

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 969 of 2019

Sefali Khatun @ Bibi

Vs.

The State of West Bengal & Anr.

For the petitioner

: Mr. Musharraf Alam Sk.,
Mr. Sujoy Sarkar,
Ms. Susmita Ghorai.

For the State

: Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.

For the Opposite Party No.2

: Mr. Angshuman Chakraborty,
Mr. Shasanka Shekhar Saha.

Heard on

: 12.07.2023

Judgment on

: 31.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 27.02.2019 passed by the learned court of Additional Session Judge, Chanchal, Malda in Criminal Revision No.03 of 2018 arising out of Maintenance Case No.146M of 2012 vide order dated 6.10.2016 passed by the learned Additional Chief Judicial Magistrate, Chanchal, Malda.

2. The petitioner's case is that on 27.02.2019, the learned Additional Sessions Judge, Chanchal, Malda passed a Judgment and Order in Criminal Revision Case No.03 of 2018 by modifying the Judgment and Order dated 6.10.2016 passed by the learned Additional Chief Judicial Magistrate, Chanchal, Malda, in Maintenance case No.146 of 2012 by directing the petitioner/opposite party no.1 herein to pay an amount of Rs.4,000/- per month instead of Rs. 6000/- as directed by the Magistrate.

3. The petitioner's case is that she filed an application under Section 125 of Cr.P.C. before the learned court of Chief Judicial Magistrate, Malda being Case No.146M/2012 stating inter alia that her marriage was solemnized on 12.10.2003 as per Muslim rights and customs with the opposite party no.1. She then lived in her matrimonial home and after some time her husband and other in laws started torture with demand of additional dowry. **Thereafter the opposite party no.1 married another lady named Nagera Bibi** and then the husband with other in laws drove her out from her matrimonial home on 13.10.2012. A case under Section 498A of Cr.P.C. is pending and the petitioner took shelter in her parent's house. The petitioner has no independent income of her own nor any house and the opposite party no.1 never provided her any maintenance.

4. It is submitted that her husband is an able bodied person and he has his own house, 15 bighas of landed properties, a tank where pisciculture is carried out, a Medicine shop and also cultivates "Makhana". The total income of her husband is Rs.30,000/- per month. The petitioner thus prays for maintenance of Rs.10,000/- per month.

5. The opposite party no.1 has denied the allegations and stated he is a day labour earning Rs.100/- per day.

6. On 28.02.2018 the opposite party no.1 filed a criminal revision being no. 03 of 2018 before the learned court of Additional Sessions Judge, Chanchal, Malda.

7. The learned Additional Sessions Judge, Chanchal, Malda though did not find any reason to modify the order of the learned ACJM, Chanchal passed in case No.146M/2012 but by modifying the said judgment held that “The learned court did not commit any error in sketching out the conclusion that the petitioner has got the means to maintain his wife.”

8. Mr. Musharraf Alam Sk. learned counsel for the petitioner has submitted that the judgment and order passed on 27.02.2019 in Criminal Revision Case No.03/2018 is not in accordance with law, as the learned Judge passed the judgment and order arbitrarily without expressing any reasonable ground to modify the judgment and order passed by the learned ACJM, Chanchal, Malda in Case No.146M/2010 and thus the judgment and order dated 27.02.2019 is required to be stayed/set aside.

9. Mr. N. P. Agarwala, learned counsel for the State is present.

10. Mr. Angshuman Chakraborty, learned counsel for the opposite party no.2 has submitted that the Sessions court has taken the total circumstances into consideration while passing the order and thus the order under revision being in accordance with law should be affirmed.

11. From the materials on record it appears that the learned ACJM, Chanchal, Malda passed an order dated 06.10.2016, **finally disposing** the

Misc case under Section 125 of the Cr.P.C. The relevant portion of the order is:-

Case No. 146M/2012

Dated 06.10.2016

ORDERED

“That the petition under Section 125 of the Cr.P.C is allowed on contest.

The opposite party namely Manjur Alam is directed to pay a maintenance allowance to the tune of Rs.6,000/- (Rupees Six Thousand) per mensem to the petitioner namely Shefali Bibi within the fifteenth day of every succeeding month. This order is effective from the date of this order.”

Sd/-

A.C.J.M., Chanchal, Malda

12. On revision, the learned Additional Sessions Judge, Chanchal, Malda in **Criminal Revision No.03 of 2018 on 27.02.2019**, on the finding that the husband's income was not enough, modified the learned Magistrate order as follows:-

Criminal Revision No. 03 of 2018

Dated 27.02.2019

ORDERED

“that the order dated 6.10.2016 as passed in Maintenance Case No.146M of 2012 by the Additional Chief Judicial Magistrate, Chanchal, Malda stands modified by directing the petitioner to pay an amount of Rs.4,000/- to the opposite party no.1 within the 7th of each calender month.....”

Sd/-

**Additional Sessions Judge
Chanchal, Malda**

13. In the present case the parties were married on 12.10.2003. The petitioner was allegedly driven out of her matrimonial home on 13.10.2012,

after nine (9) years of marriage, on their demand for dowry being not fulfilled. **They had no children.**

14. The opposite party no.2 allegedly married another lady and then the petitioner was driven out for want of more dowry. The order of payment of maintenance is from the date of order. This is not in keeping with the guidelines of the Supreme Court in **Rajnish vs. Neha (2021 (2) SCC 324)** wherein the court 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) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;*
- (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 trial court granted Rs.6,000/- per month as maintenance, the revisional court modified/reduced it to Rs.4,000/- per month.

16. A man who can marry for the second time (permitted under personal law), is duty bound to maintain his 1st wife of 9 years. A woman who has diligently, sincerely and lovingly put in so many years of her life, in a relationship with the husband, deserves to be looked after and cared for by him, as long as she needs/requires the same.

17. Thus, keeping with the guidelines in *Rajnesh vs. Neha (Supra)* the order of the Additional Sessions Judge, Chanchal, Malda passed in Criminal Revision No. 03 of 2018 dated 27.02.2019 **is set aside** and the order dated 06.10.2016 passed by the learned Additional Chief Judicial Magistrate in Maintenance Case No. 146M of 2012 **is modified** to the extent that the opposite party shall pay a sum of Rs. 6,000/- per month towards maintenance to the petitioner, **from the date of filing** of the Maintenance Case No. 146M of 2012. The maintenance is to be paid by the 15th of each month, starting from August, 2023. Arrear of maintenance on and from the date of filing of Maintenance Case No. 146M of 2012, is to be paid in 12 (twelve) equal monthly installments, first of which is to be paid along with the monthly maintenance in the month of August, 2023.

18. The revisional application being CRR 969 of 2019 is thus allowed.

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.)