

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3810 of 2019

Sri Patit Paban Dinda

Vs.

Srimati Krishna Dinda & Anr.

For the petitioner : Mr. Bibek Jyoti Basu,
Mr. Uttam Kumar De,
Ms. Ankita Mukherjee.

For the Opposite Party No.1 : Mr. Amal Krishna Samanta.

For the State : Ms. Puspita Saha.

Heard on : 19.07.2023

Judgment on : 11.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order of the learned Session Judge in Criminal Revision No.79 of 2018 vide which **the interim order of maintenance** dated 08.05.2018 passed by the learned Judicial Magistrate, 3rd Court, Tamluk, Purba Medinipur in Misc. Case No.21 of 2017 to the petitioner's wife and her minor daughter to the tune of Rs.3,000/- each, total Rs.6,000/- was affirmed.

2. From the order of learned Magistrate it appears that in this case the marriage is admitted and the paternity of the children has also been

admitted by the opposite party. After marriage the petitioner went to her matrimonial home. Three children were born out of the said wedlock. The petitioner was being tortured both mentally and physically and ultimately was driven out from her matrimonial home. The opposite party did not take any information about the welfare of the petitioner nor send her any maintenance and the petitioner has got no source of income. The opposite party is employed in the office of BL & LRO, Nandigram and earns Rs.35,000/- per month and has also got landed properties, from there earns Rs.5,000/- per month and over all earns Rs.40,000/- per month and hence the petitioner has claimed interim maintenance to the tune of Rs.10,000/- per month for herself and a further sum of Rs.5,000/- each for son and daughter and in all Rs.20,000/- per month from the opposite party.

3. The petitioner/husband/opposite party raised objection and submitted that the wife will not get any interim maintenance for herself, as she left her matrimonial home voluntarily and the opposite party is willing to take back the petitioner and also their children. The opposite party further submitted that the petitioner by making dolls earns Rs.30,000/- per month and **has further submitted that the son of the petitioner will not get any maintenance as the son is now a major.**

4. **Admittedly the daughter was a minor on the date of order.**

5. **The opposite party/wife could not be served in spite of this Court's best efforts.**

6. The petitioner has relied upon the judgment of the Supreme Court in ***Abhilasha vs. Parkash & Ors.*** reported in ***(2021) 13 SCC 99.***

7. **The interim order of maintenance** has been granted **from date of order. The case is pending for final disposal.**

8. 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) 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.

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.”

9. The order under revision being in accordance with law and the quantum of **interim maintenance** being bare minimum, this court finds no reason to interfere at this stage.

10. **The petitioner is at liberty to pray for necessary modification before the learned Magistrate as per the relevant provision of law.**

11. The learned Magistrate shall take into consideration all aspects at the time of final hearing and dispose of the case as per the guidelines in ***Rajnish vs. Neha (Supra)*** and also the judgment in ***Abhilasha vs. Parkash & Ors. (Supra)*** and make all effort to dispose of the case finally as expeditiously as possible.

12. **The revisional application being CRR 3810 of 2019 is dismissed.**

13. All connected applications, if any, stands disposed of.

14. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)