

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 429 of 2022

Sujoy Poddar

-vs-

Balaka Poddar

For the Petitioner : Mr. Pronojit Roy
Mr. Somnath Banerjee

For the Opposite Party : Mr. Souvik Ganguli
Ms. Sinthia Bala

Heard on : 25.02.2022

Judgment on : 25.02.2022

Jay Sengupta, J.:

This is an application challenging an order dated 18.01.2020 passed by the learned Judicial Magistrate, 2nd Court, Katwa, Purba Burwan in Misc. Case No. 76 of 2020 under Section 125 of the Code of Criminal Procedure.

Affidavit of service filed on behalf of the petitioner is taken on

record. Certified copy of an order dated 18.02.2022, as filed in Court, is also taken on record.

Learned counsel for the petitioner submits as follows. The opposite party had filed an application for interim maintenance. In the course of the proceedings, a direction was passed upon the parties to file their affidavits of assets and in terms of the ratio laid down in *Rajnish Vs. Neha*, (2021) 2 SCC 324. The wife filed the affidavit. However, the husband made an application for serving the copies of certain documents upon him including copy of the said affidavit of assets and liabilities. It is contended that unless the husband receives a copy of the affidavit of assets and liabilities of the wife, he would not be in a position to file his own affidavit of assets and liabilities and prepare his defence. Although the petitioner was granted liberty to pray for adjournment before the learned trial court on the previous date i.e., on 18.02.2022, on the said date the learned Magistrate adjourned the matter, but after imposition of a cost of Rs. 2,000/- upon the petitioner.

Learned counsel appearing on behalf of the wife/opposite party submits as follows. In order to file his own affidavit of assets and liabilities, there is no need to be supplied with a copy of the affidavit of assets and liabilities of the wife. However, before the final hearing

and after filing of respective affidavits of assets and liabilities, the copies would obviously be exchanged.

I have heard the submissions of the learned counsels for the parties and have perused the revision petitioner as well as the copy of the order filed before this Court today.

The affidavits of assets and liabilities as directed to be filed by the adverse parties in terms of the ratio of the Hon'ble Apex Court in *Rajnish vs. Neha* (supra) are not in the nature of an opposition and a reply. The truth to be disclosed by a party is quite absolute and is not dependant on the true disclosure by another. Therefore, it is not necessary that a copy of such affidavit should be served on the other side before the other could file his or her affidavit. In other words, these affidavits are to be independently filed by the husband and the wife and the husband would not require the wife's affidavit before filing his own.

It goes without saying that before the husband and the wife are asked to present their arguments, copies of the same have to be exchanged.

Therefore, at this stage when the wife has only filed her affidavit of assets and liabilities and husband has not, there is no need to direct the wife to supply a copy of such affidavit to the

liabilities first after that the affidavits could be exchanged as per direction of the learned trial court.

Therefore, I do not find any merit in this application.

Accordingly, the prayer of the petitioner is refused.

There shall be no order as to costs though.

However, I do not find any justification behind the imposition of a cost of Rs. 2,000/- by the learned trial court on the last date fixed before it although a liberty was granted by this Court to the petitioner to pray for an adjournment.

Therefore, the imposition of a cost of Rs. 2,000/- by an order dated 18.02.2022 passed by the learned Magistrate is hereby set aside.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)