

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1647 of 2022

**Tripti Goswami (Ghosh)
Vs.
Bappa Ghosh**

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Dipanjan Dutt
...for the petitioner

Item No.22

Heard & Judgment on: 08.09.2022

Bibek Chaudhuri, J.

Criminal Appeal No.47 of 2020 was filed by the present petitioner assailing an order passed by the learned Judicial Magistrate, 10th Court, Alipore in a proceeding under section 23 of the Protection of Women from Domestic Violence Act (hereafter described as the said Act) being A.C. Case No.2634 of 2016.

While disposing of an application under Section 23 of the said Act the learned Magistrate did not feel it necessary to pass any order as to monetary relief in favour of the petitioner. Subsequently, the petitioner's appeal was dismissed on contest by the learned Sessions Judge, South 24 Parganas at Alipore.

The petitioner has assailed the judgment passed by the Court of Appeal in Criminal Appeal No.47 of 2020 affirming the order dated 19th September, 2019 passed by the learned Judicial Magistrate, 10th Court at Alipore in an application under Section 23 of the said Act.

When the matter is taken up for hearing, the learned advocate for the opposite party is found absent on call. Adjournment was sought on the ground that the learned advocate for the opposite party is out of station. However, this Court is not inclined to adjourn the hearing of the instant revision.

Accordingly, prayer for adjournment is refused. I have heard Mr. Sandipan Ganguly, learned senior counsel on behalf of the petitioner.

It is frankly submitted by Mr. Ganguly, that the parties did not file any affidavit of assets before the learned Magistrate at the time of hearing of the application under Section 23 of the said Act. Therefore, the learned Magistrate decided the issue relating to income of the opposite party/husband and his obligation to afford monetary relief to

the petitioner on the basis of the petition and the written objection filed before him.

It is pertinent to mention that before Criminal Appeal No.47 of 2020 was decided and judgment was delivered by the learned Sessions Judge, South 24 Parganas, Alipore, the decision of the Hon'ble Supreme Court in the case of **Rajnesh versus Neha** was published in **(2021) 2 SCC 324**.

As laid down by the Hon'ble Supreme Court in the aforesaid decision, in a proceeding under P.W.D.V. Act or Section 125 of the Code of Criminal Procedure the parties are under obligation to file affidavit of assets to enable the Court to decide the income of the respective parties and liability to pay monetary relief or maintenance allowance as the case may be.

It is submitted by Mr. Ganguly that before the Appellate Court the opposite party filed affidavit of assets. However, the petitioner was not advised to file affidavit of assets in compliance with the guidelines made in **Rajnesh versus Neha**. In the instant proceeding the petitioner has filed affidavit of assets but till date the opposite party has not filed any affidavit of assets. After promulgation of the decision by the Hon'ble Supreme Court in **Rajnesh versus Neha** it is the incumbent duty upon the trial Court to consider affidavit of assets to ascertain the liability of the opposite party to pay maintenance

/monetary relief taking into consideration also the liabilities of the parties.

Since a substantial change has occasioned after promulgation of the decision in **Rajnesh versus Neha** this Court feels it prudent directing the learned Judicial Magistrate, 10th Court at Alipore to decide the application under Section 23 of the said Act afresh on the affidavit of assets. The parties are directed to file affidavit of assets within 10 (ten) days from the communication of this order. The learned Magistrate is specifically directed to fix the matter after a fortnight from the date of communication of the order passed by this Court and decide the application under Section 23 of the said Act afresh.

In view of above direction, the order dated 19th September, 2019 passed by the learned Judicial Magistrate, 10th Court at Alipore as well as the judgment dated 22nd February, 2022 passed in Criminal Appeal No.47 of 2020 are set aside.

The parties are directed to act on the server copy of this order.

It is made abundantly clear that this Court does not propose to pass any interim order of monetary relief at this stage in absence of the learned advocate for the opposite party considering the fact that the opposite party will not be prejudiced if the application under Section 23 of the said Act is heard afresh on the basis of the affidavit

of assets filed by them in course of the entire proceeding at different points of time.

(Bibek Chaudhuri, J.)