

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 330 of 2019

Lalbanu Bibi

Vs

Nur Ali Sk. & Anr.

For the Petitioner : Mr. Manas Kumar Das,
Mr. Aritra Kumar Thakdar.

For the Opposite Party no. 1 : None.

For the State : Mr. Bidyut Kumar Roy,
Ms. Sima Biswas.

Heard on : 08.12.2022

Judgment on : 05.01.2023

Shampa Dutt (Paul), J.:

The revision is by the petitioner/wife against the order and judgment dated 17th September, 2018 passed by the learned Additional District and Sessions Judge, Kandi in Criminal Revision no. 13 of 2018, affirming the judgment dated 20.04.2018 of the Judicial Magistrate, Kandi granting Rs. 1200/- per month as maintenance to the petitioner/wife in Misc case no. 94 of 2015.

The petitioner/wife's case is that her marriage with the opposite party no. 1/husband took place on 03.11.2014 and she lived in her matrimonial home till she was allegedly driven out on 23.02.2015, when they allegedly tried to kill her.

Since then she is at the mercy of her relatives as her parents have died. She then filed an application under Section 125 Cr.P.C. before the learned Additional Chief Judicial Magistrate, Murshidabad (Misc. Case no. 94 of 2015) praying for a sum of Rs. 5000/-per month as maintenance as the husband earns rupees 20,000/- per month.

After a contested hearing and on a finding that the husband/opposite party does not wish to stay with the petitioner/wife because of her average looks, granted only Rs. 1200/- per month as maintenance, which is extremely low to even live one's life with even the minimum requirement.

Mr. Manas Kumar Das, learned Counsel for the petitioner/wife has submitted that the petitioner is the legally married wife of the opposite

party. The opposite party is an able bodied person having sufficient income. The petitioner has no income of her own. The learned Magistrate did not award an adequate amount of maintenance in favour of the petitioner in respect of present market price. The learned Session Judge ought to have considered that the learned Magistrate has awarded very low amount of maintenance to the petitioner. The impugned order is bad, illegal and required to set aside.

The opposite part no. 1/husband has not appeared inspite of proper service.

There is no denial that the husband/opposite party no. 1 is an able bodied person and is a daily labourer. It has also been held by the learned Magistrate that he is unwilling to reconcile with his wife, due to her average looks. Such attitude of the husband is very unfortunate and should be condemned. If he could get married to the petitioner it is his duty to take responsibility and look after her welfare. He should ensure that the petitioner being his lawfully wedded wife (not denied) should be able to lead a comfortable life according to her husband's status.

The minimum wage for an unskilled worker per month is about Rs. 9000/-. The opposite party being a daily labourer definitely earns more than that.

The Supreme Court in **Rajnish vs. Neha, (2021) 2 SCC 324** laid down the **Guidelines /Directions on maintenance as follows:-**

“Maintenance laws have been enacted as a measure of social justice to provide recourse to

dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

Article 15(3) of the Constitution of India provides that :

“Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors. 1 held that the object of maintenance laws is :

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”

The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 (“SMA”), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 (“D.V. Act”) which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.”

Criteria for determining quantum of maintenance has been also laid down in **Rajnesh vs. Neha (supra)**.

(i) *The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.*

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

*In **Manish Jain v Akanksha Jain (2017) 15 SCC 801**, this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual*

situations; the Court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from

such property, (v) income from claimant's own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and / or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

(v) The Delhi High Court in Bharat Hedge v Smt. Saroj Hegde³⁷ laid down the following factors to be considered for determining maintenance :

- "1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17."*

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.

(b) Right to residence

Section 17 of the D.V. Act grants an aggrieved woman the right to live in the “shared household”. Section 2(s) defines “shared household” to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

*The right of a woman to reside in a “shared household” defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja v Sneha Ahuja*³⁸ (supra) held that “shared household” referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A*

mere fleeting or casual living at different places would not constitute a “shared household”. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a “shared household”. Section 2(s) read with Sections 17 and 19 of the D.V. Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

Section 19 (1)(f) of the D.V. Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(c) Where wife is earning some income

The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

In **Shailja & Anr. v Khobbanna, (2018) 12 SCC 199** this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

In **Sunita Kachwaha & Ors. v Anil Kachwaha, (2014) 16 SCC 715** the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because

the wife was earning some income, it could not be a ground to reject her claim for maintenance.

*The Bombay High Court in **Sanjay Damodar Kale v Kalyani Sanjay Kale 2020 SCC OnLine Bom 694**, while relying upon the judgment in Sunita Kachwaha (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.*

*An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in **Chander Prakash Bodhraj v Shila Rani Chander Prakash, AIR 1968 Delhi 174**. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.*

*This Court in **Shamima Farooqui v Shahid Khan, (2015)5 SCC 705** cited the judgment in Chander Prakash (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.*

(d) Maintenance of minor children

The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular / coaching classes, and not an overly extravagant amount which may be claimed. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

(e) Serious disability or ill health

Serious disability or ill health of a spouse, child / children from the marriage / dependant relative who require

constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

Considering all these factors and the facts and circumstances of this case and in the interest of justice the amount of maintenance is hereby enhanced to a sum of Rs. 4000/- per month (claim is a reasonable amount of Rs. 5000/- only) to be paid from the date of filing of the application for maintenance to be paid by the 10th of the respective months. Arrear to be paid in six monthly installments starting from the month of January, 2023, by the 30th of each month also starting from January.

Accordingly, the revisional application being CRR 330 of 2019 is allowed.

Judgment/Order dated 17th September, 2018 of the Learned Additional District and Sessions Judge, Kandi in Criminal Revision no. 13 of 2018 and Judgment/Order dated 20.04.2018 of the learned Judicial Magistrate, Kandi in Misc Case No. 94 of 2015 are modified accordingly.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)

