

Vishnu Saraf Vs Aashita Singhania nee Saraf

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 10, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 125

Hon'ble Judges: Suvra Ghosh, J

Bench: Single Bench

Advocate: Ayan Bhattacharjee, Sayan De, Sayan Kanjilal, Rimik Chakraborty, Suresh Kr. Sahani

Final Decision: Allowed

Judgement

Suvra Ghosh, J

1. The petitioner who is the husband of the opposite party is aggrieved by the order passed by the learned Additional Principal Judge, Family Court,

Calcutta on 30th August, 2024 in Misc. Case No. 62 of 2023 allowing the prayer for interim maintenance of the opposite party with cost of Rs.

25,000/- against the petitioner and directing the petitioner to pay interim maintenance to the tune of Rs. 80,000/- per month from the date of filing of

the application.

2. Learned counsel for the petitioner has referred to Section 125 of the Code of Criminal Procedure which demonstrates that a wife unable to

maintain herself shall be entitled to maintenance from her husband who despite having sufficient means, neglects or refuses to maintain her. A

memorandum of understanding/settlement was entered into by and between the parties on 15th February, 2022 wherein the petitioner undertook to pay

Rs. 32 lakhs to the opposite party and pay further amount of Rs. 32 lakhs after he was exonerated from the criminal case filed against him by the

petitioner or the criminal case was closed. According to learned counsel, after payment of Rs. 32 lakhs to the opposite party she refused to withdraw

the criminal case pending against the petitioner and the memorandum of understanding was abandoned. The opposite party has admitted receipt of Rs.

32 lakhs from the petitioner in her affidavit of assets and liabilities filed before the Learned Magistrate in Misc. Case no. 62 of 2023. Since the

petitioner has paid Rs. 32 lakhs to the opposite party in terms of the memorandum of understanding, she cannot be termed as "the wife, unable to

maintain herself. Moreover, the order impugned records that the opposite party has a monthly income of Rs. 22,000/- approximately.

3. Learned counsel has placed reliance in the authorities in *Rajnish v/s. Neha* and Another reported in (2021) 2 Supreme Court Cases 324 and *Savitri*

w/o Govind Singh Rawat v/s. Govind Singh Rawat reported in (1985) 4 Supreme Court Cases 337 in support of his contention.

4. Per contra, learned counsel for the opposite party/wife has referred to orders of coordinate Benches of this Court to indicate that the parties were

at liberty to contest the application if no mutual settlement could be arrived at. Relying upon the authority in *Kiran Jyoti Maini v/s. Anish Pramod Patel*

reported in 2024 Supreme Court Cases OnLine SC 1724, learned counsel has submitted that various factors are required to be taken into consideration

in calculating the amount of maintenance which include but are not limited to:

- i. Status of the parties, social and financial.
- ii. Reasonable needs of the wife and dependent children.
- iii. Qualifications and employment status of the parties.
- iv. Independent income or assets owned by the parties.
- v. Maintain standard of living as in the matrimonial home.
- vi. Any employment sacrifices made for family responsibilities.
- vii. Reasonable litigation costs for a non-working wife.
- viii. Financial capacity of husband, his income, maintenance obligations, and liabilities.

5. Learned counsel has placed reliance on the authority in *Rajnish v/s. Neha* (supra) which has dealt with the constitutional objective of the remedy of

maintenance. Taking this Court to several pages of the judgment, learned counsel has submitted that an application for interim maintenance ought to

be decided by a reasoned order within a period of four to six months after affidavits of disclosure are filed before the Court. The amount of

maintenance must be reasonable and realistic so that it is neither so extravagant which becomes oppressive and unbearable for the respondent, nor so

meagre that it drives the wife to penury. Even if the wife is earning, 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 and sustenance cannot be allowed to mean mere

survival. According to learned counsel, the learned Family Court has rightly granted interim maintenance in favour of the opposite party upon taking

into consideration the entire facts and circumstances including payment of Rs. 32 lakhs to her by the petitioner.

6. I have considered the rival contention of the parties, material on record and the law on the point.

7. The order impugned directs payment of interim maintenance by the petitioner to the opposite party to the tune of Rs. 80,000/- per month pending

disposal of the case under section 125 of the Code of Criminal Procedure. It is not in dispute that a memorandum of understanding was initially

entered into by and between the parties in terms of which an amount of Rs. 32 lakhs was paid to the opposite party by the petitioner. In terms of the

memorandum, the opposite party was entitled to get a further sum of Rs. 32 lakhs after she withdrew the criminal case against the petitioner or the

petitioner was exonerated therefrom.

8. Since the criminal case is still pending, the occasion for the petitioner to pay the further sum of Rs. 32 lakhs did not arise. The opposite party has

admitted receipt of Rs. 32 lakhs from the petitioner in terms of the memorandum which did not ultimately fructify. In the authorities referred to above,

the Hon'ble Supreme Court has laid down factors to be considered in granting maintenance under section 125 of the Code. There is no quarrel

with the said proposition of law. But it is to be borne in mind that the application under section 125 of the Code is pending before the learned Family

Court and it is for the learned Family Court to take into account the law laid down by the Hon'ble Supreme Court in determining the maintenance

to be paid to the opposite party under section 125.

9. The Hon'ble Supreme Court, in the authority in Savitri (supra) has vividly dealt with the concept of interim maintenance pending disposal of an

application under section 125 of the Code. In the words of the Hon'ble Supreme Court, "It is quite common that applications made under

section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under section 125, the

applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim

maintenance is passed by the Court. Such interim orders can be granted on the basis of affidavits to be filed by the parties pending final disposal of

the application.

10. In the case in hand, the petitioner has admittedly paid Rs. 32 lakhs to the opposite party in terms of the memorandum of understanding. It is also

not in dispute that the opposite party earns about Rs. 22,000/- per month. In dealing with the prayer for interim maintenance the learned Family Court

has taken into consideration the entire contention of the opposite party as made out in the application under section 125 of the Code instead of

restricting himself to the consideration as to whether there was any requirement for interim maintenance in favour of the petitioner for the purpose of

sustaining herself during pendency of the application.

11. Keeping in view the handsome amount of Rs. 32 lakhs that has been paid by the petitioner to the opposite party who also has some income of her

own to sustain herself till the application is finally disposed of, there is remote chance of her being exposed to vagrancy and destitution. Grant of

interim maintenance in her favour pending disposal of the application is not required. Also, no reason has been assigned by the learned Family Court

with regard to imposition of cost of Rs. 25,000/- besides grant of interim maintenance to the opposite party.

12. In the said backdrop, this Court is of the view that the order impugned lacks appreciation of the evidence on record in its proper perspective and is

liable to be set aside/quashed.

13. The revisional application being C.R.R. 4004 of 2024 is allowed.

14. The connected application being C.R.A.N. 1 of 2024 is also disposed of.

15. The order impugned dated 30th August, 2024 passed by the learned Additional Principal Judge, Family Court, Calcutta in Misc. Case No. 62 of

2023 is set aside/quashed.

16. However, the learned Family Court is directed to take the proceeding to its logical conclusion as expeditiously as possible, preferably within two

months from the next date of hearing fixed before him, without granting any unnecessary adjournment either of the parties, in accordance with law.

17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.