

(1)

Criminal Appeal No.32 of 2020  
& Criminal Appeal No.111 of 2019

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE**

**1<sup>st</sup> COURT, HOWRAH.**

District- Howrah

Present : Sri Asim Kumar Debnath  
Additional Sessions Judge, 1<sup>st</sup> Court,  
Howrah. J.O Code - WB00761

**Criminal Appeal No.32 of 2020**

CNR Number : WBHW01-004329-2020

1. Smt. Neha Gupta ..... Appellant

-Vs-

A) Sri Jayanta Sekhar Gupta ..... Opposite Party No1.

B) State of West Bengal ..... Opposite Party No. 2.

**Analogous with**

**Criminal Appeal 111 of 2019**

CNR Number : WBHW01-005247-2019

(1) Sri Jayanta Sekhar Gupta ..... Appellant

-Vs-

A) Smt. Neha Gupta ..... Opposite Party No1.

B) State of West Bengal ..... Opposite Party No. 2.

Arindam Mukherjee & another ..... Ld. Advocate for Neha Gupta

Arijit Bera ..... Ld. Advocate for Jayanta Sekhar Gupta

Date of hearing of the Appeal : 04/11/2022

**Date of delivery of Judgment : 14/11/2022**

**JUDGMENT**

Both the Criminal Appeals under Section 29 of the Protection of Women from Domestic Violence Act is directed against the order

No.13, dated 22.10.2019, passed by the Ld. Judicial Magistrate, 5<sup>th</sup> Court, Howrah in Misc. Case No.630 of 2018, passed for interim maintenance to the tune of Rs.6,000/-

The fact of the case, in brief, is that the marriage of the wife took place on 23/01/2011 with the husband in accordance with the Hindu rites and customs and at the time of her marriage, her father gifted several articles along with gold ornaments as dowry. After marriage, she went to her matrimonial house and started to lead her conjugal life and out of their wedlock, one male child took birth on 07/10/2012. After marriage, her husband and his family members used to torture her on the ground of lower quality of the dowry articles. On 29.06.2018, the husband and his family members tortured her physically in such a manner that she was to be medically treated and accordingly, she filed a complaint against the husband vide Shibpur P.S Case No.309 of 2018 and also filed a case for restoration of conjugal rights. The husband used to work as an Assistant General Manager (II) in OMNI Hospital and he used to earn Rs.1,16,000/- per month, whereas, wife had no income of her own. So, she prayed for maintenance to the tune of Rs.50,000/- per month and also prayed for accommodation.

After getting notice, husband entered appearance in that case and contested the case by filling written objection stating that in spite of marriage of the husband with her/wife, she never performed her duties towards him and his mother. Rather, she used to misbehave with his family members. Even in his absence, she used to torture his mother. She also tortured the respondent on several occasions and his father-in-law pressurized him take a flat near his house and for this, the husband lodged a complaint in Shibpur P.S vide Shibpur P.S G.D.E NO.724 dated 07/07/2013. On being asked by the employer, the husband resigned from his service. And now, he runs his livelihood by taking coaching classes and earns Rs.30,000/- per

month. He used to spend money for his child's education. The husband used to pay Rs.5,000/- to the wife as maintenance. The wife is self employed and earns Rs.10,000/- to Rs.15,000/- per month. He prayed for rejection of the application.

After hearing both sides, Ld trial court passed an interim monetary relief with a direction upon the husband to pay Rs.6,000/- per month in favour of the wife as a monthly maintenance for the wife and their minor child.

Being aggrieved by and dissatisfied with the said order of Ld. Trial Court, husband filed the criminal appeal being No.111 of 2019 with a prayer for rejection of the impugned order of maintenance, whereas, the wife also filed another criminal appeal being No.32 of 2020 with a prayer for enhancement of the interim maintenance amount.

The husband has made out a case that in spite of marriage of the him with the wife, she never performed her duties towards him and his mother. Rather, she used to misbehave with his family members. Even in his absence, she used to torture his mother. She also tortured the respondent on several occasions and his father-in-law pressurized him take a flat near his house and for this, the husband lodged a complaint in Shibpur P.S vide Shibpur P.S G.D.E NO.724 dated 07/07/2013. On being asked by the employer, the husband resigned from his service. And now, he runs his livelihood by taking coaching classes and earns Rs.30,000/- per month. She used to spend money for his child's education. The husband used to pay Rs.5,000/- to the wife as maintenance. The wife is self employed and earns Rs.10,000/- to Rs.15,000/- per month.

After filing of the case, both the parties appeared in this case and contested the same. Now, the record is taken up for hearing.

Perused the materials on record. Considered.

**:- POINT FOR CONSIDERATION :-**

Only point for consideration is whether the impugned order passed by the Ld Trial Court allowing interim maintenance order to the tune of Rs.6,000/- per month is justified or not, in light of the materials available to him on the day of passing the said order ?

**:- DECISION WITH REASONS :-**

In this case the appellant/wife files this application under the provision of the Domestic Violence Act .

The wife claimed that her marriage took place on 23/01/2011 with the husband in accordance with the Hindu rites and customs and at the time of her marriage, her father gifted several articles along with gold ornaments as dowry. After marriage, she went to her matrimonial house and started to lead her conjugal life and out of their wedlock, one male child took birth on 07/10/2012. After marriage, her husband and his family members used to torture her on the ground of lower quality of the dowry articles. On 29.06.2018, the husband and his family members tortured her physically in such a manner that she was to be medically treated and accordingly, she filed a complaint against the husband vide Shibpur P.S Case No.309 of 2018 and also filed a case for restoration of conjugal rights. The husband used to work as an Assistant General Manager (II) in OMNI Hospital and he used to earn Rs.1,16,000/- per month, whereas, wife had no income of her own. So, she prayed for maintenance to the tune of Rs.50,000/- per month and also prayed for accommodation.

On the other hand, husband claimed that in spite of marriage of the him with the wife, she never performed her duties towards him and his mother. Rather, she used to misbehave with his family members. Even in his absence, she used to torture his mother. She also tortured the respondent on several occasions and his father-in-law

pressurized him take a flat near his house and for this, the husband lodged a complaint in Shibpur P.S vide Shibpur P.S G.D.E NO.724 dated 07/07/2013. On being asked by the employer, the husband resigned from his service. And now, he runs his livelihood by taking coaching classes and earns Rs.30,000/- per month. He used to spend money for his child's education. The husband used to pay Rs.5,000/- to the wife as maintenance. The wife is self employed and earns Rs.10,000/- to Rs.15,000/- per month.

The case of the respective parties in another appeal is just the vice versa as to their position in the respective cases.

After hearing both sides, Ld trial court passed an interim maintenance to the tune of Rs.6,000/- per month towards the wife and their child.

Domestic relationship continues so long the parties live under the same roof and enjoy living together in a share household. Whether she is living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. As regards the meaning of the word resides, Apex Court has observed that the word meaning both a permanent dwelling as well as temporary living in a place.

The instant appeal has been preferred u/s 29 of the P.W.D.V Act against the order dated 22/10/2019, passed by J.M, 5<sup>th</sup> Court, Howrah in Misc. Case No.630 of 2018, wherein, an interim maintenance of Rs.6,000/- per month was allowed on the ground that the Ld. Trial Court did not apply its judicial mind at the time of passing this impugned order and also did not take into consideration that the husband earns Rs.1,16,000/- per month etc.

By the said petition, it has been reiterated by the wife that the wife is entitled to an interim maintenance for Rs.50,000/- per month and also separate accommodation in the shared household situated at 169, G.T Road, Howrah, in her application u/s 12 read with others D.V. Act.

After going through the respective pleadings by the parties, Ld. Trial Court has referred to the admission of the parties in the respective pleadings and also referred to the established laws and ordered a maintenance of Rs.6,000/- per month.

In this case, the wife has filed affidavit of assets and liabilities while the husband has not furnished the same and as such, the Court treated the same conduct of the husband to be deliberate withhold of the facts, submission of which, has been mandated by the Hon'ble Supreme Court. Accordingly, Ld. Counsels of the parties were heard and the record is taken up for argument by the parties on the materials available in record.

By filing the affidavit of assets and liabilities, the wife has filed the I.T return of the husband for the assessment year 2016-2017. The husband has not filed any scrap of paper showing his present income. The wife has also filed a series of documents showing the monthly expenses of their son for study in Birla High School Junior Section to the tune of Rs.19,745/-. It has been aggrieved by the parties that the interim maintenance to the tune of Rs.23,000/- per month is being paid by the order of the Court in another proceeding. It has also been admitted that Hon'ble High Court in CRAN No. 01 of 2020 has directed the husband for arranging separate accommodation with separate privy in the shared household for the wife. In this matter, Ld. Counsel for the respondent submitted that the premises as ordered in the impugned order, does no longer belong to him as he had gifted it in his sister's favour. Ld. Counsel for the wife has, on the other hand, contended that the husband had two premises and he had gifted the

another one in favour of his mother just only to deprive the wife and her son from accommodation. This contention of Ld. Counsel has not been denied by the husband. It is also admitted by the husband's counsel that he has not yet made any separate accommodation, but he agrees to arrange for the same.

In terms of the decision, passed in Rajnesh Vs. Neha and another, Hon'ble Supreme Court has mandated for filing affidavit on assets and liabilities by both the parties and provided for penal provision in case of furnishing any false/wrong information in the said affidavit. Observation of the Court is that - "At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents / relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance" and has, therefore, mandated - "Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India : (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate's Court, as the case may be, throughout the country; (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets; (c) The respondent must submit the

reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be willful and contumacious in delaying the proceedings. 32 On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the applicant and the pleadings on record; 32 Kaushalya v Mukesh Jain, Criminal Appeal Nos. 1129-1130 / 2019 decided vide Judgment 24.07.2019. 36 (d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC; On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so; The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/ supplementary affidavit, which would be considered by the court at the time of final determination. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court”,

amongst others. Hon'ble Apex Court also held that the provision of interim maintenance is never a punitive one against the respondent-husband, rather it provides a scheme to protect the wife and children from vagrancy.

In order to arrive at the quantum of maintenance what the Hon'ble Apex Court has laid down as a guideline as to the considerations is that the affidavit of disclosure of assets and liabilities in terms of the annexure appended therein, has been made a mandatory by both the parties including the pending proceedings before all the Forums, throughout the country. Thus, it has been mandated that interim maintenance shall be depended upon the part B(III) of the judgment and therein all the factors have been broadly laid down, which I have referred to herein-above.

In light of the guidelines, the case of the husband should be struck off because he appeared with the affidavit as the Court ordered following the dictum of the Hon'ble Apex Court decided in Rajnesh Vs. Neha and another, but he has not filed the affidavit. An affidavit once affirmed or sworn, stands to be the true and correct reflection of the statement and non-filing of the same does not exempt a party from making false statement. Thus, the wife in this appeal, has in spite of being served with the copy of affidavit of her husband's assets and liabilities, could not advance her argument before the Court for not being submitted before the Court. The Court was equally in no position to use the same as the same has not been officially submitted before the Court. This conduct of the husband makes it abundantly clear that the husband in this case plays a hide and seek game with the Court.

All the above i.e. withholding the informations as to assets and liabilities as per mandated by the Hon'ble Supreme Court, by filing no scrap of paper towards the present income of the husband, gifting the residential accommodations by the husband in favour of his sister and mother and not complying the Hon'ble Court's order for arranging separate accommodation with privy in the shared household or separate accommodation for the wife and their child, make it crystal clear that the husband has made no attempts unturned legally and wrongly, to suppress his income and to deprive the petitioner and her

son from residential accommodation as well as financial entitlement. Had this appeal been an against a final order, the Court would have drawn adverse inference in exercise of the provisions underlying section 114(g) of the Indian Evidence Act. Because the husband, in this case, has deliberately abstained from complying the Hon'ble Court's dictum passed in Rajnesh Vs. Neha and another case, filing the affidavit of assets and liabilities, truly revealing, disclosing and reflecting his actual income and liabilities to counter the wife's assertion as to his income and her claim for maintenance for herself as well as their child, there can be no other alternative/substitute before the Court but to believe the wife's statement as to the income of her husband, which has all along been reflected in her pleadings before Court-below as well as before this Court and also in the Memorandum of appeal in this Court. The husband, has on the other hand, pleaded a case of his unemployment at this stage and also his miser income followed by his liabilities, but has not filed a scrap of paper nor brought in record the affidavit of assets and liabilities.

Going through the affidavits of assets and liabilities, filed by the wife in these appeals, it appears that monthly income of the husband is about Rs.2,00,000/- per month. But, the I.T return for the assessment year 2016-2017 shows his total income to be Rs.7,86,542/-. Ld. Court below has, on the other hand, noted that monthly income of the husband has been stated in the petition before her to the tune of Rs.1,16,000/-. The said petition was filed on 25/10/2018 in respect of which, the present impugned order was passed. Though the husband pleaded that he resigned from service, but no proof towards his resignation or his present employment has been brought in record. It is also reasonable to infer that the husband is not under any financial constraint for his alleged resignation. Had he so faced, he certainly would have sold out the property and not gifted to his sister and mother. Ld. Trial Court has relied on the judgment of Shamima Farooqui Vs. Sahid Khan reported in (2015) 5

SCC 705, wherein, a principle has been laid down in case of absence of proof of any income of a husband engaged in labour like works. Ld. Trial Court has failed to appreciate that it is not a case guided by the above judgment. Here the husband is an income tax assessee showing an annual income of rupees 8 lac. It is also pertinent to refer that the documents, issued by Birla High School, bears the name of the guardian to be of the husband. It clearly imitates without any doubt that the husband maintained such financial status to bear with the expenses of study in such a corporate school. The status of the husband is to assess at first for arriving at a decision to calculate the maintenance. It is the boundant duty of a husband to maintain his spouse and children in equal status, he maintains himself. Therefore, the amount of interim order passed by the Ld. Trial Court, is very miser one and he arrived at such decision without application of judicial mind in the given facts and circumstances. The statement of the husband before the Ld. Trial Court that he maintained the educational cost of his son is to be expressedly shown. When he left his son in the custody of his wife and hitherto did not apply for custody showing his willingness to discharge the duties towards a son, he is to compel payment for not only education, but all the expenses a growing child needs to have from a father in the equal status, his father is spending. When he became so generous to gift his properties to his sister and mother, this generosity must be extended to his son and wife, who are also legally entitled to have the expenses for leading a life at par with him in every respect. Considering his income in 2015-2016 financial year at about rupees eight lacs per annum and in absence of his disclosure of the present income, his income is reasonable to increase year by year and the claim of the wife that his income is Rs.1,16,000/- per month, is to be taken to be a correct one because when the husband played in hushed up manner to reveal his income, there is no other alternative for the Court to hold that the above income is a correct one.

Now is the Court's decision as to the quantum of maintenance. Because there is no room to hold that the wife has approached the Court against the interim order on the allegation of domestic violence, it has become clear that primary inquiry has been done, which proves the domestic violence against the wife. Though In the order of Ld. Trial Court, it is stated that there is no report from the Protection Officer, he has overlooked the same as the report was filed long before his judgment. I from the said report find the prima facie case of the wife has been supported and corroborated in that report. The acts and conducts of the husband revealed through the pleadings makes it clear that he failed to discharge his duty to protect his wife with the son. When it is Rs.1.16 lac, the monthly income of the respondent, the wife is entitled to get 1/5th i.e. about Rs.23,000/- for her maintenance and livelihood. The child, on the other hand, is also entitled to have the maintenance in light of the above. His school expenses appears to be about Rs.20,000/-. He also requires Rs.5,000/- per month for his living costs including all others because his mess is with his mother. Thus, he is also entitled to an order of interim maintenance to the tune of Rs.25,000/-. Because the husband has not filed any affidavit on liabilities, his monthly expenses is not possible to ascertain. Thus, it is reasonable to arrive that the husband is liable to pay Rs.23,000/- for interim maintenance for the wife and Rs.25,000/- towards his son and in total Rs.48,000/- per month, which he shall pay from the date of this order.

As to the order of separate accommodation for the petitioner, I think it reasonable to upheld the order of the Ld. J.M, but in light of the direction of Hon'ble Court, passed on 19/03/2021 in CRR 3855 of 2019 and CRAN 01 of 2020. The husband will pay the tariff for availing of accommodation equivalent to the said household/rented accommodation which may be availed of by the wife.

In the result, the Criminal Appeal being No.32 of 2020 succeeds by way modification and the Criminal Appeal being No.111 of 2019 fails – both with regard to the impugned order of the Ld. Judicial Magistrate, 5<sup>th</sup> Court, Howrah, passed in Misc. Case No.630/2018.

Thus, the appeals are disposed off in light of the above observations.

C.F. Paid is reported to be correct.

Hence,

**ORDERED**

that the Criminal Appeal being No.32 of 2020 be and the same is allowed in part on contest but without any order as to cost while Criminal Appeal being No.111 of 2019 is rejected on contest without any order as to cost.

The impugned order No.13, dated 22.10.2019, passed by the Ld. Judicial Magistrate, 5<sup>th</sup> Court, Howrah in Misc. Case No.630 of 2018, is hereby modified to the effect that the wife does get Rs. 23,000/- per month as interim maintenance and the minor child of the parties does get Rs.25,000/- per month as interim maintenance from the husband starting from the date of passing of this order.

The husband is directed to pay the above stated amount i.e. Rs.48,000/- per month to the wife.

The husband will also have to pay the rent for availing the accommodation for the wife and their child, equivalent to the similar nature of household/rented accommodation, the husband had, which may be availed and managed by the wife since the month of December, 2022 and the wife shall arrange for the same accommodation and inform the husband by speed post and through advocate, engaged for the husband in this Court.

(14)

Criminal Appeal No.32 of 2020  
& Criminal Appeal No.111 of 2019

The maintenance shall have to be paid by 10<sup>th</sup> of each succeeding month.

Let a copy of this judgment be sent down to the court below for his information necessary action.

Dictated & Corrected by me.

A.S.J., 1<sup>st</sup> Court, Howrah.  
Dated : 14.11.2022

Additional Sessions Judge,  
1<sup>st</sup> Court, Howrah.