

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 656 of 2023

IA No.CRAN 1 of 2023

Hasin Jahan

Vs.

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Imtiaz Ahmed Ms. Ghazala Firdaus Mr. Sk. Saidullah Mr. Mithun Mondal Mr. Md. Arsalan
For the Opposite Party	:	Mr. Sandipan Ganguly Mr. Sompriya Chowdhury Mr. B. Kumar Mr. I. Basu
Heard on	:	21.04.2025
Judgment on	:	01.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This application has arisen against judgment and order dated 18th January, 2023 passed by learned ADJ, FTC Court, Alipore in Criminal Appeal no. 203 of 2018, by which court below disposed of petitioner's prayer for interim monetary relief.

2. Before going further, let me reproduce the background of the present case. The petitioner herein got married to the opposite party no.2 on 7th April, 2014, following the Islamic Rituals and customs and after the said marriage the couple was blessed with a female child, who was born on 17.07.2015. Incidentally petitioner further disclosed that this was her second marriage and from the previous marriage the petitioner had two daughters, who are also staying with the mother/petitioner.

3. The allegation levelled by the petitioner herein against her husband/opposite party no.2 in her application under section 12 of the Protection of Women from Domestic Violation Act, 2005.(in short PWDV Act) is that after marriage the petitioner and her minor daughter were subjected to enormous physical as well as mental torture at the instance of the opposite party no.2 and his family members and for which under very compelling circumstances, the petitioner had to lodge a written complaint which was treated as an FIR and Jadavpur P.S. Case no. 82 of 2018 dated 8th March, 2018 under section 498A/328/307/376/325/34 of the Indian Penal code was registered for investigation, against the opposite party no.2 herein and his other family members. Her further contention is that being aggrieved by the continuous mental and physical torture, indifference, neglect meted out upon the petitioner and her minor daughter, she was constrained to file the instant application under section 12 of the PWDV Act *interalia* praying for monetary relief including an interim monetary relief to the tune of Rs. 7 (seven) lakhs per month for herself and monetary relief to the tune of Rs. 3 (three) lakhs for her minor daughter from the opposite party no.2.

4. After receiving notice, the opposite party no.2 entered appearance and filed written objection before the Magistrate, who while disposing such application filed by the petitioner under section 23 of the PWDV Act, rejected the prayer for interim monetary relief qua the petitioner herein and only directed her minor daughter to pay a sum of Rs. 80,000/- per month towards interim monetary relief.

5. Being aggrieved by such order the petitioner herein preferred an appeal before the learned Sessions judge, Alipore under section 29 of PWDV Act, being Criminal Appeal no.203 of 2018. The petitioner and the opposite party no.2 filed their affidavit of assets and liabilities before the court below and by the impugned judgment and order dated 18th January, 2023 the court below disposed of the said Criminal Appeal modifying the order dated 16.08.2018 passed by learned Magistrate and thereby directed the opposite party no.2 herein to pay a sum of Rs. 50,000/- per month to the petitioner/wife and further directed the opposite party no.2/daughter to pay a sum of Rs. 80,000/- towards interim monetary relief from the date of filing the interim application.

6. Being aggrieved by the said impugned judgment dated 18.01.2023, Mr. Imtiaz Ahmed learned counsel appearing on behalf of the petitioner submits that while passing the impugned order, the learned Court below put unnecessary reliance upon the written objection filed by the opposite party no.2 and treated the same as gospel truth, while granting meagre interim monetary relief to the petitioner and her minor daughter. The court below while passed the impugned judgment though took due note of the fact that from income tax return filed by opposite party no.2 for the year 2020 -2021,

it is apparent that the total income of the opposite party no.2 is around Rs. 7,19,54,010/-(Rs. Seven Crore nineteen lakhs fifty four thousand and ten) but mechanically granted interim relief to the tune of Rs. 50,0000/- per month to the petitioner and Rs. 80,000/- to her minor child and did not consider that from the affidavit of assets and liabilities filed by the petitioner, it is apparent that the petitioner has meagre monthly income to the tune of Rs. 16,000/-(sixteen thousand) whereas her monthly expenditure is about Rs. 6,12,905/- and as such the interim relief granted to the petitioner and her minor daughter is inadequate and insufficient and liable to be modified.

7. Mr. Ahmed further argued that the court below did not minutely perused the documents submitted by the petitioner and the opposite party in its true perspective, while passed the order impugned mechanically. He ought to have taken into consideration the standard of living of the respective parties and other attending facts and circumstances of the case. The factual profile as portrayed in the instant case clearly establish that the opposite party no.2 is an affluent person having a very high standard of life in the society and on the other hand petitioner is a lady of destitute, who has also responsibility to take care of her daughters. In fact petitioner due to her financial Inabilities is not able to admit her daughter in a reputed school similar to the school, where the children of other Indian cricketers studying.

8. Referring catena of judgments Mr. Ahmed tried to impress the court that while considering prayer for interim relief made under section 23 of the PWDV Act, the courts have to consider the financial capacity of the husband, his actual income, reasonable expenses and the court must have

due regard to the standard of living of the husband as well as the spiraling inflation rates and high cost of living. At the same time while considering such plea, the wife's meagre income, ipso facto does not absolve him of his moral duty to maintain his wife and children.

9. He further contended that the courts below failed to keep it in mind the object of beneficial and protective legislation like the PWDV Act, 2005 which has been enacted as a measure of social justice to provide recourse to the dependent wife and children for their financial support, so as to prevent them from falling into destitution and vagrancy and that the enactment came in the light of Article 15(3) re enforced by Article 39 of the Constitution of India.

10. Mr. Ahmed Strenuously argued that the courts below failed to appreciate that it is no answer to a claim of interim monetary relief that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her support. The mechanical approach taken by the courts below in awarding meagre amount of monetary relief to the petitioner and her minor daughter has caused extreme prejudice to the petitioner and has defeated the legislative intent of preventing vagrancy and destitution of married women. The courts below ought to have considered that the net income of the opposite party no.2 is to the tune of Rs. 59,96,167/- (approximately) per month. Even if the quantum of monetary relief is calculated at the rate of $1/3^{\text{rd}}$ of the net income of the opposite party no.2 the monthly amount goes much higher which becomes payable. Therefore the order impugned is otherwise bad in law and is liable to be set aside and/or quashed and

appropriate direction is required to be passed upon opposite party no.2 to pay interim monetary relief to the tune of an amount which would be appropriate in terms of petitioners' claim and also in terms of the facts and circumstances of the case.

11. Mr. Sandipan Ganguly, learned Senior counsel appearing on behalf of the opposite party argued that the petitioner is the divorced wife of the opposite party no.2 who has suppressed various material facts and tried to mislead the court. She has not disclosed that on the self-same cause of action she had filed another application under section 125 of the Code of Criminal procedure being ACM 398 of 2018 before the self-same Judicial Magistrate, wherein she had also filed an affidavit of assets and liabilities, in which she had not disclosed her business income, income from other assets, mutual funds, fixed deposits etc., which is reflected from her income tax return.

12. Mr. Ganguly further argued that by an order dated 3rd October, 2023, the Magistrate directed the petitioner herein to file documents disclosing the aforesaid facts but the petitioner through her advocate informed the court on 16th January, 2024 that she shall not file the document as directed by the court and as such learned Magistrate directed that adverse presumption shall be drawn against the petitioner at the time of consideration of interim maintenance for non-disclosure of relevant documents. Thereafter the petitioner understandably had not proceeded with the application under section 125 of Cr.P.C. and on the other hand she proceeded with the instant proceeding under the PWDV Act.

13. He further contended that a bare perusal of the affidavit of assets filed by the petitioner in the proceeding under section 125 Cr.P.C. and the proceeding under PWDV Act, would reflect gross contradiction which shows that the petitioner has made false statements in the affidavit of assets, for which also she is not entitled to get any amount of maintenance.

14. The petitioner is a model and actress by profession and she is regularly engaged in modelling and acting assignments and the petitioner regularly uploads her professional assignments in her social media. In fact the petitioner from the income of her modelling assignments, acting and business has purchased properties in her name although she has been occupying the entire residential apartment of the opposite party no.2 in Kolkata and therefore, the petitioner has falsely depicted herself to be a destitute person. Therefore, the order passed by learned Court below awarding interim monetary relief of Rs. 50,000/- per month to the petitioner and Rs. 80,000/- per month for her minor child is more than commensurate for maintaining herself as she has substantial business income of not less than Rs. 5 lakhs per month.

15. Relying upon the judgment of the Apex Court in ***Rinku Baheti Vs. Sandesh Sharda*** reported in **2024 SCC online SC 3801** , Mr. Ganguly strenuously argued that the petitioner cannot seek equalization of wealth under the garb of a monetary relief order under PWDV Act. In the instant case the petitioner in fact in the garb of her application has sought for monetary relief to the tune of Rs. 7 lakhs per month for herself and Rs. 3 lakhs per month for her minor daughter which is absolutely an attempt to seek equalization of wealth, which is not permissible in the eye of law. He

further contended that under section 20(2) of PWDV Act, the monetary relief grant has to be adequate, fair reasonable and consistent with the standard of living to which aggrieved person is accustomed and the requirement of the status has to be interpreted as the mode of life which the lady was used to during subsistence of her marriage as decided in ***Rinku Baheti Case (supra)***.

16. In this context he further relied upon the judgment of ***Bhagwan Dutt Vs. Kamla Devi & another*** reported in **(1975) 2 SCC 386** where it has been held that the object of these provisions being to prevent vagrancy and destitution, the magistrate has to find out as to what is required to wife to maintain a standard of living which is neither luxurious nor penurious but is modestly consistent with the status of the family. Accordingly the needs and requirement of the wife for such moderate living can be fairly determined only if her separate income also is taken into account together with the earnings of the husband and his commitment. In this context, in support of his argument he also relied upon the observations made by the Apex Court in the case of ***Rajnesh Vs. Neha*** reported in **(2021) 2 SCC 324**.

17. Mr. Ganguly further argued that the entire spectrum of the argument made by the petitioner in the instant application is that the opposite party no.2 is a national level cricketer and therefore, he must be saddled with huge maintenance, liability without keeping it in mind that the purpose of the provisions of PWDV Act is not meant for taxing or causing extortion of husband nor its purpose is to create equalization of wealth. He further submits that the quantum of maintenance of Rs. 80,000/- per month is more than enough for a child of 11 years for her education and substantial

upbringing. Mr. Ganguly on instruction of his client further submits that the opposite Party No. 2 undertakes before this court that he is ready and willing to take responsibilities for the higher education of the child. However the petitioner/wife is not entitled to any maintenance at all as she has substantial income of her own. In this context he further submitted that though the petitioner sought to create an equalization of wealth on the basis of income tax return for the current financial year but for the purpose of disposal of the present application, the income of the opposite party no. 2 has to be considered in respect of the standard of his living in 2018 i.e. lastly when they resided together and the petitioner cannot be permitted to rely upon any other document except for affidavit of assets filed by the opposite no. 2 in the proceeding under PWDV Act. Accordingly he prayed for dismissal of the present application.

18. At the outset it needs to be mentioned that the factum of marriage and the paternity of child is not in dispute in the present case. Needless to say that the condition precedent for interim monetary relief is that the magistrate has to satisfy himself, though prima facie, that there are domestic relationship between the parties and the claimant has made out a case of commission of domestic violence by the respondent. Here the aggrieved person alleged that she had been subjected to violence in the course of her domestic life with the respondent no.1. In this context there are allegation and counter allegations which cannot be adjudicated at this stage only on the basis of affidavit without the evidence but it is an undisputed fact that a criminal proceeding cropped up out of incidents took place during their matrimonial relationship and for which Jadavpur P.S.

Case no. 82 of 2018 under sections 498A /328/307/276/506/323/34 IPC was initiated by the petitioner/wife and the investigation in the said case has culminated into a charge sheet against the accused/husband and his other family members. Accordingly the said criminal proceeding and the domestic incident report, *prima facie* discloses the incidents of domestic violence to which the aggrieved lady was allegedly subjected to.

19. While adjudicating the issue of interim monetary relief claimed by the petitioner no. 1 herein, trial court came to a finding that though the fact of marriage and birth of child due to wedlock is not in dispute but there appears to be no document filed by the aggrieved person to *prima facie* establish the incident of domestic violence against her by the respondent and on the contrary she has independent income to maintain herself. Therefore, trial Court refused to grant any interim monetary relief to the petitioner though he granted Rs. 80,000/- per month towards monthly interim monetary relief to the child. However when appeal preferred against the aforesaid observation of the trial court, the appellant court discussed the issue of domestic violence and had made clear observation that the finding of the Trial court that there appears to be no *prima facie* incident of domestic violence from the fact and circumstances of the case, does not hold good and considering that there being domestic relationship between the parties and *prima facie* she was subjected to domestic violence, court below held that she is entitled to get interim relief. Such observation made by the Trial Court about domestic relationship as well as *prima facie* observation that she was subjected to domestic violence, is not under challenge in the instant application.

20. The challenge made herein by the petitioner is about alleged meagre amount of maintenance granted by the court below which according to petitioner is not adequate fair, reasonable or consistent with the standard of living, to which the aggrieved party is accustomed. In this context the court below discussed the term “accustomed” as used in section 20 of the PWDV Act, meaning thereby that the Magistrate shall take into consideration the standard of living of which she was accustomed in course of her living with her husband and at the same time whether it is commensurate with the income of her husband. In the instant case though opposite party no. 2 herein have not specifically disclosed what was his income during continuance of marriage i.e. for the period from 2014 to 2018 but it appears from the photo copy of income tax return of the assessee/opposite party no. 2 for the years 2020-2021 that his total annual income for the said period was Rs. 7,19,54,010/- .

21. There is no quarrel with the proposition of law that equalization of wealth with the other party cannot be the basis for determination of interim monetary relief amount as held by Supreme Court In **Rinku Baheti Case (Supra)** which reflects in paragraph 80 as follows :-

“80. We have serious reservations with the tendency of the parties seeking maintenance or alimony as an equalisation of wealth with the other party. It is often seen that parties in their application for maintenance or alimony highlight the assets, status and income of their spouse, and then ask for an amount that can equal their wealth to that of the spouse. However, there is an inconsistency in this practice, because the demands of equalisation are made only in cases where the spouse is a person of means or is doing well for himself. But such demands are conspicuously absent in cases where the wealth of the spouse has decreased since the time of separation. There cannot be two different approaches to seeking and granting maintenance or alimony, depending on the status and income of the spouse. The law of maintenance is aimed at empowering the destitute and achieving social justice and dignity of the individual. The husband is under a legal

obligation to sufficiently provide for his wife. As per settled law, the wife is entitled to be maintained as far as possible in a manner that is similar to what she was accustomed to in her matrimonial home while the parties were together. But once the parties have separated, it cannot be expected of the husband to maintain her as per his present status all his life. If the husband has moved ahead and is fortunately doing better in life post his separation, then to ask him to always maintain the status of the wife as per his own changing status would be putting a burden on his own personal progress. We wonder, would the wife be willing to seek an equalisation of wealth with the husband if due to some unfortunate events post-separation, he has been rendered a pauper?"

22. It is true that petitioner in her affidavit of assets and liabilities shown her meagre income of Rs. 16,000/- per month from bank interest but it is settled law that even if the wife is earning some amount of money, it is not sufficient to rule out the application for monetary relief. **(Zahir Abdullah & another Vs. Oman Abdullah, reported in 2023 SCC Online Del 5321).** Therefore while it is true that the question of awarding an excessive amount of monetary relief to make an attempt for equalization of wealth with the husband/ opposite party does not arise but at the same time awarding of very low amount of monetary relief also cannot be accepted which does not match with the standard of living of the parties. In this context court is not supposed to accept in one hand the submission of the petitioner/wife that the maintenance must be equal to husband's wealth to award exorbitantly inflated amount but on the other hand he is also not supposed to accept the submission of the opposite party/husband in the absence of sufficiently proven fact that the wife is financially secured enough to sustain herself and the child and that there is no requirement for the husband to discharge his paternal duties or can absolve himself from his duty by paying meagre amount of monetary relief in terms of his income.

23. In the present case though a point sought to be agitated by the husband that petitioner wife leading life outside this marital relationship and for which she is also not entitled to maintenance but the court below while dealt with the issue came to a finding that though it is true that in the instant case, either side projected the easy life of another and most of their accusations are based on paper publication and media reports and it is also true that personal life of both the contending parties is under the vigil of media and public but the same cannot take the seat of prima facie material or have any such convincing value in the eye of law, in the absence of any such clear material on record that the aggrieved person has married or is living a separate married life. In the absence of such fact the allegation of adulterous life of the parties cannot speak volume at this stage, to shun the responsibility and obligations.

24. Considering above mentioned submissions made by both the parties and materials so far placed on record including the observations of the courts below, it is not clear what was the basis of fixing of interim maintenance amount awarded to the tune of Rs. 50,000/- and 80, 000/- in the context of affidavit of assets and liabilities and other materials placed on record in support of income. In view of materials placed before me and considering the elements for determination of quantum of maintenance as held in the salutary judgments, I am of the view that the quantum of interim monetary relief as fixed by the Court below requires revision. The opposite party/husband's income, financial disclosure and earnings established that he is in a position to pay a higher amount. The petitioner wife who has remained un-married and is living independently with the child is entitled to

a levelled maintenance that she enjoyed during her continuance of marriage and which reasonably secure her future as well as future of the child.

25. In my considered opinion a sum of Rs. 1,50,000/- per month to the petitioner no.1(wife) and Rs. 2,50,000/- to her daughter would be just fair and reasonable to ensure financial stability for both the petitioners, till disposal of the main application. Such amount is to be paid by the opposite party/husband from the date of filing of the application under section 23 of the PWDV Act, as decided by the Apex Court in **Rajnish Vs. Neha (supra)**. However as regards petitioner's child the husband /opposite party No.2 will always be at liberty to voluntarily assist her with educational and/or other reasonable expenses, over and above the aforesaid amount.

26. CRR 656 of 2023 thus stands disposed of. The Trial Court is directed to dispose of main application as early as possible, keeping in mind that in case of an application under Section 12 of the Act, magistrate shall make every endeavour to dispose of every such application within a period of sixty days from the date of its first hearing. It is also made clear that while disposing the application filed under section 12 of the PWDV Act finally, court below will come to a finding on the basis of evidence and documents that would be placed before him and shall not be influenced by any observation made herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)