

Form J(1)

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

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

CRR 2713 of 2022

**Md. Ashfaque
Vs.
Ayesha Sultan & Anr.**

For the petitioner : Mr. Debabrata Roy, Adv.

Judgement on : 01.09.2022.

Bibek Chaudhuri, J.

It is submitted on behalf of the husband/petitioner that his wife/opposite party no. 1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act read with other coordinate provisions praying for relief that may be granted under the said act including monetary relief. It is also the case of the petitioner that the opposite party no. 1 filed an application under Section 23 of the said Act praying for interim monetary relief. The Learned Magistrate passed an order directing the petitioner to pay a sum of Rs.3,000/- per month to the opposite party no. 1 as interim monetary relief. The petitioner herein filed an appeal before the Learned Sessions Judge, South 24-Parganas at Alipore under Section 29 of the said Act challenging the quantum of monetary relief granted by the Trial Court. The said appeal was registered as Criminal

Appeal No. 22/2020. The said appeal was transferred to the 3rd Fast Track Court of the Learned Additional Sessions Judge at Alipore for disposal. The Learned Additional Sessions Judge disposed of the said appeal vide order dated 8th July, 2022 directing the appellant to pay interim monetary relief at the rate of Rs.10,000/- per month in favour of the wife/opposite party.

The husband/petitioner has challenged the said order alleging, *inter alia*, that the Trial Court did not give any opportunity to the petitioner to file affidavit of assets in the said appeal. Secondly, the Trial Court failed to consider that the petitioner has lost his job and he does not earn as alleged by his wife. Without considering the above-stated matters the Learned Judge acted illegally and with material irregularity in passing the impugned order directing the petitioner to pay interim monetary relief at the rate of Rs.10,000/- per month.

It is repeatedly submitted by the Learned Advocate for the petitioner that during the hearing of the appeal the Appellate Court did not grant any opportunity to the petitioner to file affidavit of assets. The above submission *per se* is incorrect and only made to mislead the Court. It appears from the record that the appellant filed written objection against the application under Section 23 of the said Act filed by his wife. The Learned Trial Court disposed of the application under Section 23 on the basis of the averment made in the petition under Section 23 of the said Act and written objection. The wife/petitioner filed an appeal praying for enhancement of quantum of interim monetary relief. The Learned Advocate for the petitioner failed to produce any document to show that even

in the Appellate Court he prayed for allowing him to file affidavit of assets. Now it is submitted by the Learned Advocate for the husband/petitioner that both the Trial Court and the first Court of Appeal failed to follow the guidelines of ***Rajnesh –Vs.- Neha***.

In ***Rajnesh –Vs.- Neha*** the Hon'ble Supreme Court has formulated a guideline for the purpose of ascertainment of fact with regard to the need of the wife/petitioner and monetary status of the husband/opposite party. The said report passed by the Hon'ble Supreme Court is not a direction upon any Court to observe before disposing of an application under the Domestic Violence Act or under Section 125 of the Code of Criminal Procedure, as the case may be. The opportunity given by the Hon'ble Supreme Court in ***Rajnesh –Vs. Neha*** must be availed by the parties. If one party or both failed to avail such opportunity, the Court is under obligation to dispose of an application for monetary relief or interim monetary relief on the basis of the materials-on-record.

In the instant case, I do not find any material wherefrom it could be ascertained that husband/petitioner ever prayed for filing of the affidavit of assets either in the Trial Court or before the Court of Appeal.

Therefore, the above ground is untenable.

However, considering the fact that the petitioner has lost his job and he is at present jobless, the impugned order dated 8th July, 2022 in Criminal Appeal No. 22/2020 is modified directing the present petitioner to pay interim monetary relief at the rate of Rs.8,000/- per month in favour of the wife/opposite

party from the month of July, 2022 within 10th of each succeeding month.

It is made clear that the observation made by this Court that the petitioner has lost his job is only tentative for the purpose of disposal of the instant revision and it will have no bearing at the time of final disposal of the application under Section 12 of the PWDV Act.

With the above observation and order, the instant revision is **disposed of**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 53.