

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1064 of 2019

with

CRAN 1 of 2019

(Old No.: CRAN 4546 of 2019)

Harbindar Kumar Sharma

Vs.

Smt. Baby Kaur Sharma & Anr.

For the petitioner : Ms. Amita Gaur.

For the Opposite Party No.1 : None.

For the State : None.

Heard on : 17.07.2023

Judgment on : 07.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an interim order of maintenance in Misc. Case No.25 of 2017 dated 16.12.2017.

2. The petitioner's/husband's case is that on 11.04.2017 the opposite party no.1 filed an application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 being Misc. No.22000 of 2017/Misc. Case No.25 of 2017 before the learned Additional

Chief Metropolitan Magistrate-II at Calcutta falsely claiming herself to be the legally married wife of the petitioner and seeking relief under Sections 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 leveling false allegations against the petitioner, his parents and his elder brother.

3. The petitioner denies that the opposite party no.1 was his married wife and that all the allegations are wholly false. The application was made only with a malafide intention to extort money from the petitioner and coerce the petitioner to accept the proposal of the opposite party no.1 to marry her. In the written objection it was contended that on 05.03.2006, the alleged date of marriage of the petitioner with the opposite party no.1, she was the legally married wife **of one Sri Sanjoy Arora.**

4. The petitioner states that Smt. Baby Kaur, the opposite party no.1 married one Sri Sanjay Arora. There was a dispute between her and the said Sanjay Arora and she had decided to divorce Sanjay Arora and marry another. She and her mother in the month of January, 2006 put a proposal to the parents of the petitioner to agree to an arranged marriage of the petitioner with the said Smt. Baby Kaur. The parents of the petitioner told the opposite party no.1 and her mother that since there has not been a divorce between the opposite party no.1 and Sanjay Arora there was no question to ponder upon the proposal of the opposite party no.1 and her mother. The parents of the petitioner told the mother of the opposite party no.1 that if the opposite party no.1 could obtain divorce from Sanjay Arora, then the proposal could be considered. Thereafter it came to the notice of the petitioner and his parents that the opposite party no.1 had given birth

to a female child in the year 2007. In the year 2014 when again the said proposal of the opposite party no.1 was renewed by her and her mother to marry the petitioner, he had denied to marry the opposite party no.1. Possibly by then the opposite party no.1 has obtained divorce from the said Sri Sanjoy Arora from the Family Court at Kolkata.

5. The opposite party no.1 on or about 01.11.2015 made a complaint before the learned Additional Chief Judicial Magistrate at Sealdah which was sent to the Officer-in-Charge of Cossipore Police Station under Section 156(3) of the Cr.P.C. The Officer-in-Charge, Cossipore Police Station, 24-Parganas South registered a case being Cossipore Police Station Case No.227 of 2015 on 01.11.2015 under Sections 498A, 506 and 34 of the I.P.C. and read with Section 4 of the D.P. Act.

6. The petitioner states that he is a permanent resident of premises No.56/10, Kashi Nath Dutta Road, P.S. Cossipore, Kolkata-700 036. The petitioner got a job at Ludhiana in the year 2004 and since then he has been working at Ludhiana and he comes to meet his parents at least twice in a year.

7. That Smt. Baby Kaur falsely implicated the father of the petitioner aged about 73 years and his mother aged about 63 years, senior citizens, who are suffering from old age ailments and infirmities and the said Cossipore P.S. Case No.227 of 2015 under Sections 498A, 506 and 34 of the I.P.C. and read with Section 4 of the D.P. Act and Misc. Case No.25 of 2017 under the Protection of Women from Domestic Violence Act, 2005 has been filed only with malafide intention to harass and humiliate the petitioner and to coerce him to agree to marry the opposite party no.1.

8. The petitioner states that Smt. Baby Kaur had never developed any relationship or intimacy with the petitioner nor was she married to him during the subsistence of her marriage tie with Sri Sanjay Arora as falsely alleged. Her allegations are wholly mischievous and malafide.

9. On 16.12.2017 the learned Metropolitan Magistrate, 13th Court at Calcutta allowed the application for interim maintenance directing the petitioner to pay a sum of Rs.10,000/- per month towards interim maintenance to the opposite party no.1 and a sum of Rs.10,000/- per month towards interim maintenance to her daughter from the date of passing of the order i.e. 16.12.2017 and directed the payment to be made within 7th day of each calendar month.

10. Ms. Amita Gaur, learned counsel for the petitioner has submitted that without coming to a definite conclusion that the petitioner was the husband of the opposite party no.1 and the father of the daughter of opposite party no.1 and that there was a domestic relationship between the parties, the learned Metropolitan Magistrate, 13th Court at Calcutta saddled the petitioner with a liability to pay a sum of Rs.10,000/- per month towards interim maintenance to the opposite party no.1 and to pay a sum of Rs.10,000/- per month towards interim maintenance to her daughter from the date of passing of the order i.e. 16.12.2017.

11. The petitioner states that the learned 13th Metropolitan Magistrate, Calcutta was insisting that unless a certified copy of the document relating to the earlier marriage and divorce of the opposite party no.1 herein would not be produced before the learned 13th Metropolitan Magistrate, Calcutta,

it was not possible for him to decide the issue of the maintainability of the petition of the opposite party no.1.

12. The learned 13th Metropolitan Magistrate at Calcutta also directed that the application of the petitioner relating to the maintainability of the case would be considered at the time of final hearing and as such the impugned orders are liable to be set aside.

13. In spite of due service there is no representation on behalf of the opposite party no.1.

14. The order under revision is:-

MISC. 25/17

“The petitioner do get an order of monthly interim maintenance allowance @ Rs.10,000/- per month for herself and Rs.10,000/- per month for her minor daughter as interim maintenance allowance from the date of passing of this order as I find no unnecessary delay in disposal of the instant petition.

Opposite party no.1 is hereby directed to pay the monthly interim maintenance allowance as stated above in this order i.e. Rs.10,000/- per month to the petitioner and Rs.10,000/- per month for her minor daughter as monthly interim maintenance allowance within 7th day of each English calendar month failing which the petitioner will be at liberty to put the order into execution as per law.

Opposite party nos.1 to 4 are further directed not to cause or aid or abate any sort of mental and physical torture and/or commission of any domestic violence or torture upon the petitioner and her minor daughter directly or indirectly.

I make it clear that I make no order as to costs.

Let a copy of this order be given to the petitioner free of cost.

To 19.01.18 for payment and to 26.02.18 for hearing of the main petition.

Parties to come ready.

Sd/-

**Metropolitan Magistrate
13th Court, Calcutta”**

15. The order under revision is an INTERIM ORDER OF MAINTENANCE. The learned Magistrate has given prima facie findings on all the grounds as raised by the petitioner **subject to adjudication at the time of final disposal of the case.** On considering the same, the court granted interim maintenance.

16. The Supreme Court in ***Rajnesh vs. Neha, Criminal Appeal No. 730 of 2020 (arising out of SLP (Crl.) No. 9503 of 2018), on 04.11.2020,*** 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.”

17. Accordingly, the revision is disposed of with the direction that at the time of final disposal the Magistrate shall follow the guidelines of the Supreme Court in ***Rajnesh vs. Neha (Supra)***.

18. Accordingly considering the Materials on record, **the order of interim maintenance under revision** dated 16.12.2017 passed by the Learned Metropolitan Magistrate, 13th Court, Calcutta in Misc. Case No. 25 of 2017 **is hereby affirmed.**

19. **The Trial Court will decide the case finally as per the directions in the body of this judgment and make all endeavour to dispose of the case finally as expeditiously as possible.**

20. **The revisional application being CRR 1064 of 2019 is dismissed.**

21. All connected applications stand disposed of.

22. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)