

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

CRR 4312 of 2022

Milky Verma

Vs.

Sourav Verma & Anr.

For the petitioner : **Mr. Pawan Kumar Gupta, Adv.,
Ms. Sofia Nisar, Adv.,
Mr. Santanu Sett, Adv.,**

For the OP : **Mr. Apalak Basu, PP,
Ms. Sanghamitra Mridha, Adv.,**

Reserved on : **17.02.2025**

Judgment on : **20.03.2025**

Subhendu Samanta, J.

1. This is an application u/s 482 read with Section 401 of the Code of Criminal Procedure against an order dated 10.08.2022 passed by Learned Judicial Magistrate 6th Court, Howrah in Misc Case No. 407 of 2022 u/s 125 of the Code of Criminal Procedure.

2. The present petitioner filed an application before the Learned Magistrate concern claiming for maintenance u/s 125 Cr.P.C. against the opposite respondent No. 1. Learned Magistrate has disposed of an interim application for

maintenance by the petitioner vide impugned order dated 10.08.2022 wherein the Learned Magistrate has observed that

Therefore at this stage of the case, although the OP being an able bodied person, is obliged to maintain his wife, but the wife is also having her independent source of income, which is not remarkably less from the annual income of the OP rather, which is more or less equal to the annual income of the OP keeping in mind his liabilities towards the different loans and his mother dependent upon him. Therefore, at this stage of the case, without taking evidence, no inference can be drawn up regarding the sufficiency of the income of the petitioner and as such, she is not entitled to get any interim maintenance from the OP at this stage.

3. Being aggrieved by and dissatisfied with the said order the instant criminal revision has been preferred. The Learned Counsel for the petitioner submits that the Learned Magistrate has erroneously construed the facts in hand and denied the interim maintenance. He further submits that the Learned Magistrate has not considered the affidavit of assets filed by the petitioner. The Learned Magistrate was erroneous in observing that the OP has a car loan along with other loans and liabilities.

4. It is the contention of the Learned Counsel for the petitioner that the present petitioner is a married wife of the respondent No. 1. Respondent No. 1 is earning huge income by way of his business but only to deny the maintenance respondent No. 1 has framed a false story. During the course of argument Learned Counsel for the petitioner also placed the income tax returns and other related documents of the respondent No. 1 to show that the respondent No. 1 is earning huge amount of money. Learned Counsel for the petitioner also cited two decisions of Hon'ble Supreme Court reported in **Sunita Kachwaha Vs. Anil Kachwaha and Ors (2014) 16 SCC 715** and **Shailja and Anr Vs. Khobanna (2018) 12 SCC 199** and submits that merely the income of the wife cannot debarred her from getting proper maintenance.

5. Learned Counsel appearing on behalf of the respondent No. 1 submits that the petitioner is an employed lady prior to the marriage. She had independent source of income and which is sufficient to enable her to maintain herself. The standard of living which she accustomed prior to her marriage is appropo similar after her marriage. He submits that the Learned Magistrate was justified for not awarding interim maintenance as the petitioner

has independent source of income. He further submits that the Learned Magistrate has clearly observed that the petitioner had liabilities and loans if that be reckoned, the income of the husband/respondent No. 1 is less than the petitioner. He submits that there is no illegality or impropriety in the impugned order. So, the instant criminal revision is liable to be set aside.

6. Heard the Learned Counsel appearing on behalf of the parties. The Hon'ble Supreme Court in **Rajnish Vs. Neha and anr. (2021) 2 SCC 324** has decided the issue of granting maintenance in favour of the married wife. Hon'ble Supreme Court in **Rajnish** has directed the concern Magistrate to direct the parties to file affidavit of assets and liabilities. On the basis of which the Magistrate has to decide the maintenance required to be justified for destitute married lady and the children. In paragraph 77 and 78. The Hon'ble Supreme Court in **Rajnish (Supra)** has decided the criteria for determining quantum and maintenance as follows:-

The objective of granting interim/ permanent alimony is to ensure that the dependent 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 dependent 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.

7. It further appears that the earlier observation of Hon'ble Supreme Court in **Shailja (supra)** and **Sunita (supra)** has also been dealt with by the Hon'ble Supreme Court in **Rajnish (Supra)**.

8. After considering the observation of Hon'ble Supreme Court in **Rajnish (Supra)** it appears to me that it is the directive of the Hon'ble Supreme Court that the Learned Magistrate shall enquire the statement of assets and liabilities filed by the parties and shall

pass the order of maintenance on the basis of those documents. It appears that the Learned Magistrate has observed that the petitioner has her independent source of income, which was actually not denied by the petitioner anywhere; whether independent earning of the petitioner is sufficient to the status appropo to the respondent can only be considered after taking evidences. It further appears that the Learned Magistrate has observed that respondent has liabilities towards different loans and also observed that the mother of the respondent is dependent upon him. From the materials on record it appears that such observation of the Learned Magistrate is not final and it is tentative in nature.

9. Under the above observation it appears to me except the findings of the Learned magistrate in the impugned order in favour of the respondent No. 1, I find nothing illegal or improper in the impugned order. The petitioner was employed prior to her marriage and now she has a sufficient means of income; so at this juncture she is not entitled to get any interim maintenance. There are no reasons to believe that petitioner is not a lady “unable to maintain herself”.

10. Under the above observation CRR is disposed of with a direction to the Learned Magistrate to dispose of the main application for maintenance within 06 months from the date of receiving of this order after giving the parties the reasonable opportunity to place their evidences and also after perusing the affidavit of assets and liabilities of the parties.

11. I make it clear of the Learned Magistrate concern in passing impugned orders have made some findings those are tentative in nature and that shall not be considered to be a relevant and binding at the stage of final disposal of the impugned application for maintenance.

12. CRR disposed of, interim order if any, passed by the Court during the pendency of the CRR is hereby vacated

13. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)