

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 3543 of 2019**

**Shri Siddhartha Dechowdhury**

**Vs**

**Smt. Debashree Dey Chowdhury (Saha) & Anr.**

**For the Petitioner** : Mr. Anjan Ray,  
Mr. Subhajit Choudhury.

**For the Opposite Party** : Mr. Danish Taslim,  
Mr. A.K. Bhattacharrya.

Heard on : 13.02.2023

Judgment on : 13.03.2023

**Shampa Dutt (Paul), J.:**

The present revision has been preferred against the judgment and order dated October 12, 2018 passed by the Learned Additional Session Judge, 2<sup>nd</sup> Fast Track Court, Berhampore, District-Murshidabad in connection with Criminal Revision Case No. 277 of 2016, arising out of M.R. Case No. 76 of 2011, passed by the Learned Judicial Magistrate, 1<sup>st</sup> Court, Berhampore, District-Murshidabad, and judgment and order dated May 26, 2016 passed by the Learned Judicial Magistrate, 1<sup>st</sup> Court, Berhampore, District- Murshidabad, in M.R. Case No. 76 of 2011, under Section 125 of the Code of Criminal Procedure, 1973.

The petitioner's/husband's case is that he got married with the Opposite Party No.1 on 03.03.2006 as per Special Marriage Act and also on the same date their social marriage was solemnized socially.

After four year of their marriage the Opposite Party No.1 had filed an application under Section 125 of the Code of Criminal Procedure, 1973 before the Learned Chief Judicial Magistrate, Murshidabad and the same was registered as M.R. Case No.76 of 2011 and in the said application it was alleged that:-

*“She was subject to mental and physical torture by her husband and mother-in-law and on 16.09.2010 her mother-in-law made her sign a paper of*

*separation and on refusal her mother-in-law demanded Rs.2,00,000/- from the petitioner. On failure of the petitioner to do so she was confined in a room. She was rescued by her sister-in-law and brother-in-law and was treated in Hospital. Thereafter she was, driven out by her husband and mother-in-law from the matrimonial home. At present the petitioner is undergoing research work at Kalyani University, having no income whatsoever. The Opposite Party neither takes information nor pays any maintenance to the petitioner. The Opposite Party is an able bodied person and works as a specific officer (E) in the department of variable energy cyclotron Centre, department of Atomic Energy, 1 A/F – Bidhan Nagar, Kol- 64 having monthly income of Rs. 56,000/- per month. He also owns a Flat. She prayed for monthly maintenance to the tune of Rs.20,000/- and Rs.25,000/- of one time litigation cost”.*

That after hearing the respective parties Ms. Khaleda Mannan, the Learned Judicial Magistrate, 1<sup>st</sup> Court, Berhampore, Murshidabad by an order dated 03.09.2011 was pleased to pass an order of interim maintenance to the tune of Rs. 5,000/- per month to the petitioner from the date of filing of this case till the disposal of the case.

That Learned Judicial Magistrate, 1<sup>st</sup> Court, Berhampore, Murshidabad after going through materials on records and evidence by an order and judgment dated 26<sup>th</sup> May, 2016 was pleased to pass the following order:-

*“In the case in hand, as admitted, the gross salary of the Opposite Party (husband) is Rs.75,000/- and that in a proceeding under Section 24 of the Hindu Marriage Act, the Opposite Party has been directed*

*to pay Rs.15,000/- per month as maintenance pendente lite and Rs.20,000/- as litigation cost to the petitioner. Thus, the petitioner has already been awarded 1/5<sup>th</sup> of the gross salary of the Opposite Party that is Rs.15,000/- (Rs.75,000/-) (1/5\*). Thus it would be infructuous to pass an order more than the amount already been granted as maintenance. Hence I hold that the petitioner is not entitled to get the maintenance as prayed for as per law.”*

Being aggrieved by and dissatisfied with the judgment dated 26.05.2016 passed by the Learned Magistrate, 1<sup>st</sup> Court Berhampore, Murshidabad, the Opposite Party No.1 (being the wife of the petitioner had filed an application Under Section 397/399 of the Code of Criminal Procedure, 1973 before Shri Saugata Chakraborty, the Additional Session Judge, 2<sup>nd</sup> Fast Track Court, Berhampore of Criminal Revision Case No. 277 of 2016 and after hearing the learned Judge has been pleased to observe that:-

*“the petitioner is entitled to monthly maintenance allowance despite the order of alimony pendente lite. The quantum of maintenance allowance @Rs.20,000/- per mensem in this case is just, fair and reasonable.”*

It is stated that the learned Judge has failed to appreciate that the Opposite Party No.1, being the wife of the petitioner is a highly educationally qualified woman and she was already working as part time lecturer in college and now she is also receiving stipend for her research work from the Kalyani University and for this reason she is not

entitled to benefits Under Section 125 of the Code of Criminal Procedure, 1973.

The Learned Judge has failed to appreciate that the Opposite Party No.1 being the wife of the petitioner voluntarily left her matrimonial home without just and reasonable cause and for this reason she is not entitled any benefits Under Section 125 of the Code of Criminal Procedure.

**Mr. Anjan Ray, learned counsel for the petitioner** has submitted that the Learned Judge has failed to appreciate that Opposite Party No.2 being the wife of the petitioner was already receiving monthly maintenance from the petitioner/husband in a proceeding Under Section 24 of the Hindu Marriage Act which is just, fair and reasonable and the petitioner submits that his wife is not entitled any further maintenance amount under any other proceedings.

**Mr. Danish Taslim, learned counsel for the opposite party** has submitted that the petitioner herein/husband does not pay any maintenance to the wife/opposite party. His income is Rs.56,000/- as stated in the application under section 125 of CRPC. Though the magistrate has held it to be Rs.75,000 per month, her prayer in the petition was Rs.20,000/- per month as maintenance and Rs.25,000/- as litigation cost which was not considered. As such the revision is liable to be dismissed.

The petitioner/husband in his objection before the magistrate submitted that the opposite party gets a stipend of Rs.8000/-.

Admittedly the husband has been directed to pay maintenance of Rs.15,000/- and cost of Rs.20,000/- as litigation cost in a proceedings Under Section 24 of the Hindu Marriage Act (matter not before this Court).

The Learned Magistrate considering all these facts dismissed the application under Section 125 Cr.P.C.

The Session Judge set aside the judgment of the Magistrate and granted a sum of Rs.20,000/- Per month as **maintenance in addition** to the amount of maintenance @ Rs. 15,000 per month in the proceeding under Section 24 of the Hindu Marriage Act.

Hence the revision.

The Supreme Court in **Rajnish vs Neha & Anr., Criminal Appeal No. 730 of 2020, on 04.11.2020**, held:-

***Directions on overlapping jurisdictions***

*“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to*

*disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.*

*To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”*

**The wife admittedly being a research student gets a reasonable stipend. Further she has been granted monthly maintenance of Rs.15,000/- in the Divorce Proceedings. Thus the view of the learned Additional Session Judge, 2<sup>nd</sup> Fast Track Court, Berhampore, District-Murshidabad in order dated 12.10.2018 in Criminal Revision Case No. 277 of 2016. “The information about the award of rupees 15,000 as alimony pendente lite per month by the learned Matrimonial Court is an extraneous matter” is not correct and against view of the Supreme Court and also the principle of natural justice which applies to both sides equally.**

Thus taking into consideration all these facts, it is seen that the **findings of the Session Judge under revision and the observation that alimony in another proceeding is an extraneous matter, is not in accordance with the guidelines of the Supreme Court in Rajnesh vs Neha (Supra) and thus not in accordance with law.**

**CRR 3543 of 2019 is allowed.**

The judgment under revision dated 12.10.2018 passed in Criminal Revision Case No. 277 of 2016 passed by learned Additional Session Judge, 2<sup>nd</sup> Fast Track Court, Berhampore, District-Murshidabad, is set aside.

**The parties will be at liberty to pray for enhancement/reduction of maintenance in the divorce proceedings and proceedings for maintenance under other enactments if any.**

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

**(Shampa Dutt (Paul), J.)**