

THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.129 of 2024

ORDER:

This Criminal Revision Case is filed by the petitioner - complainant aggrieved by the order dated 21.12.2023 passed by the II Additional District and Sessions Judge - cum - I Additional Metropolitan Sessions Judge at Medchal in Crl.A.No.86 of 2023 in D.V.C.No.6 of 2023 against the interim orders passed on 08.08.2023 in Crl.M.P.No.688 of 2023 in D.V.C.No.6 of 2023 by the III Additional Junior Civil Judge- cum - X Additional Metropolitan Magistrate, Cyberabad at Medchal.

2. The petitioner filed D.V.C.No.6 of 2023 against respondents 1 to 3 seeking reliefs under Sections 18, 19, 20 and 22 of the Domestic Violence Act, 2005 and along with it filed Crl.M.P.688 of 2023 claiming monetary relief of interim maintenance and residence order in the shared household.

3. The case of the petitioner was that she was married with respondent No.1 on 20.11.2020. It was an arranged marriage. Her parents incurred an amount of Rs.20.00 lakhs including 11.00 lakhs towards dowry on demand, gold ornaments to the bride groom (1 ring and 1 chain), silver ornaments, steel utensils, household furniture, travel expenses for engaging 3 buses for the

engagement, marriage and dinner, marriage gifts and other expenses. She was subjected to severe domestic violence, necked out of her shared household. She lodged a complaint before Jawahar Nagar Police against respondents 1 to 3. The respondents deceived her stating that respondent No.1 was a permanent employee of High Court and that he was drawing a salary of Rs.60,000/- per month and stated the same in his marriage profile but suppressed the fact that he was incapable of leading marital life, habituated to bad vices, gambling, living in bad company of associates and disappearing from home days together.

3.1. She further submitted that the respondent No.2, mother of respondent No.1 informed the petitioner that respondent No.1 was facing some evil effects and he should perform certain pujas and visited various temples along with whole family and forced her to accompany them to Tirupathi, Vemulavada, Srishailam, Yadagirigutta and to various gurus and swamijis and warned her not to allow her husband to participate in marital life. Her mother-in-law and sister-in-law also gave some thanthrik powders to apply them to the clothes and footwear of her husband and of her for a period of three months on daily basis and did not allow her for any conjugal relation. From the inception, she was forced and confined to a small room alone and was given stale food and not allowed her to come out for more than four (04) months. She was not allowed to talk to her parents freely either on phone or in person. She was beaten black and blue on daily basis whenever questioned about the behavior of the

respondent No.1. The respondent No.1 used to come home midnight and his mother supported him and warned the petitioner that she should keep quiet until they get additional dowry of Rupees ten more lakhs.

3.2. She further submitted that respondent No.1 was habituated to come home in fully drunken condition along with his brother-in-law. Her mother-in-law and sister-in-law used to accuse her without any reason and abuse her continuously demanding additional dowry. They started smear campaign and accused her with illegal marital affairs. She was psychologically and emotionally effected with the said events. The respondent No.1 never intimately behaved with her for more than one and half year. His sister Smt.Nandaram Anusha alias Lahari dominated her stating that she should not ask whatever her husband did and her mother would also join her in the harassment. While so, her husband (respondent No.1) deceitfully dropped her at her parents' house at Hakimpet on 13.04.2024 informing her and her parents that he was going to Bengaluru on real estate business and would come after three months and would pick her up from her parents's house. But till date, he never visited her parents' house. After few days, her husband blocked her mobile number and thereafter avoided her. All the efforts made by her parents and other family members for reconciliation failed. He was not allowing her to live in matrimonial house, as such, filed the petition seeking the above reliefs of residence, maintenance and protection order.

4. The respondent No.1 filed counter denying the petition averments. He admitted the relationship with the petitioner and that the marriage with the petitioner was solemnized on 29.11.2020 at Lothukunta, Medchal-Malkajgiri District as per Hindu rights and customs. But he contended that the marriage was performed without taking any dowry. The petitioner belonged to a poor family. The petitioner lived happily with him only for a few days and thereafter started harassing him without any cause or reason. He contended that the petitioner used to go to her parents' house without any intimation and also forced the respondent No.1 to come and settle at their house. During her stay with the respondents, she created nuisance without any cause or reason. She willfully deserted respondent No.1. He further stated that he was unable to pay maintenance to the petitioner. He was not doing any business. He was working as a daily wage laborer in a Xerox Centre at High Court, Hyderabad and was getting an amount of Rs.400/- per day, an amount of Rs.8,000/- per month as the High Court was working only for 20-22 days in a month. His parents were also dependant on his earnings. As such, the petitioner was not entitled for any relief. He further contended that they belonged to an orthodox family having good reputation in the society. They never harassed the petitioner - complainant physically and mentally nor caused any emotional distress. He further submitted that the petitioner was suffering with mental ill-health. She used to get scared and shout loudly and create nuisance in colony from the date of

marriage. He further contended that he was ready to take back the petitioner to his matrimonial home to lead marital life.

5. Both the parties have also filed affidavits of their assets and liabilities.

6. The learned X Additional Metropolitan Magistrate, Cyberabad at Medchal observed in his order that though the assets and liabilities affidavits were filed by both the parties, they would be considered at the appropriate time in the main D.V.C. enquiry. Basing on the affidavit filed by the petitioner granted interim maintenance of Rs.10,000/- per month in favor of the petitioner and ordered the respondents to provide shared house portion to the petitioner.

7. Aggrieved by the said order passed by the learned X Additional Metropolitan Magistrate, Cyberabad at Medchal granting interim maintenance and residence order in the shared household, the respondents 1 to 3 preferred Criminal Appeal No.86 of 2023. The I Additional Metropolitan Sessions Judge, Medchal - Malkajgiri District at Medchal vide the impugned order dated 21.12.2023 observed that the trial court passed the order without verifying the actual facts of the case and the petition was silent as to the means of respondent No.1 and his capacity to pay the relief and the counter was also silent as to the capacity of respondent No.1 and his means and that the petitioner, aggrieved person was living with her parents in their house. Without substantiating as to her relief, she was claiming residence order and the trial court granting the

reliefs without considering the assets and liabilities statement available on record was erroneous and set aside the order passed by the X Additional Metropolitan Magistrate, Cyberabad at Medchal in CrI.M.P.No.688 of 2023 in D.V.C.No.6 of 2023 and remanded the matter back to the trial court to decide the matter afresh by considering the entire material placed before it.

8. Aggrieved by the said order passed by the I Additional Metropolitan Sessions Judge, Medchal-Malkajgiri at Medchal, the petitioner - complainant preferred this revision contending that as per the provisions of the Domestic Violence Act (for short "DV" Act), 2005, the Magistrate should endeavor to dispose of every application within a period of 60 days from the date of its first hearing and as per Section 28(2), the Court had ample powers for laying down its own procedure for disposal of the application under Section 12 or under Sub-Section (2) of 23 of the DV Act. The trial court judiciously and transparently gave ample opportunity to the respondents and passed interim orders in compliance with the objectives of the DV Act. But the learned I Additional Metropolitan Sessions Judge, Medchal despite arguments on the above provisions of law supported by various citations of High Courts and the Hon'ble Apex Court passed the impugned order contrary to the objectives of the DV Act. The respondents failed to file their counter within the time limit provided by the Act and failed to file their assets and liabilities statement within the time, which constrained the trial court to pass interim orders in the circumstances of the case.

The learned I Additional Metropolitan Sessions Judge failed to appreciate the settled principles of law and that the Act was a self contained code and that the Act intended to provide legal remedies not addressed in codified civil law and that the Magistrate was not bound by a straight jacket formula in deciding the application under Section 12(1) of the DV Act. In a given case, it would be open for the Magistrate to make deviation there from as may be found necessary in the interest of justice. The trial court proceeded to decide the application for interim maintenance on the basis of the affidavit filed by the applicant. There was no irregularity committed by the trial court in passing the interim order of maintenance and residence order and prayed to allow the revision by setting aside the order of I Additional Metropolitan Sessions Judge, Medchal-Malkajgiri District at Medchal in Criminal Appeal No.86 of 2023 in D.V.C.No.6 of 2023.

9. Heard Dr.G.Vasanth Kumar, learned counsel for the petitioner and Sri Nooty Vasishta, learned counsel for the respondents 1 to 3.

10. Learned counsel for the petitioner submitted that the I Additional Metropolitan Sessions Judge had not applied his mind while passing the impugned order. The said order was full of mistakes. The impugned order was signed by the I Additional Metropolitan Sessions Judge in a mechanical manner without verifying the records. The names of the parties were not matching. The

date of the order challenged and when the final hearing took place were also not matching. The age and address of the appellant were also not tallying. The amount of maintenance awarded was also not properly mentioned in the last para of the order. He also contended that the settled case laws submitted by him during the arguments in **Rajnish v. Neha and Another**¹, **T.V.Rao v. State of Telangana**² and **Prabha Tyagi v. Kamlesh Devi**³ of the Hon'ble Apex Court were not considered by the I Additional Metropolitan Sessions Judge. An interim order of suspension was passed by this Court and directed the respondent to pay maintenance to the victim as ordered by the trial court. The respondent did not prefer to file his counter in CrI.M.P.No.688 of 2023 within the time and also did not file the assets and liabilities statement till 27.12.2022 and also evaded to file the same in the prescribed format within a maximum period of four weeks as enshrined in the ratio of **Rajnish v. Neha and Another** (cited supra). The respondent did not deny his relationship with the petitioner as his wife and also did not express any inability to pay the maintenance granted by the trial court @ Rs.10,000/- per month. The respondent admitted in his counter that the petitioner was a patient suffering with certain ailments which would require constant medication and that she belonged to a poor family. The petitioner had no other source of income other than the interim maintenance

¹ (2021) 2 SCC 324

² Writ Petition No.40818 of 2015

³ Criminal Appeal No.511 of 2022

granted by the Magistrate to lead a dignified life and was undergoing trauma with series of legal litigations created by the respondent and prayed to set aside the order of the I Additional Metropolitan Sessions Judge, Medchal-Malkajgiri District at Medchal and to uphold the order of the trial court in CrI.M.P.No.688 of 2023 passed by the III Additional Junior Civil Judge, Medchal-Malkajgiri District.

11. Learned counsel for the respondents 1 to 3 on the other hand contended that the Appellate Court had rightly set aside the order passed by the trial court, as the trial court passed the order without considering the assets and liabilities despite being filed by both the parties and also without considering them on merits, which was fundamentally wrong and against the settled principles of law laid down by the Hon'ble Apex Court in **Rajnesh v. Neha and Another** (cited supra) and reiterated by the Hon'ble Apex Court in **Aditi alias Mithi v. Jitesh Sharma** in Criminal Appeal No.3446 of 2023. The contention of the petitioner that the Appellate Court wrongly mentioned the names of respondents 2 and 3 in the cause title was no way concerned with the relief claimed. The irregularities with the names of the respondents 2 and 3 were immaterial with the orders passed by the Appellate Court. Instead of filing a fresh application before the trial court as per the orders passed by the Appellate Court, the petitioner preferred this revision petition by suppressing true and material facts. There was no illegality or impropriety in the order passed by the I Additional

Metropolitan Sessions Judge, Medchal-Malkajgiri and prayed to dismiss the Criminal Revision Case.

12. On considering the arguments of both the counsel, the only point for consideration in this Revision Petition is whether there is any irregularity or impropriety in the order of the I Additional Metropolitan Sessions Judge, Medchal-Malkajgiri to set aside the same.

13. As seen from the record, along with the counter, the respondent had also filed the statement with regard to his assets and liabilities. The learned X Additional Magistrate, Cyberabad at Medchal had also mentioned in his order at Para No.7 that both the parties filed their assets and liabilities affidavits, but held that those affidavits would be considered at the appropriate time in the main D.V.C. enquiry. Thus, he had not considered the assets and liabilities affidavits filed by both the parties while granting interim maintenance and only basing upon the affidavit filed by the petitioner granted interim maintenance of Rs.10,000/- per month and residence order to the petitioner in the shared household of the respondents.

14. The I Additional Metropolitan Sessions Judge, Medchal observing that though the assets and liabilities statement of respondent No.1 was on record by the date of passing the order, in spite of the same, it was not considered by the trial court making the order erroneous, since the statement would help the Court

in deciding the actual amount of relief that was entitled and claimed. Therefore, the order of the trial court was erroneous. He also referred to various citations relied by both the parties and held that in view of the law laid down by the Hon'ble Apex Court in **Rajnesh v. Neha and Another** (cited supra), the remaining decisions were not applicable to the given set of facts and as the petition was silent as to the means of respondent No.1 and his capacity to pay the relief of Rs.20,000/- sought by her and the counter was also silent as to the capacity of respondent No.1 and the means of respondent No.1 and the aggrieved person failed to show any reason as to her entitlement for the relief of residence order, as it was not her case that she was not having any shelter or living with her friends or relatives or there was no *prima facie* evidence that she was leading her life without shelter observed that granting such relief was not permissible. The Appellate Court remanded the matter to the trial court for deciding the matter afresh by taking into consideration the entire material placed on record before it.

15. The Hon'ble Apex Court in **Rajnesh v. Neha and Another** (cited supra) issued certain directions in exercise of its power under Article 142 of the Constitution and framed guidelines to be followed in maintenance proceedings considering the need for a uniform form of affidavit of disclosure of assets and liabilities in such cases. The guidelines are as follows:

- (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 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 willful 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 basis of the Affidavit filed by the applicant and the pleadings on record.
- (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.

(i) In case the parties belong to the Economically Weaker Sections (“EWS”), or are living Below the Poverty Line (“BPL”), or are casual laborers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court / District Court / Magistrate’s Court must make an endeavor to decide the I.A. 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.

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

16. The above directions are issued in exercise of powers under Article 142 of the Constitution. 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.

17. While specifically referring to the issue of interim maintenance, it was held therein that:

“63. 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 dependant 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.

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.”

18. Thus, the Hon'ble Apex Court held that filing the Affidavit of Disclosure of Assets and Liabilities before the concerned Court is a mandatory requirement and that the Court could be in a position to make an objective assessment of the approximate amount to be awarded for maintenance at the interim stage only on the basis of such pleadings filed by both the parties and the affidavits of disclosure of assets and liabilities.

19. In the present case, as seen from the order of the trial court, the assets and liabilities statements were filed by both the parties and the same were on record by the date of passing the interim order, but the trial court had not considered the same while passing the interim order and stated that those affidavits would

be considered at an appropriate time while holding the main D.V.C. enquiry, which was not in accordance with the guidelines issued by the Hon'ble Apex Court in **Rajnish v. Neha and Another** (cited supra). Further, the Hon'ble Apex Court in **Aditi alias Mithi v. Jitesh Sharma** (cited supra), held that:

“14. 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 **Rajnish’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.

16. Considering the facts of the case in hand and the other similar cases coming across before this Court not adhering to the guidelines given in Rajnesh's case (supra), we deem it appropriate to direct the Secretary General of this Court to re-circulate the aforesaid judgment not only to all the Judicial Officers through the High Courts concerned but also to the National Judicial Academy and the State Judicial Academies, to be taken note of during the training programmes as well."

20. The Hon'ble Apex Court time and again is giving directions to all the Judicial Officers all over the country to follow the guidelines given by it in **Rajnesh v. Neha and Another** (cited supra), but still the Judicial Officers were not complying with the said guidelines. As such, this Court considers that there was no error or irregularity committed by the I Additional Metropolitan Sessions Judge at Medchal-Malkajgiri District in remanding the matter to the trial court to decide it afresh by taking into consideration the statements and affidavits of assets and liabilities filed by both the parties, which were already on record and to pass orders accordingly.

21. In the result, the Criminal Revision Case is dismissed confirming the order passed by the I Additional Metropolitan Sessions Judge, Medchal-Malkajgiri District in CrI.A.No.86 of 2023 in D.V.C.No.6 of 2023 dated 21.12.2023. The Interim Order passed by this Court in I.A.No.1 of 2024 dated 30.01.2024 stands vacated.

As a sequel, miscellaneous applications pending in this revision, if any shall stand closed.

Dr. G.RADHA RANI, J

Date: 04th June, 2024
Nsk.