

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

The Hon'ble **JUSTICE UDAY KUMAR**

C.R.R 2457 of 2023

Subhendu Pandit & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Prasenjit Debnath, Adv.,
Ms. Pritha Biswas, Adv.,

For the State/O.P No.2: Mr. Krishnendu Bhattacharya, Adv.,
Mr. Priyankar Ganguly, Adv.,
Ms. Nilanjana Ghorui, Adv.,
Ms. Sarmistha Basak, Adv.,

Hearing concluded on: 23.02.2024.

Judgment on: 19.04.2024.

UDAY KUMAR, J.: –

1. The instant revisional application is preferred under section 401 read with 482 of code of criminal procedure 1973, against the judgment and order dated 30th May 2023 of Ld. Additional Sessions Judge F.T.C. 2nd Court, Krishnanagar Nadia passed in connection with Misc. Criminal Appeal No 12 of 2021, whereby Ld. Court modified the order dated 25th August 2021 of Ld. Judicial Magistrate 5th Court, Krishnanagar, Nadia passed in Misc. Criminal Case No 74 of 2020 under Section 12 of the Protection of Women from Domestic Violence Act 2005 for relief claimed under Sections 18, 19, 20, 21, 22 of the said Act.

2. The petitioner Subhendu Pandit is the husband of O.P 2 Moumita Pandit whose marriage was solemnized on 2nd December 2009 as per Hindu rites and customs. After the marriage O.P 2 started residing with Subhendu Pandit at her matrimonial house and subsequently O.P No.2 gave birth to a baby girl. The discontentment prevailing on the issue of dowry, aggravated after the birth of the daughter. The issue of an illicit relationship of the petitioner with a lady complicated the marital relationship when O.P 2, resisted petitioner. As a result, the intensity of torture gradually amplified, constraining the marital life. On 8th November 2019 the petitioner attempted to kill O.P 2 and her minor daughter who requested Navadeep Police, to rescued them therefrom, and Family Counseling Centre Navdeep also intervened into the matter. After counseling the petitioner agreed to bring the O.P 2 and his daughter back home, but he never acted upon his commitment, nor provided any financial support to O.P No.2 to fulfill the liabilities of herself and her daughter necessary to live a dignified life. Moreover, the petitioner was a Junior Engineer at Irrigation and Waterways Department, posted at Cooch-Bihar and he used to earn more than one lakh rupees per month from salary and other sources, but he did not provide any maintenance to his wife and daughter for sustenance O.P.2/Moumita made all possible effort to convince the petitioner, but in vain. Consequently she was compelled to file Misc. Criminal Case being No 74 of 2020 on 04.02.2020 against the petitioners for the reliefs provided U/S 12/18/19/ 20/ 21 /22 of Protection of Women from Domestic Violence Act 2005.

3. Ld. Judicial Magistrate 5th Court Krisnanagar, Nadia ordered to issue summons against the petitioner husband at his official address in Coochbehar, but he refused to accept the said summon as it appeared from the order sheet wherein it had been stated that "*It is seen from the record that summons have already returned to have been refused by the respondents.*" As a result, Ld. Judicial Magistrate 5th Court Krisnanagar, Nadia proceeded ex-party to an pass order on 25th August 2021, wherein he directed to the petitioner/ husband/Subhendu Pandit to pay a sum of Rs. 10,000/- per month as monthly monetary relief to OP2/ Wife/Moumita Pandit for herself and for her minor daughter, after adjustment of the amount ordered u/s 125 of Cr.P.C, if any, within 10th day of English Calendar month from the date of filing of this case, but no compensatory relief was ordered under Sections 22 of the said Act. It was also directed that the arrear amount, if any, shall be paid in 12 equal installments, to start from 10th October, 2021.

4. The O.P 2 challenged this order in the court of Additional Sessions Judge, FTC-II, Krishnagar, Nadia. Ld. Judge on the ground that monthly monetary relief granted by impugned order was insufficient to carry on the liability of Subhamita and that compensatory relief was refused, Ld. Judge directed the petitioner Subhendu Pandit to pay a sum of Rs.25,000/- (Rupees Twenty-Five Thousand Only) per month to the OP2 as monthly monetary relief for herself and for her minor child after adjustment of any monthly maintenance if ordered u/s. 125 of Cr.P.C, to be payable within 10th of each English Calendar month. In respect of payment of arrear amount the petitioner was directed to pay the same in

twelve equal installments, to start from 10.10.2021, in default, the petitioner shall be liberty to apply for execution of the said order through Court. The compensatory relief of Rs. 50,000/ was awarded to O.P 2 as per Section 22 of the DV Act.

5. Being aggrieved by the said order the petitioner/husband Subhendu Pandit has the instant revisional application has been filed on the ground that Ld. Judge failed to appreciate salary slip (Ex-1) in proper perspective to derive his actual income, and did not consider his income tax return and his other liabilities while passing the impugned order.

6. Mr. Prasenjit Debnath, Learned Counsel for the petitioners submitted that Subhendu Pandit had no other source of income except the income of Rs. 64,310/- only from salary but Ld. Judge wrongly considered the income from landed property, rent from three storied house, and income from fish business. In reality he was never engaged in any such fish business or had any earning from rent of three storied building and from land, rather the land was onerous for him. Moreover possessing four-wheeler was rather a liability than the assets, because he had to pay EMI against loan taken for purchasing of the car Ld. Judge erroneously held that bearing car and having landed property was a source of income. He was also unmindful of his liability to maintain his old aged mother.

7. It was further contended that the Ld. Judge passed the impugned order by ignoring the guidelines of Hon'ble Supreme Court given in **Rajnish vs. Neha** reported in **(2021) 2 SCC 324**. Therefore, he prayed for

setting aside of the impugned judgment and order dated 30th May, 2023 and for the stay of its operation.

8. Per contra, Ld. Counsel for the O.P 2 contended that impugned order was just and proper as it was passed after proper verification of sources of income and liability of O.P 2. Who was the legally married wife and compelled to live at her parents' house since she was driven out by petitioner from her matrimonial house. She had no source of income to maintain herself and her daughter Subhamita Pandit, while Subhendu Pandit had sufficient income to maintain them, despite which he neglected to pay any sum of money for maintenance.

9. He further submitted that despite service of summons, petitioner did not appear before the court of learned Magistrate to contest the case. Therefore, Ld. Trial Court was compelled to pass ex-parte order, which was challenged by O.P 2 before the court of FTC II Krishnanagar Nadia. Petitioner appeared before the appellate court to contest the claim of maintenance.

10. The moot point involved in this case is whether the impugned order is suffering from any irregularities or impropriety?

11. Indubitably, petitioner and O.P 2 are husband and wife and the wife is living at her father's house. Petitioner has source of regular income while O.P. 2 has no source of income. It is also a fact that she needs monetary relief from petitioner for maintenance for herself and her daughter. Petitioner did not refute these facts. He had no grievance against the claim and payment of maintenance to O.P 2 either. His only grievance was against the quantum of compensation and maintenance

amount, which, according to him, had been excessive, because it was not decided properly by following the guidelines of the Hon'ble Supreme Court passed in **Rajnish vs Neha**. It was the specific defence of the petitioner that Ld. Trial Court considered the salary slip, earning from small chunk of uncultivable land, earning from rent of three storied building, earning from business relating to fish and possessing four wheelers, only to deduce his income but forgot to deduct his liabilities there from to assess the actual income.

12. As per the petitioner, the Ld. Trial Judge had included the landed property into the head of income, but petitioner did not earn a single farthing therefrom, rather he used to spend money for the maintenance of land. Likewise, he used to pay EMI against the purchase of car on loan which was directly deducted from his salary account, but it was not considered by the Ld. Trial Judge. He denied to have any source of income from the fish business and/or from rents. However these facts ought to have been considered by Ld. FTC II, Court for passing order for reliefs under D.V. Act. Hon'ble Apex Court had laid down a guideline in **Rajnesh Vs. Neha & Anr.** (Supra) for the purpose of grant of reliefs.

13. It appeared from the impugned order that it was passed on the basis of the domestic information report, which affirmed the fact of domestic violence inflicted on Moumita OP2. Since Suvendu Pandit subjected her under domestic violence, OP2 was rightly held entitled to a monthly monetary relief under PWDV Act.

14. For determination of quantum of relief, the financial status of Subhendu Pandit was considered by Ld. Trial Judge, on the basis of

income from salary as revealed from the salary slip of Subhnedu Pandit, which show that his total pay was Rs.64,310/- and net pay was Rs.54,300/- in the month of April, 2023, and the same was affirmed from his last pay certificate issued by Executive Engineer, Coochbehar, Irrigation and Waterways Department dated 11th, April, 2023. In addition to that, nothing was on record to show his income from different sources like income from business relating to fish, earning from farming and rents. Perusal of the income tax return for assessment year of 2022-23 reveal that the gross annual salary of Subhendu Pandit was Rs.7,29,012/- per annum.

15. The petitioner's statement of assets and liability on affidavit submitted before the Ld. Judicial Magistrate, 3rd Court, Krishnagar, Nadia in MR Case No.730 of 2021 filed under Section 125 of the Cr.P.C. and the order of maintenance passed on 24.11.2022 in this case, were also considered.

16. The affidavit of asset and liability revealed that the petitioner Suvendu Pandit had no other sources of income except the income from salary. Nothing is stated therein about earning of the petitioner from the business of fish, rent, agriculture and landed property. However, it appeared from the order that her mother-in-law drew Rs.20,000/- per month in family pension. This, statement was not challenged by Moumita Pandit. So, the statement made therein was relied upon by the Ld. Appellate court.

17. In any event this has been a temporary measure to provide maintenance to the parties under PWDV Act. Actual and final amount of

maintenance shall be granted after proper trail. Determination of actual amount is a triable issue. Both parties should get opportunity to prove their respective stands. Till then the maintenance is to be provided to the victim in the form of an interim arrangement.

18. Considering the above facts and circumstance, it is an undisputed fact that the petitioner /husband is under legal obligation to maintain his wife and daughter. His known source of income had been the income from his salary. It was around Rs. 65,000/- last year. Expecting the growth in salary of Suvendu Pandit and rise in liability of OP2, the Appellate Court has rightly ordered to pay Rs.25,000/- per month to Moumita Pandit and her minor child as monthly maintenance and Rs 50,000/- per month as compensatory relief to them.

19. Since the Domestic Violence Act is a social beneficial legislation, it always bears a benevolent spirit to protect the interest of women from domestic violence. Petitioner may have a long list of liabilities to pay EMI against the loan taken for purchasing of car or otherwise, but liability to maintain his wife and daughter is the primary and statutory obligation on him. Nothing is on record to show his expenses towards maintenance of his mother. He himself declared in statement of assets and liabilities filed to the court of Ld. Judicial Magistrate during hearing of maintenance petition U/S 125 of Cr.P.C.

20. In view of the aforesaid deliberations, I conclude that the monthly maintenance of Rs.25,000/- for Moumita Pandit and her minor child would be sufficient to meet their requirement, so no intervention of this

court was necessary. I am also convinced with the direction to adjust the amount of maintenance, if ordered U/S 125 of Cr.P.C.

21. I also conclude that considering the rise in cost of living due to inflationary factors, rise in liability towards her daughter due to her advancing age and increasing educational cost due to promotion in higher classes, the amount of Rs.50,000/- granted towards compensatory relief in consonance of Section 22 of PWDV Act is proper and justified to cater to the needs. It does not require any interference of this court, as I do not find any irregularity or inconsistency in the impugned order. Therefore, the order is affirmed.

22. Accordingly, the instant revisional application along with the applications, if any, is/are stands dismissed.

23. The interim order/orders if any, are stand vacated.

24. Parties are directed to proceed in accordance with the direction of Ld. Trial Court.

25. There is no order as to the cost.

26. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)