

Neutral Citation No. - 2024:AHC:43501

A.F.R.

Reserved on 29.2.2024

Delivered on 12.3.2024

Court No. - 91

Case :- APPLICATION U/S 482 No. - 25862 of 2023

Applicant :- Santosh Kumar Jaiswal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Arvind Prabodh Dubey, Ashok Kumar Giri

Counsel for Opposite Party :- G.A., Mohd. Naushad Ahmad Khan

Hon'ble Mayank Kumar Jain, J.

1. Heard Sri Arvind Prabodh Dubey, learned counsel for the applicant and Mohd. Naushad Ahmad Khan, learned counsel for opposite party no. 2 and AGA for the State.
2. Perused the record.
3. Present application under Section 482 Cr.P.C. has been filed for quashing the order dated 11.04.2023 passed in Criminal Appeal No. 60 of 2019 (Santosh Kumar Jaiswal Vs. State of U.P. and others) and order dated 03.09.2019 passed by Civil Judge (J.D.), Kushinagar in Case No. 236 of 2017 (Vineeta Jaiswal Vs. Santosh Kumar Jaiswal) under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act')
4. Opposite party no. 2, Vineeta Jaiswal moved an application before the learned trial Court under Section 12 of D.V. Act on the following grounds:-
 - 4.1 That her marriage with the applicant was solemnized on 29.01.2007 according to the Hindu rituals. Her parents had given sufficient jewellery and articles in her marriage.
 - 4.2 Her husband, Santosh Kumar Jaiswal, brother-in-law Krishna Jaiswal (*Jeth*), sister-in-law Poonam Jaiswal (*Jethani*) made a demand of Rs. 2,00,000/- in cash from her.

4.3 She informed his parents and her brother about this demand. They explained and tried to convince her in-laws that they were not in a position to fulfil their demand. Thereafter, her in-laws started harassing her physically and mentally for meeting such demand. She was not given proper food.

4.4 On 17.03.2011, her brother freed her from captivity of her in-laws. As a result of cruelty caused by her in-laws, she suffered miscarriage. She remained under mental stress due to ill treatment given by her in-laws. She has a female child, Pari, aged 7 years living with her.

4.5 She is residing in her maternal home since 2011 and has no source of income for her livelihood. Her in-laws are not permitting her to live with them. She is not being paid any maintenance. She tried to live with her in-laws but she was not permitted. Last time she visited her in-laws on 22.03.2014 but they did not permit her to enter in the house.

4.6 Her husband is financially sound. He is running a wholesale provision store in the name and style of 'Ashish Provision Store'. He is earning around Rs. 2,00,000/- per month from his business.

5. The objection filed by the applicant against the aforesaid application are not brought on record. The learned trial court while passing the impugned order mentioned the objections raised by that applicant.

6. The applicant submitted objection to the effect that the allegations made in the complaint by his wife are groundless, she filed an FIR such as crime no. 87/2011 under Section 498A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act. The applicant was arrested and released on bail later.

7.1 Opposite party no. 2 reached the house of the applicant, threatened him and hurled abuses upon him. The applicant lodged NCR no. 32/14 under Section 504, 506 IPC.

7.2 The applicant is a poor person and running a small provision store in a rented property. Opposite party no. 2 is running her own beauty parlour and training centre. She is earning around Rs. 30,000/- per month.

8. The Learned Magistrate vide order dated 03.09.2019 allowed the application of opposite party no. 2. Vide the impugned order an amount of maintenance of Rs. 2,000/- for opposite party no. 2 and Rs. 1,000/- for her daughter is granted **from the date of the order.**

9. Being aggrieved by the aforesaid order, the applicant preferred criminal appeal no. 60 of 2019 (Santosh Kumar Jaiswal Vs. State of UP and Anr.) before the Learned District Judge Kushinagar at Padrauna.

10. The Learned Sessions Judge vide order dated 11.04.2023 dismissed the appeal.

11. Shri Arvind Prabodh Dubey, Learned Counsel for the applicant submitted that the applicant is a poor person. The trial Court without considering the argument of the applicant, in a routine and cursory manner, allowed the application filed by opposite party no. 2. The applicant is already paying maintenance under Section 125 Cr.P.C as well as under Section 24 of Hindu Marriage Act to opposite party no. 2. He preferred an appeal against the impugned order dated 03.09.2019 under Section 29 of D.V. Act before learned District and Session Judge, Kushinagar at Padrauna. The learned District Judge without appreciating the argument advanced on behalf of the applicant dismissed the appeal vide order dated 11.04.2023. The applicant is paying Rs. 2000/- as maintenance under Section 125 Cr.P.C. and Rs. 3000/- under Section 24 of Hindu Marriage Act to opposite party no. 2. But without making adjustment of the said amount, the applicant has been directed to pay Rs. 3000/- as maintenance under D.V. Act.

12. He vehemently argued that the learned trial Court did not direct the applicant to file his affidavit of disclosure of assets and liabilities as mandated by the Hon'ble Apex Court in **Rajnish Vs. Neha, 2021 (02) SCC 324**. The guidelines laid down by the Hon'ble Apex Court are

mandatory in nature and the Court concerned is duty bound to implement such guidelines. Therefore, he argued that it was the duty of the trial Court to direct the applicant to file his affidavit of disclosure of assets and liabilities. In the absence of such affidavit, the Court cannot arrive at a rightful conclusion about the financial status of the applicant. The learned trial Court, in absence of such affidavit, was not able to assess the financial capacity of the applicant as well as the amount of maintenance being paid by him regularly to opposite party no. 2. The Learned Court thus arrived at a wrongful conclusion and awarded Rs. 3000/- as maintenance to be paid to opposite party no. 2 by the applicant.

13. Learned counsel for the applicant further submitted that at this stage he is not opposing the quantum of amount awarded as maintenance by the trial Court but his concern is about non adjustment of the amount already being paid to opposite party no. 2 by the applicant under Section 125 of Cr.P.C and under Section 24 of Hindu Marriage Act. Moreover, in the absence of affidavit of disclosure of assets and liabilities, it is unclear as to how the learned trial Court awarded amount of Rs. 3000/- to opposite party no. 2.

14. It is also submitted that learned Revisional Court also ignored the guidelines laid down by Hon'ble Apex Court in **Rajnish Vs. Neha (supra)**. The learned Revisional Court has wrongly opined that the learned trial Court has considered the guidelines laid down by the Hon'ble Apex Court.

15. Per contra, learned A.G.A opposed the prayer made by the applicant and submitted that the amount awarded under Section 12 of the D.V. Act is independent of other proceedings. There is no express or implied bar in the statute that once an order for maintenance under Section 125 of Cr.P.C is passed, no order under Section 12 of D.V. Act can be passed.

16. Learned counsel for opposite party no. 2 submitted that vide impugned order, the learned trial Court awarded Rs. 2000/- for opposite party no. 2 and Rs. 1000/- for her daughter **from the date of the order** i.e.

03.09.2019, while the application under Section 12 of D.V. Act was preferred in the year 2017. He referred to the relevant guideline laid down by the Hon'ble Apex Court in **Rajnish Vs. Neha (supra)** in which it was made clear that maintenance in all cases shall be awarded **from the date of filing the application**. Therefore, the learned trial Court was bound to award the amount of maintenance to the opposite party no. 2 and her daughter from the date of filing of the application under Section 20 of D.V. Act.

17. Section 20 of the D.V. Act provides for monetary relief to the aggrieved and reads thus:

***20. Monetary reliefs.**—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,—*

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

*(d) the maintenance for the aggrieved person as well as her children, if any, including an order under **or in addition** to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.*

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

18. Sub-section (1)(d) of Section 20 of the D.V. Act empowers the Magistrate to pass an order for grant of monetary relief to the aggrieved person from the respondents to meet loss including loss of earnings, medical expenses, loss of property and maintenance of the aggrieved person and her children, including an order under or in addition to an order of maintenance under Section 125 Cr.P.C. or any other law for the time being in force.

19. The Hon'ble Apex Court in the landmark judgment of **Rajnish Vs. Neha (supra)** considered the manner in which maintenance payable under Section 24 of the Hindu Marriage Act, 1955 or Section 125 of Cr.P.C. or under Section 20 of the D.V. Act is to be assessed. Detailed guidelines were established in this judgement which are to be followed by the trial courts while dealing with the matters of maintenance. The relevant guidelines, relating to the present facts of case are reproduced hereunder :

“129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance

proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance”

20. The Hon’ble Apex Court in *Aditi @ Misthi Vs. Jitesh Sharma* 2023 SCC Online SC 1451 observed as under:

*“8. The manner in which maintenance payable under Section 24 of the Hindu Marriage Act, 1955 or Section 125 Cr. P.C. is to be assessed, was considered by this Court in its celebrated judgment in *Rajnish v. Neha*, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:*

“72. 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:

72.1. (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 Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with 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 wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (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 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC 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.

72.7. (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.

72.8. (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 under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.”

21. Perusal of the order passed by the trial Court reflects that while passing the judgement, it completely ignored the guidelines laid down by the Hon’ble Apex Court in **Rajnish Vs. Neha (supra)**. The application under Section 12 of the D.V. Act was filed by opposite party no. 2 on 02.04.2014, the impugned order was passed by the learned Magistrate on 03.09.2019. According to the mandate given by the Hon’ble Supreme Court in the above case, the guidelines are squarely applicable in respect of pending applications also. Therefore, it was incumbent upon the learned Magistrate to direct the parties to file an affidavit of disclosure of assets and liabilities. The learned Magistrate passed the judgement merely on the basis of averments made by the parties. The argument raised by the applicant before the learned trial Court that he was already paying Rs. 3000/- as maintenance under Section 125 of Cr.P.C and Rs. 2000/- under Section 24 of Hindu Marriage Act to opposite party no. 2 was not considered in its true spirit. The learned Magistrate did not even consider the income of the applicant while granting the amount for maintenance.

22. Certainly, in the absence of affidavit of disclosure of assets and liabilities of the parties, it is not clear that on what basis the learned Magistrate awarded the amount of maintenance to opposite party no. 2 and her daughter.

23. The learned Revisional Court also erred while passing the impugned order in so far as it concluded that it has perused the judgment of the Hon'ble Apex Court passed in **Rajnish Vs. Neha (supra)**. The learned Revisional Court lost the sight that none of the parties to the proceedings filed the affidavit for disclosure of their assets and liabilities. Further, it also lost sight to the mandate given by the Hon'ble Supreme Court in the judgement that the maintenance should be granted to the aggrieved from the date of presentation of the application and not from the date of order.

24. In view of the above, it is clear that learned trial Court as well as the learned Revisional Court failed to consider and follow the guidelines laid down by the Hon'ble Apex Court in **Rajnish Vs. Neha (supra)**.

25. It is the duty of the Court dealing with the matters of maintenance either Family Courts or Magistrate Courts, to pass a specific order directing the parties to file their affidavit of disclosure of assets and liabilities in compliance with the directions given by the Hon'ble Apex Court.

26. It seems appropriate to direct that when an application under Section 125 of Cr.P.C or a complaint under Section 12 of D.V. Act or an application under Section 24 of Hindu Marriage Act is filed before the Court concerned, it should by passing a specific order on the order-sheet direct the applicant to file his/her affidavit of disclosure of assets and liabilities in accordance with the guidelines given by the Hon'ble Supreme Court. Similarly, when the opposite party appears during the proceedings or files written statement, he should also be directed in the aforesaid manner to file his/her affidavit of disclosure of asset and liability. In pending matters, if such affidavit is not filed by the parties or

any party, as the case may be, the trial Court shall pass a specific order on the order-sheet directing the party/parties to file such affidavit.

27. It may also be noted that no order for maintenance should be passed to grant maintenance from the date of the order. Rather, the learned Court concerned shall award the maintenance from the date of application as mandated by the Hon'ble Apex Court.

28. It would not be out of place to mention that the observations made by the Hon'ble Apex Court in the judgement of **Aditi @ Misthi Vs. Jignesh (supra)** which reads thus:

“15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.”

29. In the case on hand, the learned trial Court failed to obtain the affidavit of disclosure of assets and liabilities from the parties. Further, it passed the order for maintenance from the date of order which is contrary to the guidelines laid down by the Hon'ble Apex Court.

30. In view of the above, the impugned order is set aside to the extent of the manner adopted by the trial Court as well as the Revisional Court for granting the maintenance to opposite party no. 2 and its payment from the date of the order.

31. The Learned trial court is directed to invite affidavit of disclosure of assets and liabilities from the parties in terms of guidelines laid down by the Hon'ble Apex Court and to pass a fresh order for maintenance in view of the said guidelines and pursuant to filing of affidavit by the parties.

32. The parties are directed to appear on 8th April 2024 before the trial Court. The Learned trial Court is directed to decide the matter giving liberty of hearing to the parties expeditiously and preferably within two months without granting unnecessary adjournments.

33. Registrar (Compliance) is directed to communicate this order to learned Magistrate through learned District Judge, Kushinagar at Padrauna to ensure compliance.

34. The learned Registrar General of this Court is directed to circulate the copy of this judgement to all Magistrates through district Judges and Presiding Officers of Family Courts to adopt the procedure for inviting affidavit of disclosure of assets and liabilities at the appropriate stage of judicial proceedings as discussed above.

35. In view of the foregoing discussion, the application under Section 482 Cr.P.C. stands disposed off.

Order Date :- 12.03.2024

PS

(Mayank Kumar Jain, J.)