

15.12.2025

Court No.34

Item.12

sg

**CRR 4921 of 2023
With
I.A. CRAN 1 of 2024**

In the matter of: **Durga Rani Maity**

...Petitioner.

Mr. Golam Mostafa

Mr. Tarasankar Samanta

...for the Petitioner.

Mr. Sk. Rejaul Alam

...for the O.P. No.1.

1. This is an application of Act 227 of the Constitution of India against the judgement and order on dated March 10, 2023 passed in criminal appeal no. 6 of 2022 by the Additional District and Sessions Judge, Haldia, Purba Medinipur with a prayer for setting aside the order dated November 15, 2022 passed in Misc. Case No. 23 of 2022.

2. Present petitioner is being the wife has come up against the order passed by the learned Appellate Court whereby order passed by the learned Magistrate in connection with PWDV Act granting of interim order of maintenance to the tune of Rs. 3,000/- per month with a direction to the opposite party to pay such interim maintenance to the wife and Rs. 2,000/- per month for her two children till disposal of the case. The husband was directed to make payment Rs. 7,000/- per month in total to the petitioner and her children which is to be paid within 7th day of each succeeding calendar month.

3. Learned advocate representing the petitioner submits that by filing application under PWDV Act, 2005, Section 12 prayer was made for interim maintenance and she prayed for Rs. 15,000/- for herself and Rs. 10,000/- each for two minor children.

4. Learned Magistrate passed the aforesaid order against which the appeal was preferred by the present opposite party and the learned Appellate Court set aside such order on the ground of non-compliance in terms of the direction of the Hon'ble Apex Court passed in ***Rajnish Vs. Neha (2021) SCC 324*** as no affidavit of disclosure of assets and liabilities were filed either by the husband or by the wife.

5. The Learned Appellate Court observed while setting aside the interim order of Learned Magistrate, since the mandatory provision was not complied and the learned Court arrived at a conclusion granting such interim maintenance, the matter was remanded to the learned Court below to re-hear the case in the light of the aforesaid decision of the Hon'ble Supreme Court with a direction to dispose of the petition for interim monetary relief after giving an opportunity to the parties to file affidavits disclosure of assets and liabilities.

6. Pursuant to the submission made on behalf of the learned advocate for the petitioner that last date of order passed in the year 2023, and till date nothing has been progressed and the present petitioner has not been extended any relief and not provided any of amount of maintenance either for herself or for the children who are presently aged about 12 years and 6 years respectively. More

so the husband was a cancer patient but he is now cured but the petitioner is not having any income to maintain herself.

7. Learned advocate representing the opposite parties, on the other hand, submits that the husband is a cancer patient and his having no income of his own and is absolutely dependent upon his father and they are at present almost penniless. He is not in a position to pay any amount of maintenance to the wife and the children and unable to borne any expenses.

8. Learned advocate has submitted a bunch of medical papers and the disability certificate issued in his favour by the Ministry of Social Justice and Empowerment, Government of India on 21.11.2024.

9. Having heard both the learned advocate and on perusal of the papers the marriage of the parties and the birth of the children are not disputed. The medical papers primarily disclosed about the treatment sheet of the year 2010 till 2021, and also that the husband was a cancer patient. Nothing can be found in order to say that patient is till continued with such treatment or not, however, he will be liberty to place his case before the Learned Magistrate.

10. Be that as it may, the observation of the Learned Appellate Court is otherwise found well reasoned as in terms of the decision of ***Rajnish Vs. Neha (2021) SCC 324*** filing of assets and liabilities are mandatory in order to arrive at the quantum of maintenance and are to be filed by both the parties but while setting aside such order of the Learned Magistrate Learned Appellate Court made no

provision of interim maintenance even towards the children who are at such tender age specially when the present petitioner by filing such application did not disclose any income of her own to maintain herself and her children. This Court cannot be oblivious of the fact that since the date of filing of application for maintenance in the year 2022 under the provision of PWDV Act, 2005 the object and purpose of which was to provide effective protection to the women against various forms of violence and also to offer civil remedies she has not been provided like maintenance, residence with any amount.

11. Therefore, This Court is of the view that the petitioner must pay at least amount of Rs. 3,000/- per month towards the maintenance of the children which is to be paid immediately from the date of this order and to continue to pay till the order of maintenance is passed by the learned Magistrate as directed by the learned Appellate Court. It is made clear that the learned Magistrate if passed any order of maintenance to be paid to the wife and the children will consider the amount already paid to the petitioner pursuant to the direction of this Court and will make necessary adjustment.

12. The learned Magistrate is directed to rehear the case as directed by the learned Appellate Court without being influenced by any of the observation made by the Court if any regarding the merit of the case.

13. In view of above, this revisional application stands allowed in part. The order of the learned Appellate Court is modified as above. In view of that the applications pending if any and the CRAN/1/2024 is also disposed of.

14. It is pertinent to mention after hearing both the parties learned Magistrate will make endeavour to dispose of the application of maintenance at an earliest without granting any unnecessary adjournment to the parties.

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

(Chaitali Chatterjee (Das), J.)