

C.R.R. 2541 of 2022

**Shruti Mukherjee
Vs.
Debojyoti Mukherjee**

Mr. Uday Sankar Chattopadhyay,
Mr. Trisha Rakshit,
Ms. R. Tah,
Ms. Aishwarya Datta,
Ms. Bidisha Chakraborty,

.... For the petitioner

Mr. Somopriyo Chowdhury,
Mr. Dipayan Dan,

....For the opposite party

Being aggrieved by the order dated 13th June, 2022 passed in criminal revision No. 6 of 2022 by the learned District Judge, Purba Medinipur, present application has been preferred by the petitioner/wife. By the order impugned; learned Court below has modified the order of maintenance to the tune of Rs. 10,000/- per month to the wife and Rs. 5,000/- per month to the son against learned Magistrate's order of Rs. 15,000/- per month for the wife and Rs. 10,000/- per month for minor son granted towards interim maintenance.

Being aggrieved by that order Mr. Chattopadhyay appearing on behalf of the petitioner submits that the order impugned is palpably wrong and is not based on any reason at all. Said non-speaking order was passed without following the mandatory direction made by the Apex Court in ***Rajnish Vs. Neha*** reported in **(2021) 2 SCC 324**. He further submits that husband use to earn Rs.4,15,583/- per month and therefore the order passed by the

Magistrate has got some substance. When the marriage is not in dispute and there is nothing to show that the petitioner/wife has any income to maintain herself or her child, the Court below has illegally interfered with the order passed by learned Magistrate. He has prayed for setting aside the order of the Court below.

Mr. Chowdhury, learned Counsel appearing on behalf of the opposite party submits that both the orders were passed without following the mandate passed by the Apex Court, though the said order of Magistrate passed on 20th December, 2021 and the order of the Court below was passed on 13th June, 2022 i.e. long after the directions passed in ***Rajnesh Vs. Neha (supra)***. He, however, submits that the quantum passed by the Court below is quite justified, since this is an interim measure taken by the Court and the order impugned does not call for interference.

I have considered submissions made by both the parties. On perusal of the order impugned it appears that the said order was passed by the Court below without assigning any reason. Relevant portion of the order may be quoted below :

“However, considering the fact that the order is interim based and final decision is to be taken after evidence of both sides, I am of the view that if said amount of award is reduced to some extent it would not cause serious prejudice to the wife. I am of the further view that if any amount of Rs. 10,000/- per month for the wife and Rs. 5,000/- per month for the son is awarded same would not cause serious prejudice to the wife and son.”

I fully agree with the submission that the Courts below before deciding the issue of interim maintenance ought to have followed the mandatory direction passed by Apex Court in

connection with such application.

It is now well settled in view of judgment pronounced by Apex Court in **Rajnesh Vs. Neha**, reported in **(2021) 2 SCC 324** that the affidavit of disclosure of Assets and liabilities annexed as enclosures I, II and III of the judgment, as may be applicable, shall be filed by both the parties in all maintenance proceeding including interim maintenance proceeding. The court further held it must be filed to enable court to make an objective assessment of the quantum of interim maintenance and such affidavit should be filed within a maximum period of four weeks.

In such view of the matter both the order impugned passed by the Court below on 13.6.2022 in criminal revision no. 6 of 2022 and the order passed by the Trial Magistrate dated 20th December, 2021 in Misc. Case No. 416 of 2018 are hereby set aside.

Learned Trial Court is directed to hear petitioner's application for interim order of maintenance afresh following the guidelines laid down by the Apex Court in **Rajnesh Vs. Neha (supra)** and thereby he will direct both the parties to file affidavit of assets and liabilities within a period of three weeks from the date of the order and to write an order afresh after giving both the parties to contest preferably within a period of eight weeks from exchange of affidavit of assets and liabilities.

However, the opposite party /husband will go on paying an amount of Rs. 15,000/- per month to the wife and Rs. 10,000/- to the minor son till disposal of the interim maintenance application afresh by the Trial Court.

I have also made it clear that I have not gone into the

merits of the application and the Court below is directed to adjudicate the application afresh without being influenced by any observation made herein.

CRR 2541 of 2022 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)