice of petitioner in Kolkata to the tune of rupees twenty thousand (Rs.20,000/-) per month which shall be payable by 3rd of every succeeding English Calendar month from the date of this order. Petitioner and her minor child are hereby entitled to interim maintenance under Section 20(1)(d) of the

Act and accordingly, respondent No.1 is directed to pay maintenance to petitioner and her minor son to the tune of rupees thirty thousand (Rs.30,000) per month for the petitioner and rupees ten thousand (Rs.10,000/- only) per month for their minor son which shall be payable by 3rd of every succeeding English Calendar month from the date of this order. Since, the child is in custody of petitioner so, there is no need of any interim order regarding custody of that child as it is also not leveled up.”

4. The respondent/husband challenged the above mentioned order under Section 29 of the said Act by filing Criminal Appeal No.161 of 2019 in the court of the learned Chief Judge, City Sessions Court at Calcutta. The learned Chief Judge by his judgment dated 21st August, 2019 disposed of the said appeal directing the husband to pay Rs.15000/- per month to his wife as interim monetary relief and Rs.8000/- per month towards rent for alternative accommodation with effect from the date of the order passed in Misc Case No.4 of 2019.

5. The legality, validity and propriety of the said order was challenged by both the parties preferring separate revisional applications.

6. The aggrieved person/wife has pleaded that the learned Judge in appeal failed to consider the basic requirement of the petitioner, her social and economic status in relation to her husband and committed gross illegality and material irregularity in reducing the quantum of interim monetary relief as granted by the learned Metropolitan Magistrate while disposing of the application under Section 23(2) of the said Act.

7. The respondent/husband, on the other hand has challenged the impugned judgment alleging, inter alia, that the learned Court of Appeal failed to consider that he does not even have the financial capacity to pay interim monetary relief and rent towards separate accommodation for his wife as fixed by the learned Chief Judge, City Sessions Court. Under the premises mentioned above the revisional applications in hand are required to be adjudicated upon and disposed of.

8. It is the case of the aggrieved person/wife that at the time of her marriage with the respondent, her husband was employed at his sister's business under the name and style of Elahe Designer Boutique at Hyderabad. He also owns and operates three numbers of Baskin Robbin Ice Cream Parlour at Hyderabad. Soon after marriage the petitioner came to know that her husband was addicted to alcohol. He used to torture her both physically and mentally. As the petitioner was not blessed with any child in the wedlock between her and the opposite party, they decided to adopt a baby and on 17th January, 2014 they adopted a baby boy. However, even after adoption the opposite party could not change himself. On the contrary, he was romantically involved with another lady in Hyderabad. The marital discord went to such an extent that the petitioner left Hyderabad with her son and returned to Kolkata and started residing with her mother-in-law at 80/5B near Lansdowne Market, Kolkata. It is further submitted by the petitioner that the opposite party has been working as a store manager in Elahe Designer Boutique and earns salary

of Rs.1,80,000/- per month moreover he earns considerable amount of money by running the business of ice cream parlours.

9. In CRR No.2856 of 2019 the respondent/petitioner stated that his wife is gainfully employed and earns Rs.1,48,500/- per month during the financial year 2017-18. On the contrary, the petitioner used to earn Rs.76,082/- during the financial year 2017-18 and therefore the income of the husband/petitioner is much less than the income of his wife. It is also stated by him that since May, 2018 the petitioner is unemployed. As he is unemployed he has no financial capacity to maintain his wife therefore the petitioner has prayed for revision of the order passed by the learned Chief Judge, City Sessions Court in Criminal Appeal No.161 of 2019. I have heard the learned Advocates for both the parties, perused entire materials on record and the documents filed by both the parties.

10. It is not disputed that marriage between the parties was solemnized on 4th July, 2006. The respondent/husband has stated on affidavit that after marriage he and his wife used to live in a flat at Banjara Hills in Hyderabad. Banjara Hills, Hyderabad is one of the most posh areas of the country. It is further stated by the husband that after marriage and subsequently after adoption of a baby boy, he took the petitioner for travelling to various countries in Europe and Asia. At the same time the husband stated that he used to earn Rs.76,000/- per month during the financial year 2017-18. I am surprise to note as to how a person lives at Banjara Hills, Hyderabad and travels various foreign countries as well as various places in India with his wife and minor child with such salary. It

is not disputed that the respondent/husband is an employee of Elahe Designer Boutique at Hyderabad. The boutique is owned by the sister of the respondent. The respondent stated that he is no longer an employee of Elahe Designer Boutique as claimed by the petitioner but from the affidavit in opposition filed by the wife against the CRR No.2856 of 2019 it is ascertained that the respondent/husband is a team member of Elahe Designer Boutique at Hyderabad and Calcutta even in 2020.

11. The respondent has moral and legal responsibility to maintain his wife and child. He is an able bodied person, capable to earn handsome amount of money. It is not specifically disputed that he owns three ice cream parlors at Hyderabad. On the other hand the aggrieved person has no job or earning after retuning Kolkata from Hyderabad.

12. Therefore the respondent/husband is under legal obligation to pay interim monetary relief to his wife and adopted child for their sustenance and upbringing.

13. The learned Chief Judge, City Sessions Court has not assigned any reason as to why he reduced the amount of interim monetary relief to be paid by the respondent in favour of the aggrieved person.

14. In view of the above discussion the order passed by the Metropolitan Magistrate, 20th Court Calcutta in Misc Case No.4 of 2019 is restored and the judgment passed in Criminal Appeal No.161 of 2019 by the learned Chief Judge, City Sessions Court is set aside.

15. As a result CRR No.3508 of 2019 is allowed on contest however without cost and CRR No.2856 of 2019 is dismissed on contest without cost.

16. The respondent is directed to pay interim monetary relief to his wife at the rate fixed by the learned Metropolitan Magistrate, 20th Court Calcutta from the date of his order within tenth of each succeeding month.

(Bibek Chaudhuri, J.)