

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1922 of 2020

Sri Partha Sarathi Banerjee

Vs.

Smt. Kasturi Basu

Petitioner-in-person : Mr. Partha Sarathi Banerjee.

For the opposite party : Mr. Soumyajit Das Mahapatra,
Ms. M. Sinha.

Heard on : 07.06.2023

Judgment on : 12.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated 06.03.2020 passed by the learned Additional District and Sessions Judge, Fast Track 4th Court, Barasat, North 24 Parganas in Criminal Revision No.34 of 2018 thereby dismissing the same and affirming the order dated 30.05.2018 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas in C. Case No.3893 of 2017 under Section 23 of the Protection of Women from Domestic Violence Act,

2005 thereby directing the petitioner to pay an interim maintenance of Rs.10,000/- per month to the opposite party within 10th day of every succeeding English calendar month commencing from the date of filing of the case till the final disposal of the case.

2. The petitioner's case is that the petitioner, aged about 32 years is the unfortunate husband of the opposite party herein, who has been subjected to immense mental torture and harassment by the opposite party by way of a malafide application of domestic violence based on fabricated allegations and baseless grounds.

3. The petitioner states that in 2017, the petitioner's father had placed an advertisement for the petitioner's marriage in "Bengali matrimony" where they came across the profile of the opposite party. Thereafter, the petitioner's father had contacted the opposite party's father who claimed to be a professor at the Indian Statistical Institute, Baranagar and requested that the petitioner and the opposite party should be allowed to communicate by telephone for further development.

4. That when the petitioner started to meet and interact with the opposite party on and from 19.02.2017, he had disclosed every fact about himself to the opposite party, including his psychiatric treatment for depression amongst other things. On the other hand, the opposite party would present lies and misleading statements about herself and her family. The opposite party's father was active in abetting the opposite party in all regards. The petitioner and the opposite party also got intimate under the assurance of getting married to each other which resulted in the opposite

party demanding an early marriage on the ground of her alleged pregnancy which the petitioner and his family readily accepted.

5. The petitioner states that he got married to the opposite party on 23.05.2017 according to Hindu rites and customs, which was registered on the same date.

6. The petitioner and the opposite party started their conjugal life at the residence of the petitioner.

7. It is stated that the opposite party and her father had hatched a conspiracy to harass and cause mental anguish to the petitioner and his family. On 22nd August, 2017, the opposite party had emptied all the valuables and articles, including the important documents and valuable belongings to herself as well as the petitioner and **deserted him voluntarily on her own accord.**

8. That in addition to such atrocities as mentioned hereinabove, the opposite party filed applications under Sections 12 and 23 of the Protection of Women From Domestic Violence Act, 2005 before the learned Additional Chief Judicial Magistrate, Bidhannagar being C. Case No.3893 of 2017 inter alia, praying for monetary relief amongst several other reliefs.

9. The petitioner filed a written objection refuting the allegations made against him and stating the actual facts.

10. By an order dated 30.05.2018, the learned Additional Chief Judicial Magistrate, Bidhannagar was pleased to observe as follows:-

*“that the petitioner's/aggrieved person's application for **interim maintenance** is allowed in part on contest. The respondent no.1 is hereby directed to pay Rs.10,000/- per mensem to the petitioner/aggrieved person from the date of filing of*

this case. Such amount has to be paid within 10th day of each succeeding English calendar month for which it becomes due.”

11. The petitioner/opposite party therein then preferred an appeal being criminal revision no.33 of 2018 under Section 29 of the Protection of Women from Domestic Violence Act, 2005, inter alia, praying for setting aside the order dated 30.05.2018 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar.

12. By an impugned Judgment and Order dated 06.03.2020, learned Appellate Court was pleased to dismiss the appeal and affirm the order dated 30.5.2018 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas in C. Case No.3893 of 2017 under Section 23 of the Protection of Women from Domestic Violence Act, 2005.

13. The petitioner submits that the petitioner is presently unemployed and is surviving at the mercy of his parents and well wishers.

14. **It is further submitted that the opposite party has cleverly and intelligently concealed her social media platform accounts which show that she is traveling to exotic locations and is visiting expensive cafes and flaunting her status while disguising herself as a helpless and needy woman before the learned trial court.**

15. The petitioner submits that the learned Trial and Appellate Courts have totally ignored that your petitioner has no income while **the opposite party is having an occupation that yields a handsome remuneration to her.** The sum awarded for interim monetary maintenance will deprive the petitioner of his basic essential needs.

16. It is further submitted that the learned Magistrate erred inasmuch as observing that “the respondents have alleged that having no care of the minor child, the aggrieved person returned to her father's house along with all her belongings” whereas in the instant case, the petitioner has no child at all.

17. That the learned courts completely overlooked the fact that there has been no denial of the fact that **the opposite party is a qualified lady, who was working in DPS Mega City as a teacher and is presently associated with Teach for India and draws a handsome salary whereas the petitioner has submitted documents before the learned court below to substantiate his submission that he has resigned from his job at Canara Bank to pursue his dream of film making and is presently unemployed, sustained at the mercy of his own parents.**

18. **Mr. Partha Sarathi Banerjee (petitioner-in-person)** has further submitted that the opposite party **willfully left your petitioner** and did not want to reconcile even after being pleaded repeatedly and despite such pleas, the opposite party deliberately chose to abandon and desert the petitioner without any comprehensible reason.

19. That the opposite party did not want to preserve any conjugal intimacy with your petitioner, this fact and conduct alone disentitles the opposite party to any maintenance from the petitioner as there were no laches on part of your petitioner.

20. That the learned courts have passed the impugned orders without appreciating the settled propositions of law and the same has occasioned into miscarriage of justice.

21. That the opposite party no.1 has voluntarily walked out of the matrimonial abode without any just cause and entirely on her own accord.

22. That the impugned order is otherwise bad in law and based on perverse findings and is thus liable to be set aside.

23. **Mr. Soumyajit Das Mahapatra, learned counsel for the opposite party** has submitted that the order under revision is in accordance with law and as such the revision is liable to be dismissed.

24. The matter was referred for **mediation** on 24.04.2023. The relevant part of the final report of the mediator is as follows:-

“During the course of mediation it was ascertained by me as per submission made by each of the parties during single sessions as well as the joint sessions that they were unwilling to resolve their marital discord and be united under the same roof with each other as husband and wife and/or resume their conjugal life under any circumstances.

I further noted that only resolution to amicable settlement between the parties was a mutual decision from both ends on the quantum of money which had to be mutually agreed upon. I learnt that Smt. Kasturi Basu was agreeable to one time settlement at a sum of Rs. 15,00,000/- (without instalments) foregoing any/or all other claims for severing the nuptial ties and that Mr. Partha Banerjee was agreeable to pay a sum of Rs. 5,00,000/- one time borrowing the money from his father.

Since the monetary gap could not be bridged and/or mitigated through this mediation I was compelled to conclude the same as failed on 03.06.2023 at 4.30 p.m.”

25. From the materials on record the following facts are before this Court:-

- (i) By an order dated 30.05.2018, in C-3892/17, the learned ACJM, Bidhannagar granted **interim relief** of Rs.10,000/- as monthly maintenance from date of filing.
 - (ii) The said order has been affirmed in appeal. Hence, the revision.
 - (iii) **Admittedly, the initial order is an interim relief.**
26. **The case/matter being C. Case No. 3893/2017 before the trial court is still pending final disposal.**
27. The marriage in this case is admitted.
28. Admittedly, the petitioner/husband was employed with a nationalised bank, namely Canara Bank.
29. Considering these facts, an interim relief of Rs.10,000/- was granted to the opposite party/wife, which is subject to final disposal of the case.
30. While deciding an application/case for maintenance the Learned Magistrate can now follow the guidelines as laid down by the Supreme Court in ***Rajnish Vs Neha, (2021 SCC 324)***.
31. **The said Judgment 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) (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.”

32. 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. The Court shall consider the stand of the parties regarding their income/financial capacity and also all other relevant factors while disposing of the case finally.

33. 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 been deserted her husband without any just and sufficient reasons.

34. 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 Hegde*³⁷ 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 Ahuja³⁸ (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.”

35. The Order dated 06.03.2020 passed by the learned Additional District and Sessions Judge, Fast Track 4th Court, Barasat, North 24 Parganas in Criminal Revision No.34 of 2018 thereby dismissing the same and affirming the order dated 30.05.2018 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas in C. Case No.3893 of 2017 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 thereby directing the petitioner to pay an interim maintenance of Rs.10,000/- per month to the opposite party within 10th day of every succeeding English calendar month commencing from the date of filing of the case till the final disposal of the case, is hereby affirmed.

36. **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.**

37. **CRR No. 1922 of 2020 is thus dismissed.**

38. There will be no order as to costs.

39. All connected Applications stand disposed of.

40. Interim order if any stands vacated.

41. A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

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

(Shampa Dutt (Paul), J.)