

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 1362 of 2022

Sandeep Prasad aged about 32 years, son of Sri Ramlagan Nayak,
Resident of Village- Murubanda, P.O. – Barki Pona P.S.- Rajrappa,
District- Ramgarh (Jharkhand). **Petitioner**

Versus

1. State of Jharkhand
2. Reeta Kumari wife of Sandeep Prasad and Daughter of Bhola Nayak @ Bhola
3. Geenisha Kumari, aged about 3 years, daughter of Sandeep Prasad, minor represented through her mother and natural guardian, the opposite party no. 2.

Both resident of Qr. No. B Type, CCL, Colony, Topa Colliery, P.S
& District – Ramgarh (Jharkhand).

... ... **Opposite Parties**

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CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

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09/01.03.2024

Heard the learned counsel for the parties.

I.A. No. 7086 of 2023

2. This interlocutory application has been filed under section 5 of the Limitation Act seeking condonation of delay of 172 days in filing the present Criminal Revision Petition.

3. In view of the statements made in this interlocutory application, the delay of 172 days in filing this criminal revision petition is condoned.

- 4.** I.A. No. 7086 of 2023 is, accordingly, allowed.

Criminal Revision No. 1362 of 2022

5. This criminal revision petition has been filed against the order dated 23.02.2022 passed by learned Principal District Judge- cum-Family Judge, Ramgarh in Original Maintenance Case No. 01 of 2020 whereby and whereunder the learned Family Judge, Ramgarh has been pleased to allow the petition under section 125 of the Cr.P.C. of the opposite party nos. 2 and 3 ex-parte against the petitioner and the petitioner has been directed to pay as maintenance by 10th of every succeeding month Rs. 5,000/- per month to his wife (opposite party no. 2) and Rs. 1,000/- per month to his minor daughter (opposite party no. 3) until she is married or is gainfully employed. The amount of

maintenance has been directed to be paid from the date of application i.e. from 03.01.2020 and the petitioner has been further directed to pay the arrears of maintenance amount within one month of the said order, failing which the opposite party no.2 is entitled to get the same recovered through process of law.

6. Learned counsel for the petitioner has referred to the order dated 22.06.2021 passed by the learned Family Court to submit that the notice in the case was served upon his brother and not to him and therefore, the petitioner had no knowledge regarding the proceeding, which has resulted in passing of the *ex-parte* order. The learned counsel has also submitted that the petitioner is an unemployed person and the impugned order calls for interference.

7. The learned counsel for the petitioner has further submitted that the impugned order be set-aside and one opportunity be granted to the petitioner to contest the case on merits before the learned Family Court. He has also submitted that the income of the petitioner has been tentatively taken as Rs. 25 to 30 thousand per month while granting the maintenance and in fact, the petitioner is unemployed though he is a B. Tech Graduate.

8. Learned counsel for the opposite party nos. 2 and 3 who has joined online has opposed the prayer and has submitted that the petitioner and his brother were living under the same roof and therefore, the notice was accepted as validly served. The petitioner purposely did not participate in the proceedings. The learned counsel submits that the impugned order is a well-reasoned order and only a meagre amount of Rs. 5,000/- for the wife and Rs. 1,000/- for the minor daughter has been awarded as maintenance and the order passed by the learned Family Court does not call for any interference. He has also submitted that the maintenance amount has been directed to be paid from the date of application i.e. 03.01.2020.

9. In response, the learned counsel for the petitioner has submitted that the petitioner has paid Rs. 50,000/- to the private opposite parties in the year 2023.

10. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, it is not in dispute that the petitioner is B. Tech. graduate. It is further not in dispute that

private opposite parties i.e. opposite party nos. 2 and 3 are the wife and daughter of the petitioner respectively. From the perusal of the order dated 22.06.2021 passed by the learned Family Court, it appears that the notice served upon the brother of the petitioner has been accepted as validly served upon the petitioner and the proceeding was held *ex-parte*. The service of notice upon the petitioner is being disputed by the petitioner and the fact remains that the impugned order is an *ex-parte* order so far as the petitioner is concerned.

11. Considering the arguments advanced by the learned counsel for the parties, the impugned order dated 23.02.2022 calls for interference solely on the ground that the same is an *ex-parte* order and the notice was accepted as validly served to the petitioner through his brother but the petitioner denies service of notice. The fact also remains that in terms of the judgment passed by the Hon'ble Supreme Court in the case of **"Rajnish v. Neha"** reported in **(2021) 2 SCC 324** the required affidavit in terms of the Enclosures I, II and III of the said judgment, as may be applicable, was required to be filed even in all the pending proceedings for the purposes of assessment of the source of income/assets/liabilities of both the parties and accordingly quantification of the maintenance claimed by the wife/minor children. The directions contained in the judgement passed in the case of **"Rajnish v. Neha"** have not been complied.

12. Some of the important observations and directions issued by the Hon'ble Supreme Court in the case of **"Rajnish v. Neha"** reported in **(2021) 2 SCC 324** with regards to fixation of quantum of maintenance, disclosures of income by both the parties, issue of overlapping jurisdiction with regards to maintenance, cases where wife also has some earning etc., which are relevant for the present case are 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. 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.*

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(c) Where wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In *Shailja v. Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

90.2. In *Sunita Kachwaha v. Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha*, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* cited the judgment in *Chander Parkash* with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

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VI. Final Directions

127. In view of the foregoing discussion as contained in Part B — I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

(a) Issue of overlapping jurisdiction

128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

128.3. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance

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.

(c) Criteria for determining the quantum of maintenance

130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.

(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, as held in Part B — IV above.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

133. Before we part with this judgment, we note our appreciation of the valuable assistance provided by the learned Amici Curiae Ms Anitha Shenoy and Mr Gopal Sankaranarayanan, Senior Advocates in this case.

134. A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts/Family Courts/Courts of Judicial Magistrates for awareness and implementation.”

13. This Court finds that in the aforesaid judgement passed by the Hon’ble Supreme Court, it has been, *inter alia*, directed that the Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of the 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.

14. This Court finds that the aforesaid directions issued by the Hon’ble Supreme Court including the requirement to file Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III

of the judgment, as may be applicable, have not been complied and consequently the quantum of maintenance has not been fixed in the light of the guidelines issued by the Hon'ble Supreme Court in the aforesaid judgment.

15. In the present case, even if the proceeding was *ex-parte* against the petitioner still the required affidavit was to be filed by the wife so as to find out her assets/liabilities/source of income etc. This Court is of the considered view that the matter requires fresh consideration by the Court of learned Principal District Judge- cum- Family Judge, Ramgarh after complying with the directions issued by the Hon'ble Supreme Court in the case of ***“Rajnish v. Neha” (Supra)***.

16. Accordingly, the impugned order is set-aside to enable the learned Court to pass a fresh order in accordance with law.

17. The parties are directed to appear before the learned Court of Principal District Judge - cum- Family Judge, Ramgarh on 18th March 2024 along with their respective affidavit of disclosures in terms of the judgment passed in the case of ***“Rajnish v. Neha” (Supra)***. The affidavit of the parties should disclose their financial status in terms of the said judgment including the period from the date of filing of the case.

18. Upon their appearance, the learned Court concerned shall pass fresh order in accordance with law within a period of three months from the date of appearance of the parties.

19. It is further observed that so far as the maintenance amount fixed by the impugned order is concerned, the petitioner would continue to pay only the current maintenance amount in terms of the impugned order till the disposal of the matter by the learned Court and such payment will also be subject to the final outcome of the case.

20. The criminal revision petition is accordingly disposed of.

21. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)