

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3096 of 2019

With

CRAN 1 of 2019

(Old No. CRAN 4720 of 2019)

Susanta Pal

Vs

The State of West Bengal & Anr.

For the Petitioner : Ms. Debipriya Mitra,
Ms. Sudakshina Dey.

For the State : Mr. Binay Panda,
Mr. Subham Bhakat.

For the Opposite Party No. 2 : None

Heard on : 05.07.2023

Judgment on : 20.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding relating to Misc Case No. 40 of 2017, now pending for disposal before the Learned Judicial Magistrate, Amta, for the offence punishable under Section 12 and 23 of the protection of the women from Domestic Violence Act.
2. The petitioner/husband's case is that the opposite party no. 2 was married to the petitioner accordingly to Hindu rites and customs on 24th day of Baishak 1407 B.S. and the said marriage was a negotiated one. After few days of marriage the opposite party no. 2 alleged, that she was subjected to torture by her husband, and the petitioner along with his mother are alleged to have assaulted her with a bamboo and have taken away the children of the opposite party no. 2 who are at present aged 14 years and 9 years respectively. The son of the opposite party no. 2 happens to be a special child and as the petitioner avoided to maintain his family, the parents of the opposite party no. 2 tried to intervene and solve the problem but on 20.07.2013 the opposite party no. 2 was again assaulted by the petitioner and his family. The petitioner though alleged to be earning Rs. 70,000/- (Rupees Seventy Thousand only) had deliberately neglected to maintain his family and his wife, for which the opposite party no. 2 filed an application under Sections 12 and 23 the

protection of the Women from Domestic Violence Act being Misc Case no. 40 of 2017.

3. That petitioner states that the opposite party no. 2 with a malafide intention had filed the instant application for which the petitioner outrightly denied all the allegations made therein by filing a written objection to the said application.
4. The opposite party no. 2 in her written complaint ventilated false charge about the petitioner and his family stating that she was not given proper food and was alleged to have been tortured and assaulted in her matrimonial house.
5. The opposite party no.2 previously also had roped the petitioner and his parents on the said same false and frivolous complaint of mental and physical alleged torture on her in her matrimonial home on the same cause of action.
6. The opposite party no. 2 had obtained an order ex parte on 22.05.2013 vide Misc. Case No. 12 of 2013 and also filed a case under Section 125 of the Criminal Procedure Code behind the back of the petitioner and the petitioner did not have any chance to ventilate his grievances before the Learned Court. The opposite party herself had willfully deserted her matrimonial home with her two children and though she had filed a false and frivolous case against the petitioner and his family members under Section 498A/406 of Indian Penal Code vide G.R. Case No. 1302 of 2013 before the Learned 4th Judicial Magistrate, Sreerampore, Hooghly but

due to the failure of the prosecution i.e. the opposite party no. 2's frivolous claim to produce any substantial evidence, the Learned Magistrate was pleased to acquit the petitioner and others of the false charge by his order dated 15.05.2017.

7. The Petitioner states that the opposite party no. 2 curiously enough stated before the Learned Magistrate that the petitioner's income happens to be Rs. 70,000/- to Rs. 1,00,000/- per month without any documentary evidence but the real fact is that the opposite party had deliberately suppressed the net income of the petitioner who happens to be a small businessman and whose income from the business is hardly Rs. 20,000/- per month.
8. **Ms. Debapriya Mitra, learned counsel for the petitioner,** submits the opposite party no. 2 by misleading the Learned trial Court had obtained an order of maintenances on 22.05.2013 where the Learned Magistrate directed the petitioner to make payment of Rs. 2,500/- per month to the opposite party/wife and Rs. 1,500/- per month towards the maintenance of two minor children totalling to Rs. 5,500/- per month.
9. The opposite party no. 2 in order to siphon money from the petitioner has filed the instant application and the Learned Magistrate by his order dated 23.05.2013 in Misc. Case No. 12 of 2013 came to a wrong finding and also ignored the statutory provisions of Section 125 of the Criminal Procedure Code.

10. That on the self same cause of action the opposite party no. 2 with malafide intention had filed an omnibus allegation against the petitioner and his parents suppressing the fact that she had already filed an application claiming maintenance under the Criminal Procedure Code and thereafter again obtained an order of maintenance from the Learned Judicial Magistrate, Amta, Howrah on 22.02.2018 wherein the Learned Magistrate directed the petitioner to pay Rs. 1000/- (Rupees One Thousand only) each to the opposite party no. 2 and her two children with respect to the case mentioned above which is totally bad in law.
11. That on the same said cause of action, the opposite party no. 2 deliberately has filed different false and frivolous applications relating to claiming of maintenance from the petitioner before various court's of law which is illegal and bad in law and thus liable to be set aside.
12. **Mr. Binay Panda, has appeared as the learned counsel for the state.**
13. **In spite of due service there is no representation on behalf of the opposite party no. 2/wife.**
14. **The Misc Case in the present revision, before the trial court, has not been disposed of finally. The grievance of the petitioner is against an order of interim Maintenance dated 22.02.2018 under the PWDC Act, 2005.**
15. While **disposing of the application** under Section 12 and 23 of the PWDC Act, 2005 **finally**, the Learned Magistrate can now follow the

guidelines as laid down by the Supreme Court in ***Rajnesh Vs Neha, (2021 SCC 324)***.

16. The said Judgment (***Rajnesh Vs Neha (Supra)***) raises the issue of maintenance as a whole. All the Acts providing the said benefit has been considered, discussed and guidelines laid down. The final Direction there in is as follows:-

“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.”

- 17. Keeping with the said guidelines, both the parties to the case will file their Affidavit of Disclosure of Assets and liabilities before the**

trial Court. It is admitted by the petitioner (husband) that the opposite party no. 2 (wife) lives in a portion of his house separately with her children.

18. There is another factor to be considered by the Learned Magistrate at the time of final disposal of the case as to whether the petitioner was driven out from her matrimonial home or had she deserted her husband without any just and sufficient reasons. The admitted fact that she reside with her children separately in the same house is an important fact to be kept in mind at the time of final disposal of the case.

19. The criteria determining quantum of maintenance as in *Rajnesh Vs Neha (Supra)* is:-

“III Criteria for determining quantum of maintenance

(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. 40 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.”

- 20.** Accordingly considering the Materials on record, the **order of interim maintenance** under revision dated 22.02.2018 passed by the Learned Judicial Magistrate, Amta in Misc. Case No. 40 of 2017 being in accordance with law, is hereby affirmed.
- 21. 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.**
- 22. The revisional application being CRR 3096 of 2019 is accordingly dismissed.**
- 23.** No order as to costs.
- 24.** All connected applications, if any, stands disposed of.
- 25.** Interim order, if any, stands vacated.
- 26.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 27.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)