

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No. 1455 of 2014

With

I.A. No. C.R.A.N. 2 of 2021

SOMA KOLEY

-VERSUS-

RAJESH KOLEY

For the petitioner : Mr. Tapas Kr. Dey, Adv.,
Mr. Asish Dutta, Adv.,
Mr. Rakesh Roy, Adv.,
Ms. Susmita Mondal, Adv.

Hearing concluded on : 28.04.2022

Judgment on : 05.05.2022

Kausik Chanda, J.:-

Despite service, none appears on behalf of the husband/opposite party.

2. In this revisional application, an order dated January 31, 2014, passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Sealdah, South 24-Parganas, has been challenged. By the order impugned, the learned Sessions Judge affirmed an order passed by the learned Judicial Magistrate, 5th Court, Sealdah, rejecting the prayer of the wife/petitioner for interim monetary assistance under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the said Act').

3. Learned Magistrate rejected the application under Section 23 of the said Act mainly on the ground that the petitioner did not disclose the income of the husband/opposite party. The learned Magistrate observed that the income of the husband is subject to concrete evidence, and before him, it was a war of affidavit-versus-affidavit. When the wife/petitioner has not specifically disclosed the income of the husband, no relief under Section 23 of the said Act could be granted.

4. The learned Sessions Judge approved the reasoning of the learned Magistrate and further observed that when the husband produced municipal tax receipts showing that he had no right over the alleged shared-household or the business, then the Court could not ignore the

same in absence of documents from the side of the wife negating the same. The learned Sessions Judge was of the view that the learned Magistrate rightly observed that a full-fledged trial was required for passing such an order.

5. The learned Sessions Judge also rejected the contention of the petitioner that the learned Magistrate ought to have considered the report of the protection officer before passing an order under Section 23 of the said Act. According to the learned Sessions Judge, it was not mandatory for the learned Magistrate to consider the report of the protection officer before passing an order of interim compensation under Section 23 of the said Act. The learned Sessions Judge observed that legislature has not incorporated any word in Section 23 of the said Act, making it mandatory for the Magistrate to consider the domestic incident report of the protection officer or the service provider before passing any interim order as opposed to Section 12 of the said Act. According to the learned Sessions Judge, it was the intentional omission of the legislature since an interim relief always provides for emergent relief in case of exigency.

6. In my view, the orders of the learned Sessions Judge and the learned Magistrate in the Court below cannot be sustained.

7. Section 23 of the said Act empowers the Magistrate to grant interim and ex-parte orders. For passing an ex-parte order, the Magistrate requires to confine himself to the averments made in the application for such interim order. The legislature, with an object to attach credence to the

statements made in the application for an interim order, thought it fit that such application should be supported by an affidavit unlike an application under Section 12 which requires to be verified only. If the application for an interim order, on a plain reading, prima facie, discloses that there has been an act of domestic violence or likelihood of committing an act of domestic violence, the Magistrate may grant ex-parte order on the basis of the averments made in the application itself. The version of the opposite party need not be considered while passing an ex-parte interim order.

8. If for any justifiable reasons the learned Magistrate declines to grant an ex-parte order of monetary reliefs on an application under Section 23 of the said Act, he should decide the said application upon considering the affidavits of the respective parties as directed by the Supreme Court in the judgment reported at **(2021) 2 SCC 324 (*Rajnesh v. Neha*)**.

9. The Supreme Court in the said judgment has laid down, inter alia, the guidelines for deciding an application for interim maintenance. The relevant part of the said judgment is quoted below:

“ ...

II. Payment of Interim Maintenance

62. The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24-9-2001), and the third proviso to Section 125 CrPC (inserted vide Act 50 of 2001 w.e.f. 24-9-2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases.

The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

...

(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country. ...”

10. It is not necessary to go into the question as to whether a Magistrate should mandatorily take into consideration the report of the protection officer or service provider in passing the interim order under Section 23 of the said Act. Suffice it to say that if such a report is already on record,

there is no bar under the Act to consider the same for proper adjudication of an application under Section 23 of the said Act.

11. In the present case, the learned Magistrate as well as the learned Sessions Judge in the Court below rejected the claim of the interim monetary relief after considering the counter affidavit filed by the petitioner.

12. Before the learned Magistrate, the husband/opposite party contended that he had no source of income, and the shared-household and the business do not stand in his name. The wife/petitioner also did not disclose any specific source of the income of the husband in her application. In my view, such failure does not absolve the husband/opposite party from his liability to maintain his wife. The law is settled that an able-bodied husband is under a legal obligation to maintain his wife and the plea that he has no source of income, cannot resist a claim for maintenance by the wife, who has been subjected to domestic violence. It was not the finding of the learned Magistrate or the learned Sessions Judge that the petitioner had an independent source of income.

13. In this revisional application, an order of interim maintenance in favour of the petitioner to the tune of Rs.5,000/-(Five Thousand) per month was passed by this Court on June 18, 2014. I am not inclined to alter or modify the said order keeping in mind the present market price and standard of living of the parties.

14. The opposite party shall go on paying the said amount of maintenance to the petitioner/wife till the disposal of the application filed

by the petitioner under Section 12 of the said Act before the learned Magistrate in the Court below. The learned Magistrate in the Court below shall make an endeavour to dispose of the application under Section 12 of the said Act, preferably within a period of six months from date in the light of the judgment rendered in **Neha** case.

15. For the above reason, the order of the learned Sessions Judge as well as the learned Magistrate in the Court below are set aside.

16. C.R.R. No. 1455 of 2014 along with I.A. No. C.R.A.N. 2 of 2021 is, accordingly, disposed of.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)