

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 556 of 2019

Geeta Sharma

Vs.

Banwari Lal Sharma & Ors.

For the Petitioner : Mr. Sanjay Banerjee,
Mr. Joydeep Bhattacharjee.

For the Opposite Parties : Mr. Pawan Kr. Gupta,
Ms. Sofia Nesar,
Mr. Santanu Sett.

Heard on : 12.07.2023

Judgment on : 31.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for setting aside the order dated 13th July, 2018 passed by the Learned Additional District Judge, 5th Court, Howrah, in Criminal Appeal No. 91 of 2017 arising out of order dated 16th August, 2017 passed by the Learned Judicial Magistrate, 1st Court, Howrah, in Misc. Case No. 641 of 2013 under Section 12 read with Sections 18/19/20/22 and 23 of the Protection of Women against Domestic Violence Act, 2005.

- 2.** The petitioner's case is that she is an abandoned house wife who has been compelled to stay at her paternal home with her two children and is struggling to make ends meet. The opposite party no. 1 is her estranged husband. The opposite party nos. 2 and 3 are her parents-in-law. The opposite party no. 4 is her sister-in-law (Widow of the deceased brother of the opposite party no. 1).
- 3.** Misc. Case No. 641 of 2013 now pending before the Learned Judicial Magistrate, 1st Court, Howrah under Section 12 read with Sections 18/19/20/22/23 of Protection of Women against Domestic Violence Act, 2005 and Section 125 of the Code of Criminal Procedure, 1973 was filed by the petitioner.
- 4.** The grievance of the petitioner in a nutshell is that she was married to the opposite party no.1 on 08.06.2003. At the time of marriage various valuables were given as dowry. Subsequently, she was subjected to torture because the opposite parties considered the dowry materials to be inferior in quality. Within three months of her marriage she became pregnant but her husband took no care of her. She was compelled to do heavy domestic work and was assaulted for additional dowry of Rs. 2,00,000/- .
- 5.** On 15.05.2004 she gave birth to a baby girl who was named Durgawati Sharma at Rishra. She was tortured at the matrimonial home for giving birth to a daughter. In 2005 the opposite party no.1 left for Delhi, leaving behind his wife and his daughter with the other opposite parties at Rishra who subjected her to torture.

6. The petitioner was awarded an ad-interim maintenance of Rs.10,000/-, Rs.1,500/- towards litigation expenditure and Rs.5,000/- for attending the Court proceedings by the Family Court, Jaipur Metro, Jaipur. Challenging that order opposite party no. 1 filed a S.B. Civil Writ Petition No. 8636 of 2014 before the Hon'ble High Court of Judicature, Rajasthan at Jaipur. The Court was pleased to stay the said order on conditions that the husband will continue to pay a sum of Rs.5,000/- towards maintenance, Rs.1,500/- towards litigation expenditure and Rs.5,000/- for attending the Court proceedings and to bear the educational expenses of his children. But, the opposite party no. 1 was neither bearing the educational expenses of his children nor was he paying any maintenance to his wife. On 03.02.2017 the writ petition was dismissed by directing the opposite party no. 1 to follow the orders as passed by the Family Court, Jaipur Metro, Jaipur.
7. By an order dated 16.08.2017, the Learned Judicial Magistrate, 1st Court, Howrah was also pleased to allow the application for **an ad-interim order of maintenance** directing the opposite party no. 1 to pay to the petitioner and his children a sum of Rs.5,000/- each per month, i.e. Rs.15,000/- from the date of order and also a sum of Rs.5,000/- per month for an alternative accommodation for the aggrieved person.
8. Being aggrieved and dissatisfied with the order dated 16.08.2017 passed in Misc. Case No. 641/2013, the petitioner/wife moved an application being Criminal Appeal No. 91 of 2017 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before the District and Sessions Judge, Howrah, who was further pleased to

transfer it before the Court of the Learned Additional District Judge, 5th Court, Howrah.

9. By an order and judgment dated 13.07.2018 the Learned Additional District Judge, 5th Court, Howrah was pleased to dismiss the appeal and confirmed the order that was passed by the Learned Judicial Magistrate, 1st Court, Howrah.

10. **Mr. Sanjay Banerjee, learned counsel for the petitioner** has submitted that the quantum of maintenance awarded is so meager and improper that the petitioner and her children are suffering irreparable loss and injury and that the maintenance has not been awarded from the date of filing of the application.

11. It is further submitted that the application is bona fide and made in the interest of justice to set aside the order dated 13th July, 2018 passed by the Learned Additional District Judge, 5th Court, Howrah in proceedings being Criminal Appeal No. 91 of 2017 arising out of order dated 16th August, 2017 passed by the Learned Judicial Magistrate, 1st Court, Howrah in Misc. Case No. 641 of 2013 under Section 12 read with Sections 18/19/20/22 and 23 of the Protection of Women against Domestic Violence Act, 2005 and enhance the quantum of ad-interim maintenance awarded to the petitioner and her children from the date of filing of the application in Misc. Case No. 641/2013 and shall also direct the respondent no. 1 to pay and clear all the arrears of maintenance.

12. **Mr. Pawan Kumar Gupta, learned counsel for the opposite parties** has submitted that **the petitioner has been granted maintenance by two forums and he being admittedly a disabled person has been**

seriously prejudiced. The case of the opposite party/husband is that the opposite party has always discharged his duties and responsibilities towards the petitioner as her husband. He has always been providing education to his children. In spite of this without any reason the petitioner has intentionally deserted the opposite party no. 1 and kept him away from his children. He was compelled to file two applications, one under Section 9 of the Hindu Marriage Act and another under Section 26 of the Hindu Marriage Act before the Ld. Family Court at Jaipur. The opposite party no. 1 further states that they are always ready to accept the petitioner but she left her matrimonial home at her own wish. Mr. Gupta has prayed for dismissal of the prayer for enhancement of maintenance made by the petitioner.

13. On hearing both sides and considering the materials on record, it is evident that:-

- (i) The order under revision is against **an order of interim maintenance.**
- (ii) There is **an order** of maintenance passed by the Family Court, Jaipur Metro, Jaipur, Rajasthan and **another** by the Court at Howrah, West Bengal, against which the present revision has been preferred.

14. The Supreme Court in ***Rajnish vs. Neha, Criminal Appeal No. 730 of 2020 (arising out of SLP (Crl.) No. 9503 of 2018), on 4 November, 2020***, held:-

“VI Final Directions

In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India : (a)
Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

- (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;*
- (ii) (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;*
- (iii) (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.*

(b) Payment of Interim Maintenance

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 concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take

into account the criteria enumerated in Part B – III of the judgment. 56 The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.”

15. The learned Judicial Magistrate, 1st Court, Howrah shall take into account the amount of maintenance granted by the respective courts (two different forums) and also the facts and circumstances of the cases and then keeping with the guidelines of the Supreme Court in ***Rajnesh vs Neha (Supra)***, pass an order disposing of the case finally, expeditiously.
16. The Court shall also consider as to whether the petitioner/wife has left her matrimonial home wilfully or was driven out, while disposing of the application.

17. The revisional application being CRR 556 of 2019 is accordingly disposed of.

18. All connected applications, if any, stands disposed of.

19. Interim order, if any, stands vacated.

20. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

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

(Shampa Dutt (Paul), J.)