

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 274 of 2020

Smt. Meghna Nandi (Maiti)

Vs.

Sri Asit Nandi & Anr.

For the Petitioner : Mr. Animesh Bhattacharya.

For the opposite party no.1 : Ms. Sreeparna Das,
Mr. Pratik Majumder,
Mr. Abdul Mallick.

For the State : None.

Hearing concluded on : 16.08.2023

Judgment on : 13.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 26.11.2019 passed by the learned Judicial Magistrate, 6th Court, Howrah in Misc. Case No. 192 of 2018 rejecting the petition under Section 127 Cr.P.C. praying for modification of the order under Section 125 Cr.P.C. granting interim maintenance of Rs.2000/- to the petitioner and Rs.1000/- each for the two daughters, total Rs.4,000/- per month from the date of the order.

2. The petitioner's case is that this is an application assailing the impugned order on the ground that the quantum of interim maintenance granted upon hearing both the parties is inordinately low and inappropriate for the petitioner to maintain herself and her two minor daughters.
3. The petitioner being a housewife and a mother of two minor daughters was compelled to leave her matrimonial house without any belongings on 05.12.2017 and forced to reside with her parents. The petitioner filed an application under Section 125 Cr.P.C. registered as Misc. Case No. 192 of 2018 before the Court of Learned Chief Judicial Magistrate at Howrah. A gist of the application is reproduced below:-

- a) *The marriage between petitioner/wife and the opposite party /husband was solemnized according to Hindu rites and customs on 11th May, 2013 at the residence of the maternal house of the opposite party/husband i.e. village Post Office and Police Station Balichak, District-Paschim Medinipur.*
- b) *That as the first issue was a female child the opposite party/husband with the help of his sister, namely, Nandita and one maid servant, namely, Kananbala Bar, all of Duillya (Gholmath), Post Office- Duillya, P.S. Sankrail, District-Howrah, Pin- 711302, started physical and mental torture upon the petitioner/wife just after the birth of the first female child and subsequently within a short period the opposite party/husband compelled the petitioner to have another child in anticipation of a male child but ironically the second one was also a female child. After the second issue, the degree of torture increased. As a result of such torture the petitioner/wife went to Jhargram District Hospital on*

05.12.2017 for treatment and then to Sankrail Police Station and lodged a FIR being No.159/18 dated 17.03.2018 u/s 498A/34 of I.P.C. against the opposite party/husband and was compelled to come to her paternal house at Temple of Clay, Madhuban More, Post Office- Raghunathpur, Police Station and District- Jhargram.

- c) As per information the opposite party/husband use to draw monthly income more than Rs.45,000/- (approximately).*
- d) The opposite party/husband therein contested the case and filed a show cause and accepted the marriage as genuine as well as accepted the birth of their two daughters but he denied his monthly income as 45,000/- per month approximately as claimed by his wife and averted that his monthly salary is Rs.20,414/-, which also was mentioned in his show cause, but no salary slip was produced by him. On being satisfied, only with the oral submission of the opposite party/husband, the Learned Trial Court was pleased to direct to make payment of Rs.2,000/- per month to the petitioner wife and Rs.1,000/- each to both the daughters by his order dated 31.10.2018. It was further ordered that the order of payment shall take effect from the date of the said order.*

- 4.** It is stated that the husband is an Upper Division Assistant at Writers Building, Kolkata in the Department of Agriculture.
- 5.** It is further stated that through a communication dated 23.07.2019 signed by Dy. Secy. & S.P.I.O. department of Agriculture, Govt. of West Bengal, supplied the copy of pay slip of the husband of the petitioner for the month of June, 2019 from which it appears that the husband of the petitioner drawn Rs.34,000/- per month but he deliberately submitted before the trial court that his monthly income is Rs.20,414/- and on that

basis the quantum of interim maintenance of the petitioner and her two minor daughters were fixed by the trial court by its order dated 31.10.2018.

6. On 26.11.2019 the learned Trial Court rejected the prayer for enhancement of monthly maintenance.
7. **Mr. Animesh Bhattacharya, learned counsel for the petitioner** has submitted that the quantum of maintenance fixed by the learned Trial Court to the tune of Rs.2,000/- per month for the petitioner and Rs.1,000/- each for her two minor daughters, is very negligible and in need of urgent enhancement.
8. It is further submitted that the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.
9. Thus it is submitted that the impugned order dated 26.11.2019 is not tenable in the eye of law as the Learned Trial Judge illegally opined that the petition under Section 127 Cr.P.C. for enhancement of monthly maintenance **is premature**. Hence, the revision.
10. **Ms Sreeparna Das, learned counsel for the opposite party no. 1** has submitted that the order under revision is in accordance with law and as such the revision is liable to be dismissed.

11. **On perusal of the materials on record it appears that** the parties were married on 11.05.2013. The petitioner allegedly was tortured and was compelled to leave her matrimonial home on 05.12.2017 with her two daughters.
12. The learned Magistrate prima facie accepting the contention of the opposite party/husband that his monthly salary was rupees Rs.20,414/- (without production of pay slip), granted interim maintenance of Rs.4000/- in all.
13. The petitioner then having failed to get the 'information' as to the payslip of the opposite party, who admittedly is an Upper Division Clerk (State Govt.) in the Department of Agriculture, by filing a RTI application with the SPIO, Department of Agriculture and also it's Appellate Authority, approached the High Court in its writ jurisdiction (W.P. No. 11818(W) of 2019). The Hon'ble Court by its order dated 03.07.2019 gave relief to the petitioner by quashing the orders of the SPIO and the Appellate Authority and directed the respondents (State and Ors.) to provide the salary details of the husband to the petitioner.
14. The salary slip at page 55 and 55A to the revisional application for the month of June, 2019 shows the grand total of salary per month, admittedly as Rs. 34,090/-. Net pay as Rs. 22,890/- which by way of revision/increments has been enhanced in due course.
15. Thus it was in no way logical to grant such a low amount as **interim** maintenance for 3 persons and leave the balance for the husband.

- 16.** Of course at the time of final disposal of the case, all factors have to be taken into consideration by the learned Magistrate, but an amount of Rs. 4000/- for three persons is just not reasonable. But the order under challenge in this revision is where the learned Magistrate rejected the prayer under section 127 Cr.P.C. **on the ground of it being premature, as the Case under section 125 Cr.P.C. was still pending final disposal.**
- 17.** The order under revision thus does not require the interference of this Court but taking into consideration all factors, the trial Court is to make all endeavor to dispose of the Misc. Case finally, keeping with the guidelines of the Hon'ble Supreme Court in ***Rajnish vs Neha & Anr. (2021) 2 SCC 32***, **within three months from the date of this order.**
- 18.** **The revisional application being CRR 274 of 2020 is, accordingly disposed of.**
- 19.** All connected applications, if any, stands disposed of.
- 20.** Interim order, if any, stands vacated.
- 21.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)