

CRR 855 of 2022

**Shilpa Ghosh (Palui)
Vs.
The State of West Bengal & Anr.**

Mr. Suddhadev Adak
Ms. Richa Pramanik ...for the petitioner

Mr. Niladri Sekhar Ghosh
Ms. Sompurna Chatterjee
Ms. Laboni Sikdar ...for the Opposite parties

The present application under Section 482 of the Code of Criminal Procedure has been preferred against the order dated 15th December, 2021 passed by the learned Judicial Magistrate, 3rd Court, Arambagh, Hooghly in MC case no. 55 of 2019. By the order impugned, learned court below directed the opposite party/husband to pay interim maintenance of Rs. 12,000/- per month to the petitioner herein from the date of filing of the application.

It is submitted on behalf of the petitioner that the marriage between the parties, which took place on 25th January, 2019 is not in dispute. However, it is alleged by the petitioner/wife that she was subjected to physical and mental cruelty during her stay at her matrimonial home, as her in laws were not satisfied with the bridal articles. It is further submitted that since the torture got increased day by day, she was compelled to leave her matrimonial home and presently residing at the charity of her parents and relatives.

Petitioner further submits that she filed an application under Section 125 of the Code seeking maintenance along with a prayer for interim maintenance, as she is unable to maintain herself. Learned Trial court by the order impugned, granted maintenance of Rs. 12,000/- per month, while disposing petitioner's prayer for interim maintenance.

Being aggrieved by that order, the petitioner submits that the opposite party/husband is presently posted as Preventive officer in the Customs office under Government of India and earns more than Rs. 1,00,000/- per month.

Petitioner's counsel further submits that the court below while passed the impugned order, has not applied his judicial mind and the impugned order is utterly devoid of any legal basis and totally unjustified. In fact, the court below had passed the order mechanically without dealing with the issues raised by the petitioner. Accordingly, the petitioner has prayed for passing appropriate order, granting appropriate amount of maintenance.

Learned counsel for the opposite party denied that the opposite party/husband use to earn more than Rs. 1,00,000/- per month. Accordingly, he submits that the court below after considering the financial condition of both the parties and the status of the parties, had passed well reasoned order which does not call for interference by this court.

I have considered the submissions made by both the parties. It appears that though the impugned order was passed on 15th December, 2021 but such order was passed without complying mandatory provision as laid down in **Rajnish Vs. Neha** reported in **(2021) 2 SCC 324**.

To overcome the issue of overlapping jurisdiction and to avoid conflicting orders, Apex court has laid down criteria for determination of quantum of maintenance payable to an applicant by which the court is to take into account the criteria enumerated in Part B-III of the said judgment. However, said factors are not exhaustive and the court may in its discretion consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case. In case of payment of interim maintenance also, in paragraph 129 of the judgment, the court observed that the affidavit of disclosure of Assets and liabilities annexed as Enclosure I, II and III of the judgment, as may be applicable, shall be filed by both the parties in all the maintenance proceedings including pending proceeding throughout the country.

In such view of the matter, the order impugned which was passed without complying the mandatory provision as laid down in the case of **Rajnish Vs. Neha (supra)**, dated 15th December, 2021 is hereby set aside.

The court below is directed to ask both the parties to file up to date affidavit of assets and liabilities and after considering the submissions made by both the parties and the affidavit of assets and liabilities filed by the parties will pass an order afresh following the guideline laid down by the Apex Court in **Rajnish Vs. Neha (supra)** preferably within a period of eight weeks from the date of communication of the order. However, the opposite party/husband shall go on paying an amount of Rs. 18,000/- per month till disposal of the interim maintenance application afresh by the court below.

I have made it clear that I have not gone into the merits of the case and the court below will dispose of such interim maintenance application afresh without being influenced by any observations made herein.

CRR 855 of 2022 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)