

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 820/2018 & CRL.M.A.32656/2018**

Date of decision: 05th April, 2021

IN THE MATTER OF:

JAIVEER SINGH

..... Petitioner

Through: Mr. Neerad Pandey, Advocate

versus

SUNITA CHAUDHARY

..... Respondent

Through: Mr. D.K.Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition is directed against the order dated 16.07.2018, passed by the Principal Judge, Family Court, Karkardooma Court, Shahdara District in MT-327/14, directing the petitioner/husband to pay maintenance at the rate of Rs.17,000/- per month to the respondent/wife from the date of the order i.e. 16.07.2018.

2. The marriage between the petitioner and the respondent was solemnized on 07.06.1985. Out of the wedlock, parties had three children two sons were born in the year 1987 and 1989 respectively and one daughter was born in the year 1991. The daughter passed away in the year 2010. Both the sons have attained majority. They are well settled.

3. It is stated that the parties are living separately since 2012. The respondent/wife filed a petition under Section 125 Cr.P.C for grant of maintenance stating that she was treated with cruelty and was thrown out of

the house in the year 2012 and that she is unable to sustain herself and needs maintenance from her husband. It is stated that both the sons are well educated and are employed. At the time of petition under Section 125 Cr.P.C, the petitioner was a Head Constable. The petition states that the petitioner herein draws a salary of Rs.50,000/- per month. Apart from the salary the petitioner has also got agricultural land from which he is earning income. The respondent herein claimed Rs.25,000/- per month as maintenance. The petitioner filed a reply denying all the allegations of cruelty. The petitioner stated that he has taken care of his children and has given them good education. The petitioner has stated that the respondent is a working lady earning handsomely. It is stated that the respondent herein participates in *Jagrans* and does TV serials and she is in a position to take care of herself and it cannot be said that the respondent is unable to maintain herself. Both the parties have filed their respective affidavits of income.

4. By an order dated 20.10.2014, learned Family Judge, North-east District, Vishwas Nagar, directed the petitioner to pay Rs.9,500/- per month as interim maintenance to the respondent herein. By the impugned order the amount of maintenance has been fixed at Rs.17,000/- per month.

5. Heard Mr. Neerad Pandey, learned counsel appearing for the petitioner and Mr. D.K.Sharma, learned counsel appearing for the respondent and perused the documents.

6. Mr. Neerad Pandey, learned counsel appearing for the petitioner states that the respondent has given a Statement under Section 165 of the Indian Evidence Act which reads as under:

“Statement of Ms. Sunita Chaudhary w/o Shri Jaiveer

Singh d/o Shri Subedar Ramvir Singh, age 38 years, housewife, r/o H. No. Nil, Gali No. 2, Azad Nagar, Near Railway Station Baraut, U.P.

On SA

I have been living at the above address for the last about one year. I had been living at Bhagirithi Vihar for the period about 7-8 years. At the time of filing of Writ Petition, I was residing at Bhagirithi Vihar. I was doing modeling of and on. I was having very low income from this profession. I never file any income-tax return. I am without work for the last 6-7 months. I have Bank Account in UCO Bank, Patiala House, Delhi (Witness produced photocopy of the pass book, photocopy of same is marked as Mark A). I am not having any Bank Account. I do not have any insurance policy or FD. My both the sons are in service and they are earning enough. Their income is more than my husband. I did not file case of the maintenance against my sons at the advise of my Counsel Shri D.K. Sharma, Advocate.”

He would state that as per her own statement she was doing modelling and that it was for the her to establish that the income earned by her is so less that she cannot maintain herself. The learned counsel for the petitioner further state that the this statement amounts to an admission under Section 26 of the Indian Evidence Act. The learned counsel for the petitioner also took this Court through evidence of income filed by the respondent herein. He has taken this Court through certain covers of magazines and also newspaper articles to establish that the respondent is employed and is capable of maintaining herself.

7. On the other hand, the learned counsel for the respondent supports the impugned judgment and states that the order does not

require any interference by the Court exercising jurisdiction under Section 397/401 of the CrPC.

8. The factum of marriage between the petitioner and the respondent is not denied. The Supreme Court in Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, has stated that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Supreme Court has observed as under:

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005

SCC (Cri) 787 : (2005) 2 Supreme 503].

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. **Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.** (emphasis supplied)

9. The Supreme Court in Rajnish v. Neha, (2021) 2 SCC 324, has categorically laid down the criterion for determining the quantum of maintenance. The Supreme Court observed as under:

“III. Criteria for determining quantum of maintenance

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 [Manish Jain v. Akanksha Jain, (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.

84. The Delhi High Court in Bharat Hegde v. Saroj Hegde [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the*

claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.” (emphasis supplied)

10. A perusal of the law laid down by the Supreme Court would indicate that the proceedings under Section 125 Cr.P.C have been enacted to remedy/reduce the financial sufferings of a lady, who was forced to leave

her matrimonial house, so that some arrangements could be made to enable her to sustain herself. It is the duty of the husband to maintain his wife and to provide financial support to her and their children. A husband cannot avoid his obligation to maintain his wife and children except if any legally permissible ground is contained in the statutes.

11. In the present case, the petitioner relies only on the statement given by the respondent under Section 165 Indian Evidence Act. A perusal of the above mentioned statement would show that though the respondent admits that she was doing modelling of and on but she was earning very low income from modelling. That statement by itself does not mean that the respondent is able to sustain herself. Her affidavit of income does not show that she is earning enough to sustain herself. The onus then shifts on the petitioner to show as to how much the respondent is earning and that is sufficient to maintain herself. The petitioner has not brought any evidence to establish that the respondent is earning sufficient to maintain herself. It is well settled and the Supreme Court has time and again laid down that newspaper clippings etc. are not evidence. Apart from filing a few covers of magazines and one newspaper clipping nothing has been filed by the petitioner to substantiate that the respondent is earning sufficient income to maintain herself. The petitioner at present is working as an ASI, both his sons are majors and are well employed and the petitioner is not under any obligation to maintain his two children but he is under a legal obligation to maintain his wife. The respondent herein is forced to stay alone. When pointedly stated as to whether the petitioner has filed any petition for divorce, the learned counsel for the petitioner states that the children did not want the petitioner to take divorce from his wife. In view of the above, it

becomes the moral and legal obligation of the petitioner/husband to maintain his wife. Considering the fact that the petitioner is an ASI, having virtually no other liability, he can pay Rs.17,000/- per month to the respondent/wife who otherwise is not able to maintain herself.

12. It may be stated here that though in Rajnesh v. Neha (supra) the Supreme Court has held that the maintenance is payable from the date of the application and the impugned judgment directs the petitioner herein to pay maintenance only from the date of the order, keeping in view the fact that the respondent has not challenged the impugned order, this Court is not inclined to use its *suo motu* powers to direct the petitioner to pay maintenance at the rate of Rs.17,000/- per month from the date of the filing of the petition under Section 125 Cr.P.C.

13. The scope of the jurisdiction of the High Court under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, the Supreme Court observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based

on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie.

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. **Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.** On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)*

14. The petitioner has not been able to point out any perversity in the impugned order. The petitioner is an ASI and is earning well so as to pay Rs.17,000/- to his wife who has no stable source of income. No material has been placed on record to show that the respondent is able to sustain herself. Magazine covers are not sufficient evidence to demonstrate that the respondent can sustain herself.

15. In view of the above, this Court does not find any infirmity with the impugned judgment. Accordingly, the revision petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J

APRIL 05, 2021

Rahul

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