

30.11.2022

Court No.35  
Item No. 9

I.T.

**CRR 2513 of 2016**

**With**

**CRAN 4 of 2022**

**Amitav Sarkar @ Amitabha Sarkar  
Vs.  
Mahua Sarkar**

Ms. Minoti Gomes,  
Mr. Kaushik Biswas,  
Mr. Paratha Sarathi Das,  
Ms. Kuhu Roy,  
Mr. Protyush Ghosh.

... For the Petitioner

Mr. Sumanta Ganguly,  
Ms. Sharmila Nath.

... for the Opposite Party.

Husband/petitioner is aggrieved with the judgment of the trial court passed on 21<sup>st</sup> June, 2016, in Criminal Motion No.60 of 2016. Petitioner has contended inter alia that the amount of interim maintenance granted by the court by dint of the said order to the tune of Rs.45, 000/- in total for the opposite party no.2/wife and the minor child of the parties respectively, to be exorbitant and hardship for him to pay. Hence, in this revision he has prayed for modification of the quantum of interim maintenance earlier granted by the trial court to the present opposite party/wife.

Several other formal grounds have been taken in this revision to oppose the impugned order, i.e, the trial court has not considered the attending facts and circumstances i.e, income of the petitioner, income of the present opposite party/wife etc. while delivering the order as impugned, that the trial court has not exercised jurisdiction vested in it by law and acted in closed mind and whimsically in issuing the directions as in the impugned order, that the order of the trial court is de hors the settled provisions of law in this regard, that the order of the trial court is unreasonable, that the same is not maintainable in law and is liable to be set aside.

According to the petitioner, after filing of this revision this court directed him to pay a monthly sum of Rs.30,000/- to the opposite

party no.2 as a condition for stay of operation of the further proceedings in the trial court, vide its order dated 17<sup>th</sup> August, 2016. He says that he has complied with the said order and remitted the amount of interim maintenance to the tune of Rs.30,000/- to the opposite party no.2 till this month, i.e, the month of October, 2022, regularly and without any discontinuation or diversion.

It is now prayed that the instant revision case may be disposed of with an order which the petitioner shall be capable of complying in view of his income and liabilities in so far as being a law abiding citizen of this country, the petitioner is always desirous to follow the law of the land.

Vehement and strong objection has been raised on behalf of the opposite party. Several points have been argued. Firstly, that the order of this court dated 17<sup>th</sup> August, 2016, was a conditional order and mandatory pre-condition was stipulated for the present petitioner to pay an amount of Rs.30,000/-, on each succeeding months within a specified date for the stay order to sustain. In default of which the stay order granted by the court was supposed to be vacated automatically. It is submitted that the directions in the said order has been flouted by the husband in so far as he has not been consistent in paying the amount of interim maintenance on regular basis as per direction of the court. It is submitted that in such view of the fact the conditional order of stay dated 17<sup>th</sup> August, 2016, of this court would automatically stand vacated. Therefore, according to the opposite party no.2 the claim made by the petitioner of remitting at the rate of Rs.30,000/- per month to the wife is only fallacious in so far as in the event the order dated 17<sup>th</sup> August, 2016, of this court being not complied and automatically vacated, the amount of interim maintenance would automatically revert back to that as has been granted in the impugned order dated 21<sup>st</sup> June, 2016. It is stated that obviously and admittedly the amount of interim maintenance as was directed in the impugned order has not been remitted by the petitioner to the wife.

Both the parties have presented their respective calculations on the basis of the submissions made. There is a discrepancy to the tune of Rs. 9 Lakhs approximately, i.e, according to the wife's claim the arrear interim maintenance amount would be Rs. 9 Lakhs approximately more than what has been calculated by the petitioner. However, remittance of an amount of Rs.30,000/- per month by the petitioner till the month of October, 2022, has not been disputed in this case, barring the grievance of irregular payment thereof. It is apparent that the discrepancy in calculation for the arrear amount of maintenance arose pursuant to the understanding of the parties regarding if or not conditional order dated 17<sup>th</sup> August, 2016 of this court has already been vacated.

Ld. Advocate on behalf of the opposite party no.2 has relied on the judgment of the Hon'ble Apex Court in the case of Rajnesh vs. Neha & Anr. reported in (2021) 2 SCC 324, to submit that such an order of interim maintenance may not be interfered with by this court.

On behalf of the petitioner it has been submitted very fairly and categorically that the amount of interim maintenance as has been granted by the trial court in the impugned order dated 17<sup>th</sup> August, 2016 would be a hardship for the petitioner to pay otherwise it is never been his intention to deprive his wife from any statutory right she should get in a situation like this. To support such contention the documents as to the payment of interim maintenance amount in terms of this court's order dated 17<sup>th</sup> August, 2016 have been produced. Worth mentioning is that receipt of such an amount has not been denied or disputed by the wife.

It would be prudent for the court not to go into the question if the order of this court dated 17<sup>th</sup> August, 2016, would lose its force due to any alleged violation thereof. Firstly, it is noted that the allegations of violation thereof is only evasive, without any specific material as to the months and dates when such alleged violation took place. Secondly, at this interim stage it would not be prudent to dwell upon the peripheral points without insisting for final disposal of the case under

Section 125, Cr.P.C, 1973, in the trial court:

This is a reason for which this court thinks it fit and proper to dispose of this criminal revision case with the directions as below:-

- (i) Considering the income of the petitioner, he is direct to pay the opposite party no.2/wife interim maintenance to the tune of Rs.25,000/- for herself and Rs.15,000/- for the minor child, i.e, a total of Rs.40,000/- per month, as interim maintenance.
- (ii) This amount shall be payable with effect from the date of the order impugned, i.e, 21<sup>st</sup> June, 2016.
- (iii) The current amount shall be paid within 10<sup>th</sup> day of each succeeding calendar month starting from the month of December, 2022.
- (iv) Arrear, if any, calculated at the rate of Rs.40,000/- starting from the date of the impugned order, i.e, 21<sup>st</sup> June, 2016, shall be paid in two equal installments in the months to January, 2023 and February, 2023.
- (v) In calculating arrear as stated above, the amount of interim maintenance, as has already been paid shall be deducted. If this amounts to zero arrear, the petitioner shall not, for the time being, pay any further arrear of interim maintenance. However, if it amounts to excess payment, the same shall not be adjusted right now but shall be brought to the notice of the trial court to be appropriately dealt with at the time of final determination of the case.

With the directions as above the revision case is disposed of. Impugned judgment of the Trial Court, dated 21<sup>st</sup> June, 2016, is set aside.

Hence, CRR 2513 of 2016 is allowed.

Considering the period of pendency of the case under the Section 125 Cr.P.C, 1973, by the wife, in the trial court, the same is requested to proceed with the case, as expeditiously as possible.

Connected application being CRAN 4 of 2022 is also disposed of.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon usual undertaking.

**(Rai Chattopadhyay, J.)**