

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1755 of 2019

Ruhu Nurmina Bibi @ Rugh Noor Meena Khatun

Vs

Hafijul Rahaman & Anr.

For the Petitioner : Mr. Suman Chakraborty.

For the Opposite Party : None.

For the State : None.

Hearing concluded on : 25.09.2023

Judgment on : 06.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an Order dated April 18, 2019 passed by the Learned Sessions Judge, Hooghly in Criminal Motion No. 63 of 2018 (*Ruhu Nurmina Bibi Vs Sk. Hafijul Rahaman*) arising out of order dated 28.06.2018 passed by the Learned Judicial Magistrate, Additional Court, Hooghly in M.C. Case No. 333 of 2013, under Section 125 of the Code of Criminal Procedure.
2. The Petitioner/Wife's case is that one application under Section 125 of the Code of Criminal Procedure was filed at the instance of the Wife/Petitioner before the Court of Learned Chief Judicial Magistrate, Hooghly being M.C. Case No. 333 of 2013 praying for maintenance from the Opposite Party/husband.
3. The case made out by the Wife/Petitioner in her application under Section 125 of Code of Criminal Procedure in short is that:-

The petitioner got married with the opposite party on 30.09.2010 as per the Muslim Rights and Customs and at the time of marriage several gifts were given to the bride and after marriage the Wife/Petitioner went to the house of the Opposite Party and other family members of the Opposite Party was residing there. After a few days of marriage, the Wife/Petitioner was subjected to mental and physical harassment by the Opposite Party and almost every night the Opposite Party used to come back home late at night, in intoxicated condition and then he used to torture the Wife/Petitioner. After three months of marriage, the husband/Opposite Party took the Wife/Petitioner to Rajkot and started mental and physical torture there also. The Wife/Petitioner was not provided proper meal by the Opposite Party. The Opposite Party used to talk rudely with the Wife/Petitioner. During the pregnancy period of the

Wife/Petitioner, she was sent to her paternal house and the Husband/Opposite Party did not bear any cost during that period. The Wife/Petitioner gave birth to a female child and due to birth of a female child, the in-laws of the Wife/Petitioner also used to inflict torture upon her. The Opposite Party never bore any medical expenses either of the Wife/Petitioner or their child. Subsequently, the Wife/Petitioner was ousted from her matrimonial house on 25.05.2013 with her minor child. The entire sridhan articles of the Wife/Petitioner was snatched away by the Opposite Party. The Wife/Petitioner has no income of her own. The Husband/Opposite Party has a jewellery shop in Rajkot and also landed property from which the Husband/Opposite Party earns Rs. 25,000/- per month. The Wife/Petitioner claimed Rs. 5,000/- per month for her maintenance and Rs. 5000/- per month for the maintenance of her minor child.

4. An application for restitution of conjugal right has also been filed at the instance of Husband/Opposite Party before the Court of Learned Civil Judge (Junior Division), Second Court, Hooghly at Chinsurah being M.A.T. Suit No. 07 of 2013 and a Criminal Case being Pandua Police Station Case No. 317 of 2013 has also been registered against the Husband/Opposite Party and other in laws of the Wife/Petitioner alleging commission of offences Under Sections 498A/406 of the Indian Penal Code. Both the criminal case and the matrimonial suit are pending before their respective courts.
5. On 28.06.2018, the Learned Trial Court was pleased to pass the Judgment and Order under revision dated 28.06.2018 thereby granting maintenance to the minor daughter to the extent of Rs. 2500/- per month, to be paid by the Husband/Opposite Party within the 7th of each

English calendar month. No maintenance allowance was awarded for the Wife/Petitioner.

6. Being aggrieved by and dissatisfied with the impugned Order dated 28.06.2018, the Wife/Petitioner preferred a Criminal Motion being no. 63 of 2018 before the Learned Sessions Judge, Chinsurah, Hooghly challenging the impugned Order dated 28.06.2018.
7. By its impugned Order dated 18.04.2019 the Learned Sessions Judge, Hooghly was pleased to dismiss the revisional application, thereby confirming the Order dated 28.06.2018 passed in Criminal Misc. Case No. 63 of 2018 by the Learned Additional Judicial Magistrate, Chinsurah, Hooghly.
8. The Wife/petitioner submits that the Learned Magistrate failed to appreciate that the marriage in between the Wife/Petitioner and the Husband/Opposite Party has not been denied. It has also not been denied that the child was born out of the wed lock. It has also not been denied that the Wife/Petitioner has no source of income of her own and she has been compelled to stay out of her matrimonial home. On the other hand the income of the husband has not been denied.
9. **Mr. Suman Chakraborty, learned counsel for the petitioner** has submitted that the Ld. Magistrate should have considered that the petitioner of the case is/was unable to maintain herself and a sum of Rs 2500/- per month is not enough/sufficient for the minor daughter.

10. In spite of due service there is no representation on behalf of the Opposite Party No. 2.

11. From the materials on record, including the Judgment of the Magistrate and the Sessions Judge, it is evident that :

- i) The parties were married in the year 2010.
- ii) A female Child was born on 11.01.2012.
- iii) The Petitioner/Wife has been residing in her parent's house since 2013 with her Child.
- iv) The findings of the Learned Sessions Judge as to the income of the Husband/Opposite Party, amounting to Rs. 25,000/- per month has not been disputed and or denied.
- v) Admittedly the Wife/Petitioner lived with her husband at Rajkot for about 8-9 months, where their child was also born.

12. In *Rajnesh Vs Neha & Anr., (2021) 2 SCC 324, on 4 November, 2020,*
the Supreme 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) (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.”

13. **In the present case,** the wife/petitioner had been taken to her parents’ house for medical treatment but after that she has refused to return to her husband, without any just or sufficient cause, as rightly held by the Trial Court and the Appellate Court and as such the said findings require no interference by this court.
14. **But the quantum of maintenance granted in favour of the minor daughter, who is now aged about 11 years is too low and accordingly the said amount is enhanced to a sum of Rupees 8000/- (Eight Thousand only) per month, keeping in mind the overall welfare of the child including her education, mental and physical well-being, starting from the month of October, 2023, to be paid within the 10th of each month.**
15. **The amount of Rs. 2500/- per month as granted by the Trial Court and affirmed by the Appellate Court is to be paid by the Opposite**

Party/Father from the date of filing of the case, (*Rajnish vs Neha, Supra*), till September, 2023.

16. Arrear if any if paid by December, 2023.

17. The Order dated April 18, 2019 passed by the Learned Sessions Judge, Hooghly in Criminal Motion No. 63 of 2018 (*Ruhu Nurmina Bibi Vs Sk. Hafijul Rahaman*) arising out of order dated 28.06.2018 passed by the Learned Judicial Magistrate, Additional Court, Hooghly in M.C. Case No. 333 of 2013, under Section 125 of the Code of Criminal Procedure **are modified accordingly.**

18. CRR 1755 of 2019 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.)