

132-133.
26.03.2025
Bd.
Ct.237

CRR 319 of 2023
Sri Jayant Shekhar
-vs-
The State of West Bengal & Anr.
With
CRR 331 of 2023
IA No. CRAN 1 of 2023

Sri Jayant Shekhar
-vs-
The State of West Bengal & Anr.

Mr. Rachit Lakhmani
Mr. Subhadeep Ghosh
Mr. Piyush Kumar **...for the petitioner**

Mr. Sabir Ahmed
Mr. Tasmin Ahmed
Mr. Dhiman Banerjee
Mr. Ezaz Ahmed **...for the O.P. no. 2**

Mrs. Manika Sharma **...for the State**
 (in item no. 132)
Ms. Debjani Sahu **...for the State**
 (in item no. 133)

Being aggrieved and dissatisfied with the judgment and order passed by the court below in criminal appeal no. 111 of 2019 and 32 of 2020 dated 14.11.2022, the husband as petitioner herein has preferred both the revisional applications before this Court being CRR 319 of 2023 and CRR 331 of 2023, challenging the judgment impugned.

The brief background of the present case is that on 23rd January, 2011 the opposite party no. 2 herein was married with the petitioner and they are blessed with a child, who is presently aged about 10 years.

However, the matrimonial life was not peaceful and for which the opposite party no.2 was allegedly driven away from her matrimonial home on 29.06.2018 along with her son. The opposite party no. 2, herein lodged an FIR being Shibpur Police Station Case no. 309 of 2018 dated 30.06.2018 under section 498A of the Indian Penal Code. Thereafter the opposite party no. 2 herein also filed application under section 12 of the Protection of Women from Domestic Violence Act, 2005 and learned Magistrate by an order dated 22.10.2019 was pleased to direct the opposite party no. 2 to pay Rs. 6,000/- per month towards interim monetary relief and also directed the respondent/husband to provide one room with separate privy at the shared household, situated at 169, G.T. Road, (South) Howrah.

Being aggrieved by that order two criminal appeals were preferred being aforesaid Criminal Appeal No. 32 of 2020 and Criminal Appeal No. 111 of 2019, which were heard analogously by the Court below and by the judgment and order impugned learned court below has directed the husband/respondent to pay Rs. 23,000/- per month towards interim maintenance to the wife/opposite party no. 2 herein and Rs. 25,000/- to the son from the date of passing the order and the court below also directed the husband/respondent to pay rent for availing the accommodation for the wife and their child, equivalent to the similar nature of household / rented accommodation.

Being aggrieved by that order the petitioner herein contended that the learned court below while passing the impugned order

did not take into consideration that unless the petitioner hereby be given opportunity to file reply against affidavit of asset filed by other side he will be seriously prejudiced. Petitioner further argued that the order of the court below is biased, favouring the opposite party no. 2 herein. The court below did not take into consideration the prayer of the petitioner and without providing an opportunity to the petitioner to file reply against affidavit of assets and liabilities filed by the opposite party No. 2 herein upon perusal of her annexure to affidavit, he has fixed the quantum of maintenance. The court below also did not take into consideration the affidavit of assets and liabilities filed by the opposite party no. 2 herein, which is an out and out false statement. In fact the opposite party no. 2 is an educated lady and has enough qualification to earn and maintain herself and her child.

Learned counsel for the petitioner further submits that the petitioner is very much aggrieved in view of the fact that learned court below has failed to take into consideration the actual income of the husband/petitioner and he failed to come to a just decision as he did not give the opportunity to file affidavit of assets and liabilities by the petitioner.

He further contended that though the petitioner as per court's order is paying rent for the separate accommodation to the wife and her minor child and for which he is paying Rs. 14,000/- per month but the said amount is excessive one and the petitioner may be exempted from paying such rental amount. Accordingly, he prayed for necessary modification of the said order, since his

verbal submission before the court that his monthly income is not more than Rs. 1,16,000/- but he had to look after his mother and other family members and for which he has to incur Rs. 90,000/- approximately per month, has not been considered by the Court below.

Mr. Ahmed, learned counsel appearing on behalf of the opposite party no. 2 raised strong objection and contended that the income of the husband has been increased substantially in the meantime and the child is school going and she had to incur a lot of expenditure for the child's education. He further submits that the husband is duty bound to pay accommodation charges as directed by the court below, otherwise husband will have to accommodate her and her child in the shared household. He further submits that the order impugned is justified in terms of the standard of living that the petitioner and their child was accustomed to while both of them were in the matrimonial house of the opposite party no. 2. In such circumstances, the order impugned does not call for interference by this Court invoking jurisdiction under section 482 of the Code of Criminal Procedure. Mr. Ahmed, denied that the husband/petitioner has any dependent or he has to maintain his family members and has to incur to Rs. 90,000/- per month for their maintenance.

I have considered the submissions made by the parties. It appears that the trial court as well as the court below while decided the quantum of monetary relief did not have the scope to

take into consideration the assets and liabilities, of the parties in it's proper perspectives.

In view of the salutary judgment in the case of **Rajnesh –vs- Neha & Ors.** reported in **(2021) 2 SCC 324** it has now become law of the land that while passing any order of maintenance the courts are mandatorily required to obtain affidavit of assets and liabilities from both the parties to ascertain the quantum of maintenance.

In the present case both the courts below have decided the quantum of maintenance without having proper affidavit of assets and liabilities of the parties and as such, the basis of determining the quantum of monetary relief has not been reflected in the order impugned.

Having considered the facts and circumstances of the case, the present application being CRR 319 of 2023 and CRR 331 of 2023 both hereby disposed of with a direction upon the court below to ask both the parties to file properly filled up affidavit of assets and liabilities strictly in accordance with the proforma annexed with the judgment of **Rajnesh –vs- Neha** (supra) within a period of one month from the date of communication of this order and the Court below will dispose of the Appeal afresh filed by the opposite party herein on the basis of such affidavit of assets and liabilities as expeditiously as possible and preferably within a period of two months from the receipt of affidavit of assets and liabilities filed by the parties.

It is made clear that while passing the order afresh the court below will not be influenced by any observation made by this court or by his own earlier observation.

It is also directed that the husband petitioner shall go on paying Rs. 23,000/- per month to the wife and Rs. 25,000/- per month to the son till disposal of the Appeal afresh.

The husband/petitioner also will pay the rent for availing suitable accommodation for the wife and their child equivalent to the similar nature of household/rented accommodation till disposal of the Appeal.

The judgment and order impugned passed by Court below in Criminal Appeal No. 32 of 2020 analogously with Criminal Appeal No. 111 of 2019 dated 14.11.2022 are hereby set aside.

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.)