

HIGH COURT OF CALCUTTA**Bench : Justice Ajay Kumar Gupta****Date of Decision: 29.04.2024****CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 3650 of 2018

C.R.R. 3651 of 2018

██████████Revisionist**Versus****The State of West Bengal and AnotherRespondents****Legislation and Rules:**

Article 227 of the Constitution of India

Sections 18, 19, 20, and 22 of the Protection of Women from Domestic Violence Act, 2005

Section 125 of the Code of Criminal Procedure, 1973

Subject: Revision of judgments regarding maintenance and compensation under the Domestic Violence Act, focusing on the eligibility of a well-educated, albeit unemployed, wife to claim maintenance, and the appropriate compensation for domestic violence suffered.

Headnotes:

Domestic Violence and Maintenance – The High Court, reviewing lower court decisions that denied maintenance to a qualified but unemployed wife under the Protection of Women from Domestic Violence Act, 2005, held that educational qualification alone does not disqualify a spouse from claiming maintenance if they lack independent income - The court emphasized that the wife's capability to earn should not undermine her entitlement to

maintenance, which depends on the husband's obligation and the wife's current employment status – Maintenance granted. [Paras 6-10]

Compensation for Domestic Violence – Adjustment of compensation for pain and suffering from domestic violence – The High Court found no adequate reason in the lower court's reduction of compensation from Rs. 20,00,000 to Rs. 15,00,000 and restored the original amount, recognizing the impact of domestic violence on the wife's mental health and marital expectations – Compensation restored to Rs. 20,00,000. [Para 11]

Legal Assessment and Procedural Fairness – The High Court criticized the procedural lapses in the lower courts, including failure to provide adequate reasoning for decisions, and remanded the matter for a fresh determination with instructions to avoid undue adjournments and consider the merits independently of the High Court's observations. [Paras 12-18]

Referred Cases:

- Smt. Mamta Jaiswal Vs. Rajesh Jaiswal [2000 (4) MPHT 457]
- T. Muraleedharan V. CP Vijaylakshi [2007 CRI.L.J. (NOC) 569 (Ker); 2006 (4) Crimes 335]
- Rajnesh V. Neha (2021) 2 Supreme Court Cases 324
- Bhushan Kumar Meen Vs. Mansi Meen SLP (Crl) 7924 of 2008 Supreme Court.

Representing Advocates:

For Petitioner: Md. Sabir Ahmed, Mr. Ashok Kumar Jana, Mrs. Pampa Dey Dhabal, Mr. Krishna Deo Das, Mr. Suman Biswas

Ajay Kumar Gupta, J:

1. Petitioner being the wife of opposite party no. 2 filed two revisional applications under Article 227 of the Constitution of India. In CRR 3650 of 2018, the petitioner challenges the judgment and order dated 10th September,

2018 passed by the learned 4th Court, Learned Additional District and Sessions Judge, Alipore, South 24 Parganas in Criminal Appeal No. 21/2016 which was filed by the petitioner/wife herein arising out of Complaint case No. 3848 of 2014 thereby learned Judge affirmed the order of rejection for payment of maintenance under Section 20(1)(d) of the Protection of Women from Domestic Violence Act dated 14.12.2015 passed by the learned Judicial Magistrate, 4th Court, Alipore in Complaint Case No. 3848 of 2014.

2. In the second revisional application CRR 3651 of 2018, the petitioner challenges the judgment and order dated 10th September, 2018 passed by Learned Additional District and Sessions Judge, Alipore, South 24 Parganas in Criminal Appeal No. 23/2016 which was filed by the opposite party/husband arising out of Complaint case No. 3848 of 2014 thereby decreases the compensation amount allowed u/s 22 of the said Act from Rs. 20,00,000/- to Rs. 15,00,000/-. Both the applications are taken up together for their disposal.

3. The brief facts of the instant case are as under:

3a. Petitioner and opposite party no. 2 are the wife and husband. Their marriage was solemnized as per the Hindu Rites and Customs in Siliguri on 13th March, 2013. The said marriage was arranged marriage. It is the case of the petitioner that their marriage was not consummated peacefully due to various reasons. The opposite party no. 2/husband tortured physically and

mentally to the petitioner. Opposite party no. 2 assaulted the present petitioner. Having no alternative, petitioner lodged a complaint before Siliguri Police Station and same was registered under Section 498A and other sections of the IPC against the husband and other in-laws. Her dream was to lead happy conjugal life but the said dream has been scattered like a broken glass within a very short period of marriage due to the cruel act and ill behaviour of the husband. Acute mental torture inflicted upon the petitioner and having no other option, she had to initiate a proceeding under the Protection of Women from Domestic Violence Act, 2005 (in short PWDV Act) with a prayer for order of residence, compensation and maintenance before the learned Additional Chief Judicial Magistrate at Alipore, District 24 Parganas (South) and the same was registered as Complaint Case No. 3848 of 2014.

3b. After hearing the parties, the learned Magistrate, 4th Court, Alipore delivered a judgment on 14.12.2015 whereby Learned Magistrate allowed the prayer for residence directing the respondent/husband to pay Rs. 11,000/- per month to the petitioner for her rental accommodation and further directed to pay a sum of Rs. 20,00,000/- towards compensation on account of her pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage to the petitioner. However, the learned Magistrate

rejected the prayer for maintenance to the Petitioner as sought for under Section 20(1) (d) of the PWDV Act.

3c. Being aggrieved by and dissatisfied with the said order of rejection of maintenance, the petitioner preferred a criminal appeal being Criminal Appeal No. 21/2016 before the Learned Additional District and Sessions Judge, Fast Track, 4th Court at Alipore. The petitioner had earlier moved an application for interim maintenance before the learned Court below and after considering the case of the petitioner, learned Magistrate was initially awarded an interim order of maintenance with a direction to the opposite party no. 2/husband to pay a sum of Rs. 15,000/- per month to the petitioner on and from 5th February, 2016. The said order was communicated to the opposite party no. 2/husband but he deliberately or intentionally failed to pay the amount of maintenance. Accordingly, the petitioner has filed a Misc. Execution Case No. 99/2017 before the Learned Judicial Magistrate, 1st Class, 4th Court at Alipore. In the said execution case, a distress warrant was issued by the learned Court. During pendency of the aforesaid appeal, respondent /husband filed an application with the prayer for adducing additional evidence on 7th February, 2017 before the learned Additional District and Sessions Judge alleging therein that the Petitioner, Anindita Roy is working lady and also a Director of the company. As such, she is not entitled to get any relief though the allegation is totally false, baseless and without supporting any

authenticated document. Actually, the petitioner was a managing director of the Company called North Bengal Realtors Pvt. Ltd. from 17th November, 2004 long before her marriage and the company was running in loss. As such, petitioner never got any profit or remuneration from the said company. The company is also not functioning. The allegations of the respondent/husband were that the petitioner had purchased a flat at Siliguri upon making payment of 50 Lakhs in the month of January, 2017 though the entire amount has been paid by his father after selling his own property and also by taking loan from his personal account. But unfortunately, the learned Additional District and Sessions Judge accepted those contentions of the opposite party no. 2/husband without examining the parties or given opportunity to cross-examine. Documents were accepted by the learned Additional District and Sessions Judge without adducing evidence is totally illegal, incorrect and without jurisdiction of the learned Additional District and Sessions Judge. On the basis of those unexhibited documents, the learned Additional District and Sessions Judge affirmed the order of learned Magistrate without giving an opportunity to adduce evidence to the parties and further held that the petitioner had her own income to maintain herself. Finally, the Learned Judge affirmed the order of rejection of maintenance to the petitioner. 3d. In the second impugned judgment, the learned Additional District and Sessions Judge, Fast Track 4th Court, Alipore, South 24 Parganas in Criminal Appeal

No. 23/2016 reduced the amount of compensation to the tune of Rs. 15 Lakhs observing therein that Rs. 20 Lakhs is a little higher side on account of her pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage. At the same time, the order regarding alternative residence and additional monetary relief for rented accommodation has been set aside. The compensation awarded under Section 22 of the Act is also reduced to the tune of Rs. 15 Lakhs and directed to pay the same within a month of the order and remaining balance amount of Rs. 5 Lakhs already deposited would be adjusted with the final amount. The Order passed under Section 18 of the Act is thereby modified and further appellant/husband is restrained from committing any Acts of domestic violence on the aggrieved wife. Learned Court further restrained from disturbing the aggrieved wife in her place of employment if any or from communicating with her in any manner whatsoever directly, except for the purpose of litigation and legal purposes for which the communication must be through legal counsel and in presence of legal counsel. Learned Court further restrained from alienating any streedhan property or property of the wife which may be in his possession.

As such, both revisional applications have been taken up together for consideration and their disposal by a common judgment. SUBMISSION ON

BEHALF OF THE PETITIONER:

4. Learned counsels appearing on behalf of the Petitioner submitted that due to domestic violence upon the petitioner, the petitioner has initiated an application seeking relief under Sections 18, 19, 20 and 22 of the said Act. However, the learned Judicial Magistrate only allowed alternative accommodation by way of monetary relief by paying Rs. 11,000/- per month for a rented accommodation and also allowed to pay a sum of Rs. 20 Lakhs to the petitioner as compensation for the injuries including mental torture and mental distress caused by the act of domestic violence committed by the husband/opposite party no. 2 and the said amount to be paid within one month from the date of order. On the other hand, the learned Judicial Magistrate turned down the prayer of maintenance amount as prayed for by the petitioner without any reasonable or sufficient grounds though she is unable to maintain herself. She has no independent income of her own to maintain herself. She is fully dependent upon her husband. She had never earned prior to her marriage nor after the marriage though the husband of the petitioner was a Dermatologist at HAMM Hospital and RC, Hojai, Assam and his income was sufficient to maintain himself and his wife. Despite of the said fact, the learned Judicial Magistrate disallowed the maintenance after observing therein that she is an educated lady having MBBS degree and having highly qualified doctor has capacity to earn and maintain herself. Learned Magistrate placed reliance a judgment passed in Smt. Mamta

Jaiswal Vs. Rajesh Jaiswal. The learned Magistrate accepted the observations made by the Hon'ble Madhya Pradesh High Court that a spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. Accordingly, learned Magistrate finally rejected the prayer of maintenance though the actual fact is that the wife is unable to maintain due to no independent income of her own. She is very much entitled to maintenance. It is not denied by the learned Magistrate that the respondent/husband has no sufficient income to maintain her as per status and standard maintained in the society. There was no any evidence transpires from the entire record that she was practising doctor prior to filing or at the time of marriage or when deserted by husband on 27.03.2013 or thereafter. He places a reliance of a judgement passed in **Rajnish V. Neha** to bolster his contention. He submitted she is entitled to get maintenance. The judgment relied by the Learned Magistrate is not at all applicable in this case as the facts and circumstances of this present case are different. Even if she is educated lady, husband is bounden duty to maintain her when she has no her independent income to maintain herself. She may be an educated even then she is entitled to get maintenance from her husband as per his income, status and standard maintained in the society or at home. Even the Appellate Court

also not considered this legal provision and outrightly rejected the prayer of maintenance though the husband fails to produce or adduce evidence that she has her own independent income to maintain herself. Furthermore, no sufficient reason assigned by the Appellate Court for reduction of compensation amount towards pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage from Rs. 20,00,000/- to 15,00,000/-. No evidence brought on record with regards to the income of the parties and their status and standard of living etc. Apart from that, the Learned Additional District & Sessions Judge has passed imaginary order on the basis of surmises and conjecture as such same is liable to be set aside. Therefore, both the orders may be set aside and amount of maintenance should be allowed. The Opposite Party is also liable to pay entire amount of compensation to the tune of Rs. 20,00,000/= awarded by the Learned Magistrate for compensation towards pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage and Rs. 11,000/- for her rental accommodation as because she lost her hope to lead conjugal married life.

5. On the other hand, no body appears on behalf of the opposite party no. 2/husband in spite of service of notice. No accommodation was sought for.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Having heard the submission of the learned counsels appearing on behalf of the petitioner and on perusal of the applications together with annexure thereto and judgments passed by the Learned Judicial Magistrate and Learned Additional District and Sessions Judge, this Court finds there is admitted fact that their marriage was solemnized as per the Hindu Rites and Customs in Siliguri on 13th March, 2013 and the said marriage was negotiable marriage. But from the very beginning, disturbance started between them due to comment made by the family members of the husband that the wife wore spectacles and had a big mole on her nose and her appearance did not match with her profile picture uploaded in the matrimonial site. She noticed some unnatural behaviour in respondent/husband. He was fully controlled by his cousin sister Payel. Even their Baubhat and Fulosajyaa Ceremony were affected due to unwarranted activities of respondent's cousin sister Payel. The respondent/husband also refused to share bed with her in the night of Fulosajyaa, which caused mental depression on her. She never expected such behaviour from the respondent/husband. Husband further pressurised upon her to accept his unnatural relationship with cousin sister Payel. Her life at her matrimonial home became miserable. She was not provided with basic necessities and household facilities like food etc. The respondent also assaulted her in very cruel manner and due to such situation, she has compelled to live separately.

7. On the contrary, the allegation of the respondent/husband is that on 12.03.2013, the husband along with his relatives and guests reached Siliguri for marriage. At the station, they were welcomed by the father of the petitioner/wife, who had made arrangement for the accommodation of the Barjatri at his Siliguri residence 'Swapnanir'. In the afternoon of that very day when the relatives of the respondent/husband went to bless the petitioner as per custom, they saw her for the first time and to their utter surprise, they found that the petitioner wore spectacles and had a big mole on her nose and her appearance did not match with her profile picture. On 13.03.2013 at about 1 am, the marriage ceremony was over. After marriage, the petitioner disappeared from the scene. She appeared only on the next morning for signing marriage registration form. At that time, the husband/respondent, the petitioner and her father had some conversation, on inquiry the respondent/husband came to know that the petitioner had very high degree of myopia, which was not brought to the notice of respondent/husband earlier. The petitioner also showed an unusual behaviour as she wanted to sleep at the place where her cousin brother was sleeping on the pretext that she did not want physical relationship with the respondent/husband. On 17.03.2013, the petitioner told the respondent/husband that she did not want a physical relationship with him and he should not approach her for consummation. During her stay at her matrimonial home, she was always busy with her

mobile phone or with her cousin brother or with some study materials, she paid little attention to the respondent/husband and never care to talk with any of her inmate members. During some formal conversation with the respondent/husband, the petitioner displayed some unusual thoughts like some unseen force was out there to harm her and that thought could not be reasoned with. With these facts and allegations levelled from both sides, it is quite natural that they are unable to live together and finally she started residing separately. She had to compel for initiation of a case against the husband under the said PWDV Act, 2005 and prayed several reliefs thereto. It is admitted fact that she also lodged a criminal case under Section 498A and other section of IPC against the husband and inlaws. Learned Magistrate held both the parties have crossed the point of no return. The husband is not willing to take back the aggrieved person. There is no chance of reconciliation between Amiya and Anindita. They have crossed the door of mutual understanding and compromise since there is no scope for return to happy and conjugal married life. The Learned Court further held there was a domestic violence while residing with her husband. It has been allowed the relief under Sections 18, 19 (1)(f) and 22 of the said PWDV Act, 2005. But Learned Magistrate refused the relief under Section 20(1) (d) of the Protection of Women from Domestic Violence Act, 2005 observing therein as follows:

“The applicant is admittedly a well-educated lady having MBBS degree. She has stated that she has no independent source of income as she is unemployed and is dependent upon her father. The applicant being a highly qualified doctor has the capacity to maintain herself. In my considered opinion a person who is qualified enough to earn his or her livelihood and has the capacity to maintain himself or herself cannot be allowed to sit idle. As the law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In Smt. Mamta Jaiswal Vs. Rajesh Jaiswal, reported 2000 (4) MPHT 457, the Hon’ble Madhya Pradesh High Court has held that “A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent life alimony”. After analyzing the materials on record with reference to the principles enunciated above, I hold that the aggrieved person is not entitled to get relief under Section 20(1)(d) of the Protection of Women from Domestic Violence Act.”

8. In appeal, the Learned Additional District and Sessions Judge also affirmed the finding of the Learned Magistrate with regard to the maintenance, which is first subject matter of challenge.

Now, a question emerges before this Court whether well educated wife, has not her own independent source of income to maintain herself, is

entitled to get maintenance under Section 20(1) (d) of the Protection of Women from Domestic Violence Act, 2005 from her husband or not?

9. To answer this question, both Learned Courts below have concurrent findings after relying a judgement reported in Smt. Mamta Jaiswal Vs. Rajesh Jaiswal and held, she is not entitled to get compensation under Section 20(1) (d) of the Protection of Women from Domestic Violence Act, 2005. The Hon'ble Madhya Pradesh High Court has held, inter alia, in the said judgment that:

“That well qualified spouses desirous of remaining idle, not making efforts for purpose of finding out a source of livelihood, have to be discouraged. It is further held that a lady, who is fighting matrimonial litigation filed for Divorce, cannot be permitted to sit idle and to put her burden on the Husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not mean for creating an army of idle person who would be sitting idle waiting for a "dole" to be awarded by her Husband who has got a grievance against her and who has gone to the court for seeking relief against her. The case may be vice versa also. If a Husband well qualified, sufficient enough to earn, sit idle and puts his burden on the wife and wait for a "dole" to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolent as well idles so also does not want an army of self-made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criterion is not

applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but for away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlements because he would be reaping the in nature of pendente lite alimony, and to prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardizing their hard-earned money by toiling working hours”.

On the other hand, the Hon’ble Supreme Court held in Paragraphs 77 to 83 for criteria for determining quantum of maintenance in the referred judgment by the petitioner in Rajnesh V. Neha as under:

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. (Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290)

79. In *Manish Jain v. Akanksha Jain*, reported in (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712, this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance 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 or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. (*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339)

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. (*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356). The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following

factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home." It is further held certain additional factors which would also be relevant for determining the quantum of maintenance payable in the said judgment on the basis of age and employment of the parties as under:

"86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years."

Upon perusal of aforesaid judgments, this Court does not find the judgment relied by both the Courts below are applicable in this instant case because, it is well settled law that Wife cannot be refused maintenance on the ground that she is educated and can secure employment, merely for the fact that a woman is educated, she cannot be deprived of her right to get maintenance [Ashok Kumar Singh V. VIth Additional Sessions Judge, Varanasi 1991 Cri LJ 2357 (All)]. In another judgment passed in T. Muraleedharan V. CP Vijaylakshi the Hon'ble Kerala High Court clearly held in paragraph nos. 12, 13 and 14 as under:

“12. Coming back to the facts of the case, the lady claimant is certainly educationally qualified. But the plight and the situation of even the educated half of the Indian polity show clearly that the qualification by itself cannot be held to be synonymous with ability to maintain themselves. Many a qualified housewife after marriage relegates herself to the kitchen and the homefront looking after children. She opts herself to be or is compelled to be satisfied with the role of a home maker. After playing that role for some time she renders herself unable to do anything more than that. The expression able to maintain must receive a dynamic and realistic interpretation in the light of the indisputable plight of the Indian woman. The mere fact that she has qualification is not sufficient ip-so facto to conclude that she is in a position to maintain herself. More so, in a competitive profession like the profession of law as the lady had never enrolled herself as a

practitioner nor embarked on any activity connected with law for a long period of time after her marriage till the separate living started. The qualification that she possesses is such that it cannot immediately be converted into work and earnings. Possession of such qualification by itself cannot be reckoned as synonymous with ability to maintain herself. So far as the postgraduate qualification in Arts is concerned, she had explained that she was able to get some work earlier. But those opportunities were not available to her now as institutions were insisting on B.Ed. qualification for teachers. There is nothing tangible to show that she was actually engaging herself in any teaching activities or professional activity as a lawyer at the time when the claim was made or before spouses started separate residence. In these circumstances, the conclusion appears to me to be inevitable that the mere fact that after separation on some occasions she had worked as a teacher in some schools is in sufficient to take her out of the category of persons unable to maintain themselves.

13. Of course, the dictum in *Rajathi v. C. Ganesan* (AIR 1999 SC 2374) will also have to be understood reasonably and fairly. If a qualified woman is actually able to engage herself in some stable and settled employment after the spouses started separate residence, it may not be fair or correct to say that such subsequent stable employment and income must be ignored solely for the reason that she had taken up such employment only after the spouses separated and while in matrimony she was not engaging herself in any income earning activities. It is not necessary to advert in detail to such possibilities in view of the facts of this case, where it is very clear that either before the spouses separated or immediately prior to the date

of filing of the petition or thereafter the claimant wife was not actually engaging herself in any income earning activities. The evidence clearly shows that it was not an adamant refusal on the part of the claimant/wife to engage herself in any income earning activity to maintain herself. It was clearly a case of her inability to secure any such income earning activities and income to be able to maintain herself. The conclusion in these circumstances appears to me to be inevitable that the impugned order does not warrant any interference by invocation of the revisional jurisdiction of superintendence and correction.

14. The quantum of maintenance fixed is also found to be absolutely reasonable and modest considering the proved means of the petitioner and the needs of the claimant. The challenge fails and the revision petition is accordingly, dismissed.”

Furthermore, the provisions, either contemplated in Section 125 of the CrPC or under Domestic Violence Act, have not stipulated that the educated wife, is not entitled to get maintenance allowance from her husband. Section 125 (4) says no Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. There is no such condition stipulated that the wife, who is educated and able to secure employment is not entitled to receive an allowance from her husband under Section 125 of the CrPC. Similarly, Section 20 (1) (d) of

the PWDV Act, 2005 is not stipulated any embargo or restriction to pay maintenance by husband to his wife, who is educated and able to secure employment because Section 20 (1) (d) clearly says the maintenance for the aggrieved person as well as her children, if any, including 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. So, here also such condition is not applicable that an educated lady can secure employment for her independent income is not entitled to get monetary relief.

Under the above facts and circumstances, she is entitling to get maintenance from her husband if she has no her own independent income to maintain herself. Husband is bounden duty and obligation to maintain his wife until she remarries and secures employment or starts any profession for her independent income. It is true that an educated wife or husband can earn their independent income after securing employment. Such qualified spouses desirous of remaining idle, not making efforts for purpose of finding out a source of livelihood, have to be discouraged. It also should not be encouraged wife, who is fighting litigation with husband and in laws, cannot be permitted to sit idle and to put her burden on the Husband for demanding maintenance allowed from him.

We should not forget the observation of Hon'ble Supreme Court made in Bhushan Kumar Meen Vs. Mansi Meen as under:

“In this case while reducing the maintenance amount from Rs. 10000/- to Rs. 5000/- granted by the lower court to the wife, the Supreme Court observed that " we cannot also shut our eyes to the fact that at present the respondent wife is not employed or at least there is nothing on record to indicate that she is employed in any gainful work. However, having regard to the qualifications that she possesses, there is no reason why she ought not to be in a position to also maintain herself in the future”.

10. Another question arises before this Court, whether the learned Additional District Judge rightly reduced the amount of compensation amount towards pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage from Rs. 20,00,000/- to Rs. 15,00,000/=?
11. It reveals from the judgment, no sufficient or reasonable reasons assigned by the Appellate Court for reduction of compensation amount towards pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage from Rs. 20,00,000/- to Rs. 15,00,000/=. No proper assessment had been made by the learned Judge while reducing the amount granted by the learned Judicial Magistrate. Apart from that, it appears the Learned Additional District Judge has passed imaginary order on the basis of surmises and conjecture

as such same is liable to be set aside. Accordingly, the Opposite Party is liable to pay entire amount of compensation to the tune of Rs. 20,00,000/= as awarded by the Learned Magistrate for compensation towards pain, suffering, loss of hopes, dreams and loss of faith in the institution of marriage.

12. This Court further finds there are sufficient merits in these applications. Order of rejection of maintenance allowance to the petitioner/wife passed by both Courts below and order for payment of Rs. 11,000/- per month for her rental accommodation set aside by the Appellate Court below are hereby set aside.
13. Consequentially, CRR 3650 of 2018 and CRR 3651 of 2018 are, thus, allowed without order as to costs. Connected applications, if any, are also thus, disposed of.
14. Let a copy of this judgment be sent to the learned Court below for information and taking necessary steps to decide the case of the petitioner afresh for her prayer for allowing maintenance and also for alternative accommodation after affording sufficient opportunity to both sides for its final conclusion with regards to maintenance and for alternative accommodation in accordance with law without granting unnecessary adjournment to the parties and disposed of the same as expeditiously as possible.
15. I make it clear that I have not gone into the merits of the case relating to income of parties, their present status and standard of living in the society as

such the same to be decided afresh by the Learned Court below independently in accordance with law without being influenced by any observations, whatsoever, made herein above by this Court.

16. Case Diary, if any, is to be returned to the Learned Advocate for the State.
17. Interim order, if any, stands vacated.
18. Parties shall act on the server copies of this order uploaded on the website of this Court.
19. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

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