

Tripura High Court

Ramendra Kishore Bhattacharjee vs Smt. Madhurima Bhattacharjee ... on 1 June, 2022

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HIGH COURT OF TRIPURA
AGARTALA

Crl.Petn.No.53 of 2021

Ramendra Kishore Bhattacharjee, son of Late Santi Gopal
Bhattacharjee Resident of Badharghat, Sreepalli, P.S.-Amtali District
West Tripura

.....Petitio

Versus

Smt. Madhurima Bhattacharjee wife of Ramendra Kishore
Bhattacharjee C/O Sri Tapan Bhattacharjee of Ramnagar Road No.4
P.S: West Agartala District: West Tripura.

.....Responde

BEFORE

HON'BLE MR.JSUTICE S.G.CHATTOPADHYAY

For the Petitioner(s) : Mr. S.Kar Bhowmik, Sr. Adv.
Mr. J.Das, Adv.

For the Respondent(s) : Mr. Raju Datta, Adv.

Date of hearing : 11.03.2022

Date of pronouncement
of Judgment : 01.06.2022

Whether fit for reporting: YES

JUDGMENT

[1] By means of filing this Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C, hereunder) read with Section 25(2) of the Protection of Women from Domestic Violence Act, 2005, petitioner Ramendra Kishore Bhattacharjee has sought for Crl.Petn. 53/2021 modification of the judgment and order dated 10.02.2021 passed by this court in Criminal Revision Petition No.36 of 2020 for reducing the amount of monetary relief granted to the petitioner from Rs.15,000/- to a reasonable sum of money in view of the financial constraints of the petitioner. [2] The petitioner has sought for the following reliefs:

- (i) For modification of the judgment and order dated 10.02.2021 passed by this court in Criminal Revision Petition No.36 of 2020 by reducing the amount of monetary relief granted to the respondent wife.
- (ii) For exempting the petitioner from paying the arrear of maintenance.

(iii) For passing such other order/orders as the court deems fit and proper.

[3] Heard Mr.S.Kar Bhowmik, learned Sr. Advocate, appearing along with Mr. J.Das, learned advocate, for the petitioner.

Heard Mr. Raju Datta, learned Advocate appearing for the respondent wife.

[4] The factual context of the case is as under: Crl.Petn. 53/2021 The wife presented an application under Section 12 of the DV Act in the court of the Judicial Magistrate of the First class (court No.8) at Agartala on 22.01.2016 seeking various reliefs under the DV Act wherein she referred to several incidents of domestic violence against her husband. It was stated by her that after solemnization of their marriage a son was born to them on 28.05.2001. Their relationship was normal for a period of 01 year only. Thereafter, her husband subjected her to harassment and torture for dowry and since she was unable to meet his demand, she was physically assaulted by her husband on various dates. Gradually he developed an extramarital affair. When the wife raised protest against his conduct he assaulted her. As a result of continuous assault on 16.12.2015 and 17.12.2015 she became ill and received treatment in IGM Hospital at Agartala. Unable to bear his torture, the wife parted with his company on 17.12.2015. In this factual background, she claimed the following reliefs in the trial court under the DV Act:

(i) A protection order under Section 18 of the DV Act restraining her husband from Crl.Petn. 53/2021 committing acts of domestic violence to her.

(ii) Residence order under Section 19 of the DV Act restraining the husband from dispossessing her from the shared household.

(iii) Monetary relief under Section 20 of the DV Act @Rs.15,000/- per month along with one time medical expenses of Rs.1 lakh.

(iv) Compensation order under Section 22 of the DV Act against the husband for payment of compensation and damages of an amount of Rs.3 lakhs for the injuries including mental torture and emotional distress caused to her by her husband by his acts of domestic violence.

[5] Her application was registered in the trial court as case no. CR 54 of 2016 and notice was issued to the husband.

[6] The husband filed written objection against the complaint of his wife. In his written objection he stated that his wife filed a false and frivolous complaint against him. According to him, she was very arrogant and torturous right from the beginning of their marriage. But he condoned her conduct and wanted to continue the relationship. He noticed no change in her behavior even after the birth of their son. After he was transferred to the court of District and Crl.Petn. 53/2021 Sessions Judge at Kailashahar, he had taken his wife and child to there from where the wife used to visit her parents at Agartala frequently without taking any care of his convenience. Having noticed growth of abnormalities in her conduct day by day, the husband with the consent of her parents had taken her

to various psychiatrists. He had also taken her to Bangalore for treatment in the National Institute of Mental Health And Neuro Science (NIMHANS) in 2012 which brought no change in her. The husband then approached the State Commission for Women for reconciliation. He also approached the State Legal Services Authority for a settlement. His efforts yielded no result. Ultimately, his wife filed an FIR against him and his old parents on 18.12.2015. Since then, the husband has been living separately along with his son who is studying in school. Having denied the allegations of his wife, he claimed that his wife was solely responsible for their matrimonial discord and as such she was not entitled to any relief under the DV Act.

Crl.Petn. 53/2021 [7] During the trial of the case, the wife examined herself as PW-1, her elder brother Tapan Bhattacharjee as PW-2 and her neighbor Ranajoyti Bhattacharjee as PW-3. [8] The husband on the other hand examined himself as DW-1, his neighbor Priya Bhusan Deb as DW-2 and Smt. Rekha Roy as DW-3.

[9] The learned trial court on appreciation of evidence granted reliefs to the wife vide paragraph 12 of his judgment dated 23.08.2018 which is as under:

"ORDER (12) In the result, the application filed by the aggrieved petitioner U.S. 12 of the Act is partly allowed and the aggrieved petitioner is found entitled to protection order, residence order and monetary relief. The respondents are prohibited from committing any act of domestic violence or aiding or abetting in the commission of acts of domestic violence upon the aggrieved petitioner. The Respondent No.1 is further directed as part of residence order to make payment of Rs.2000/- per month as rent for accommodation to the aggrieved petitioner. He is further directed to make payment of Rs.15,000/- per month as monetary relief in the form of maintenance to the aggrieved petitioner. The payment of Rs.2000/- per month as residence order and Rs.15,000/- per month as maintenance is to be deposited within the 10th day of every month in the Bank account of the aggrieved petitioner.

Supply a copy of this judgment and order free of cost to both the parties and to the C.D.P.S's of their respective jurisdiction of address for doing the needful. This Judgment is passed on this 23 rd day of August, 2018 under the seal and signature of this Court. Crl.Petn. 53/2021 Thus, the case is disposed off on contest. Make entry in the concerned T.R. The record shall be consigned to Record Room after due compliance of all legal formalities." [10] The husband and his mother, brother and sister being appellants challenged the said judgment of the learned trial court in criminal appeal no.16 of 2018 before the learned Additional Sessions Judge [Court no.4] at Agartala in West Tripura and the learned Additional Sessions Judge by the impugned judgment partly allowed the appeal vide paragraph 8 of the impugned judgment and directed as under:

"8. In view of the discussion made above, the present criminal appeal partly succeeds and the judgment and order dated 23.8.2018 passed by the Ld. Trial Court in C.R. 54 of 2016 is partly upheld and interfered with as stated herein below : -

(a) The husband-appellant No.1 is solely proved to have committed and liable for the acts of Domestic Violence upon his aggrieved wife and all other appellant Nos.2, 3

and 4 are hereby discharged from the liabilities.

(b) The protection order passed by the Ld. Trial Court under Section 18 of the PWDV Act is upheld with a direction that the husband-appellant No.1 strictly adhered the same.

(c) The order of monetary relief passed in the form of maintenance under Section 20(1)(d) of the PWDV Act for an amount of Rs.15,000/- per month is hereby upheld, and

(d) The order of relief passed under Section 19(f) of the PWDV Act is hereby set aside."

Crl.Petn. 53/2021 [11] Aggrieved by and dissatisfied with the judgment and order passed by the Additional Sessions Judge, the petitioner husband challenged the said judgment in criminal revision petition No.36 of 2020 before this court mainly on the following grounds:

i) The learned courts below have not properly appreciated the evidence and materials on record and as such their judgments are erroneous and liable to be set aside.

ii) The learned courts below have failed to appreciate the fact that the wife has left the son in the custody of her husband. Thereafter, the husband alone has been shouldering all expenses of the son including his educational expenses. The learned courts below without taking into consideration the expenses borne by the husband directed him to provide monetary relief to the wife @15,000/- per month.

iii) While providing the monetary relief to the wife under Section 18 of the DV Act, the courts below did not also take into consideration personal expenses of the husband and expenses borne by him for maintaining his old and ailing mother. Moreover, the learned courts below did Crl.Petn. 53/2021 not also consider his permanent disability and the recurring medical expenses for his treatment. While determining the amount of monetary relief the courts below did not also take into consideration the order of the Family Court, Agartala passed in Misc. Case No.463 of 2017 whereby the husband was directed to pay 6000/- to his wife in a proceeding under Section 125 Cr.P.C.

iv) The trial court as well as the appellate court issued the protection order against the husband without any proof of commission of domestic violence. According to the husband, evidence adduced by him was not appreciated by the trial court as well as the appellate court while issuing such protection order.

[12] On appreciation of evidence and the submissions made on behalf of the parties to the lis, this court made the following observations in the order impugned:

"[26] Under Section 12 of the DV Act only the aggrieved person or a protection officer appointed under the DV Act or any other person on behalf the aggrieved person may present an application to the magistrate seeking one or more reliefs under this Act. It would be apposite to reproduce Section 12 of the DV Act at this juncture which is as under:

"12. Application to Magistrate.--(1) An aggrieved person or a Protection Officer or any other person on Crl.Petn. 53/2021 behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

[27] Aggrieved person has been defined under Section 2(a) of the DV Act which reads as under:

"2. Definitions.--In this Act, unless the context otherwise requires,--

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

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(b)

(c) :

:

:

:

[28] A conjoined reading of Section 12 and Section 2(a) makes it abundantly clear that relief under the DV Act can be granted only to an aggrieved person defined under the DV Act and an aggrieved person has been defined as a woman who is or has been in a domestic relationship with the respondent who alleges to have been subjected to any act of domestic violence by the respondent. Therefore, allegation of domestic violence is a sine qua non for pursuing a petition under the DV Act.

[29] In this case, the wife who filed the application under Section 12 of the DV Act in the trial court is obviously an aggrieved person within the meaning of the Act because she made allegations of domestic violence against her husband and the fact that she was in a domestic relationship with the husband as his wife has been admitted by her respondent husband. Now the question is whether the wife proved commission of domestic violence against her husband at the trial court and become entitled to a relief under Section 12 of the DV Act.

[30] In the definition clause of the DV Act i.e. Section 2 under clause (g) states that domestic violence has the same meaning as assigned to it in Section 3 of the DV Act. Section 3 of the DV Act defines domestic violence as under:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing Crl.Petn. 53/2021 physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, Crl.Petn. 53/2021 securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

[31] Apparently, domestic violence has been defined under Section 3 of the Act in a very wider term and with regard to proof of domestic violence, explanation II to said Section 3 provides that for determining whether any act, an omission, commission or conduct of the respondent constitutes

"domestic violence" under the said Section, the overall facts and circumstances of the case, shall be taken into consideration.

[32] It may be recalled that in the present case, the spouses have brought allegations and counter allegations against each other and the learned additional sessions Judge after examining these allegations and the materials placed before the court by the contesting spouses set aside the protection order as against the mother, brother and the sister of the husband. While affirming the protection order as well as the monetary relief against the husband, the residence order for payment of house rent @Rs.2000/- per month to the wife under Section 19(f) was also set aside by the learned Additional Sessions Judge by the impugned judgment.

[33] In gist, the Additional Sessions Judge upheld the direction of the trial court prohibiting the husband from committing any kind of domestic violence or aiding or abetting in the commission of any act of domestic violence upon the wife and by means of Crl.Petn. 53/2021 monetary relief as under Section 20 of the Act, the order for payment of 15,000/- to the wife was also upheld.

[34] In the instant case, during his cross- examination before the trial court the husband had categorically admitted that his monthly salary was 49,000/- excluding all deductions. He also admitted that he gave nothing towards maintenance of his wife from 13.12.2015. His statement is reproduced as under:

"At present my gross salary is 49,000/- excluding deductions. It is true that I have not given any maintenance to my wife since 13.12.2015." [35] Section 20 of the DV Act provides for payment of monetary relief to the aggrieved person which reads as under:

"20. Monetary reliefs.--(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,--

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an 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.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

Crl.Petn. 53/2021 (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent." [36] Under Section 3 of the DV Act which defines domestic violence, 'economic abuse' is a form of domestic violence. Clause (iv) of explanation I of Section 3 relates to 'economic abuse' which includes deprivation of all or any economic financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise. The said clause (iv) of the Explanation I of Section 3 of the DV Act, reads as under:

"(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

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(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the

shared household."

[37] In the present case, obviously the wife is legally entitled to maintenance allowance from her husband who is a salaried government employee. She has made out a good case justifying her separate living. Admittedly, she is a housewife and she has no source of earning whereas the husband draws a monthly salary of 49,000/- excluding all deductions. In these circumstances, denial of maintenance allowance to the wife obviously causes 'economic abuse' to her within the meaning of domestic violence as under Section 3 of the DV Act. There is, therefore, no infirmity in the impugned judgment.

[38] In so far as the quantum of monetary relief is concerned, it is asserted by the husband in his memo of appeal that the Family Court, Agartala in Misc. case No. 463 of 2017 also directed the husband to pay monthly maintenance allowance of 6,000/- to his wife and it has been averted by the husband that the learned trial court as well as the appellate court committed error in not taking into account this amount while determining the amount of monetary relief in the proceeding under the DV Act. The Apex Court in case of Rajnesh vs. Neha (supra) has held that maintenance provided in a previously instituted proceeding can be adjusted or set off in the subsequent proceeding. Though the husband has not produced any document with regard to his averment that there is an order passed by the Family Court for Crl.Petn. 53/2021 payment of monthly maintenance allowance of Rs.6000/- to the wife, such amount, if any, shall be adjusted towards the said amount of 15,000/- in view of the directions issued by the Apex Court in the case of Rajnesh vs. Neha(supra).

[39] The husband will, therefore, pay 15,000/- to his wife as monetary relief as directed by the Additional Sessions Judge by the impugned judgment w.e.f the date of filing of the petition i.e. from 01.10.2018. The said monetary relief shall be paid by the husband by depositing the same in her savings bank account. The learned Judge, Family Court Agartala will determine the mode of payment of the outstanding arrear till 31.01.2021 after issuing notice to the parties and hearing them in person. If the husband fails to pay the arrear, the same shall be deducted from his salary and paid to the wife." [13] Now, appearing for the petitioner husband in the present Criminal petition, learned Sr. Advocate contends that this court is not powerless to review or alter its judgment passed in Criminal Revision Petition No.36 of 2020. Having relied on the decision dated 05.10.2021 of the High Court of Delhi in Crl. Rev. P. No. 549 of 2018 [URVASHI AGGARWAL AND ORS VS. INDERPAUL AGGARWAL], learned counsel contends that in terms of the legislative scheme of Section 125 and 127 Cr.P.C court does not become functus officio after a judgment/order relating to maintenance allowance is passed. Court has power to review its judgment or final order if the circumstances so required. Crl.Petn. 53/2021 Counsel has relied on para 4 and 5 of the said judgment of the High Court of Delhi which read as under:

"4. At the outset, this Court finds it pertinent to state that the embargo contained in Section 362 Cr.P.C., which prohibits the Court from altering or reviewing its judgement or final order disposing of the case, is inapplicable to an Order of maintenance passed under Section 125 Cr.P.C. The Saving Clause contained in Section 362 Cr.P.C. entails that the rigour of the provision is relaxed in two conditions, i.e. save as otherwise provided by (i) the Code of Criminal Procedure or

(ii) any other law for the time being in force.

5. In *Sanjeev Kapoor v. Chandana Kapoor and Ors.*, (2020) 13 SCC 172, the Supreme Court had observed that the legislature was aware that there were situations where altering or reviewing of criminal court judgement were contemplated in the Code itself or any other law for the time being in force. Noting that Section 125 Cr.P.C. was a social justice legislation, the Supreme Court held that a closer look at Section 125 Cr.P.C. itself indicated that the Court after passing judgment or final order in the proceedings under Section 125 Cr.P.C. did not become functus officio, and that the Section itself contains express provisions wherein an Order passed under Section 125 Cr.P.C. could be cancelled or altered, and that this was noticeable from Sections 125(1), 125(5) and 127 Cr.P.C. Therefore, the legislative scheme as delineated by Sections 125 and 127 Cr.P.C. clearly enumerates circumstances and incidents provided in the Code where the Court passing a judgement or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, relaxed in proceedings under Section 125 Cr.P.C."

[14] It is further contended by the counsel of the petitioner that the petitioner has moved the present Crl.Petn. 53/2021 criminal petition seeking review of the judgment of this court in extraordinary circumstances. According to Mr.Kar Bhowmik, learned Sr. Advocate, the petitioner who is serving as a UDC in the court of Judicial Magistrate First class (Court No.5) at Agartala draws a monthly salary of Rs.63,000/- and after compulsory deductions under various heads, he draws carry home pay of only a sum of Rs.54,682/-. His son who is staying with him is a student of class-XII who would be appearing in board examination. Petitioner incurs a regular monthly expenditure of Rs.8,000/- towards his tuition fees. This apart, his dependent mother is 87 years' old who has been suffering from various ailments. Since wife of the petitioner is not staying with him, the petitioner has engaged a nurse to look after his mother round the clock who is paid Rs.8,000/- per month. This apart, petitioner also spends Rs.6,000/- per month in purchasing medicine for his ailing mother. Petitioner had also taken a house building loan of Rs.10 lakhs from SBI in 2015 for which he is paying a monthly installment of Rs.14,000/-. Counsel also contends that petitioner has paid Rs.2,74,000/- till date to his wife as Crl.Petn. 53/2021 arrear maintenance allowance and for paying this amount he had taken bank loan of a sum of Rs.3 lakhs from the TLA House branch of SBI. According to learned counsel, the petitioner has been paying the additional monthly installment of Rs.5,800/- to SBI TLA House branch towards repayment of such loan. Learned counsel submits that after incurring this huge recurring expenditure, he is unable to pay a monthly sum of Rs.15,000/- to his wife as monetary relief. Counsel therefore, requests the court to consider the crisis of the petitioner and provide relief to him by reducing the amount of monetary relief payable to his wife to a reasonable sum.

[15] Mr. Raju Datta, learned counsel appearing for the respondent wife on the other hand contends that the present petition is not maintainable because this court has become functus officio after it has passed the judgment in Crl.Rev.P.No.36 of 2020. Counsel contends that now there is no scope to review or alter the judgment in view of the provision laid down under Section 362 Cr.P.C. Mr. Raju Datta, learned counsel, contends that only arithmetical or Crl.Petn. 53/2021 clerical errors, if any,

may be removed. Counsel contends that the questions raised by the counsel of the petitioner with regard to the income and liabilities of the respondent husband, have already been examined and resolved in criminal revision petition No.36 of 2020. Now the petitioner cannot re-agitate those issues once the judgment has been passed. In support of his contention learned counsel has relied on the decision of the apex court in the case of ATUL SHUKLA VERSUS STATE OF MADHYA PRADESH AND ANOTHER reported in (2019) 17 SCC 299 wherein the apex court set aside the order of the high court whereby the high court recalled its earlier order in exercise of power under Section 482 Cr.P.C. The apex court held that in view of the specific power contained in Section 362, the impugned order of the high court was unsustainable and such an application for review or modification could not have been entertained.

[16] Mr. Datta, learned counsel appearing for the respondent wife has further relied on the decision of the Apex Court in STATE OF MADHYA PRADESH VERSUS MAN Crl.Petn. 53/2021 SINGH reported in (2019) 10 SCC 161 wherein the Apex Court has held that high court has no jurisdiction to review its order either under Section 362 or under Section 482 Cr.PC after disposing a case on merit. Counsel has referred to the observation of the apex court made in paragraph 7 of the judgment which reads as under:

"7. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 CrPC. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers."

[17] Mr.Raju Datta, learned counsel also refers to an earlier decision of the Hon'ble Supreme Court in the case of STATE OF KERALA Versus M.M.MANIKANTAN NAIR reported in (2001) 4 SCC 752 wherein the apex court held that Section 362 of the Act prohibits the court after it has signed its judgment or final order disposing of a case from altering or reviewing the said judgment or order except to correct a Crl.Petn. 53/2021 clerical or arithmetical error. Counsel has referred to paragraph 6 of the judgment which reads as under:

"6.The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed. By the first order dated 31-05-2000, the High Court rejected the prayer of the respondent for quashing the criminal proceeding. This order attained its finality. By the

impugned order, the High Court reversed its earlier order and quashed the criminal proceeding for want of proper sanction. By no stretch of imagination it can be said that by the impugned order the High Court only corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done as there is no such provision under the Code of Criminal Procedure, but there is an interdict against it."

[18] The issues now raised by the petitioner have already been considered by this court while delivering the judgment in Crl. Rev.P.No.36 of 2020. Admittedly the respondent is the wife of the petitioner. It is not disputed that the petitioner is a salaried employee whereas his wife Crl.Petn. 53/2021 has no income to maintain herself. Admittedly petitioner's monthly salary exceeds Rs.62,000/- . When the judgment was passed in Crl.Rev.P.No.36 of 2020, income of the petitioner, his liabilities and the status and needs of his wife and all other relevant factors were taken into consideration to determine the amount of monthly monetary relief for his wife. The learned counsel could not make out any new ground to reconsider the same. Moreover, in view of the judgment cited to supra this court cannot reopen the case and review/recall its judgment for modification. [19] Resultantly, the petition stands dismissed.

Interim application(s), if any, shall also stand disposed of.

Petitioner is directed to comply with the order. Send down the LCR.

JUDGE Saikat Sarma, PS-II Crl.Petn. 53/2021