

22.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 78/2009

% Judgment Delivered on: 14.09.2010

MADHU TANEJA Petitioner
Through : Mr. J.C. Mahindroo, Adv. along with
the petitioner.

versus

SANJAY TANEJA Respondent
Through : Mr. Somnath Bharti, Adv. along with
the respondent.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Present petition is directed against the Order dated 11.12.2008 passed On an application filed by the petitioner (wife) for enhancement of maintenance.
2. Brief facts, which are necessary for disposal of this petition, are that marriage between the parties was solemnized on 11.9.1997. A son was born out of their wedlock in the year 1999. The parties are stated to have separated since May, 2001. Thereafter the respondent (husband) filed a petition under Section 13(i)(a) of the Hindu Marriage Act on 18.10.2002. In the year 2003, the petitioner wife made an application under Section 24 of the Hindu Marriage Act, which

was disposed of by an order dated 2.9.2003 awarding maintenance @ ₹ 5000/-, per month, to the petitioner wife and her minor son, besides litigation expenses in the sum of ₹3000/-. The petitioner wife also made an application under Section 125 Cr.P.C. in which she was awarded maintenance @ ₹ 3000/-, per month, besides ₹ 1500/-, per month, for the minor child. The order made under Section 125 Cr.P.C. was challenged and the amount of maintenance was increased from ₹ 4500/-, per month, (in total) to ₹ 5500/-, per month. As the petitioner wife was unable to cope up with the financial pressures she made an application for increase of maintenance under Section 24 of the Hindu Marriage Act. By the impugned order dated 11.12.2008 the maintenance was increased from ₹ 5000/-, per month, to ₹ 6000/-, per month.

3. Learned counsel for the petitioner submits that having regard to the present price index and taking into consideration that the petitioner wife has no other source of livelihood the petitioner finds it almost impossible to maintain herself and her son, who is studying in Class VII. It is further submitted that petitioner wife is staying with her father and she has to pay a sum of ₹ 1800/- per month, towards the school fee of her son besides various other expenses including uniform, books, tuition, etc. The petitioner wife has also to maintain herself taking into consideration the standard of living, which she is used to. It is also submitted that the respondent

husband is residing with his mother and father at Mehrauli in a house built up on a plot of land measuring 180 sq. yards. It has not been disputed that sisters of the husband are already married and the other brother of the respondent is residing at Revari.

4. Respondent has also not disputed during the course of hearing that he is carrying out his business of finance of consumer durable items at a shop from Malviya Nagar. He has also stated during the course of hearing that the shop belongs to his brother but he is not paying any rent to his brother but he is paying property tax and other dues of the shop. He has also submitted that he is a graduate and also obtained a diploma in pharmacy and his monthly income is only ₹ 10000/-, per month. In support of this, the respondent has filed copy of his Income Tax Return for the year 2008-2009, which shows the gross income to be ₹111007/- and within this income he is paying ₹ 31795/- towards his LIC premium.
5. Learned counsel for the respondent husband submits that keeping in view the earnings, the respondent is not in a position to pay any further maintenance to the wife and the child. The basic thrust of the argument of learned counsel for the respondent is that females have an equal capacity of earnings and the petitioner should also maintain the son as maintenance of the son is their joint liability.

6. While relying on a judgment passed in Criminal Revision Pet. No.2367/2009 titled as **Sachin Kapoor vs. Simmi @ Nidhi & Another**, passed by a Single Judge of Punjab & Haryana Court, counsel submits that income tax return is a reliable piece of evidence as it cannot be forged, therefore, it should be treated as a conclusive proof of the income of the respondent.
7. Respondent, who is present in Court, has fairly stated that he is a graduate and also a diploma holder in pharmacy. He has entered into an agreement with another person to enable him to gain benefit of his licence in pharmacy.
8. I have heard counsel for the parties as also the respondent, who is present in person. The law with regard to fixing maintenance under Section 24 of the Hindu Marriage Act is well settled. In the case of **Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.**, reported at (1997) 7 SCC 7, it has been observed that neither of the parties disclose the correct and true income therefore the Courts have to do some guess work to arrive at a fair and just figure. Para 8 of the judgment reads as under:

"8. The wife has no fixed abode of residence. She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand the husband has sufficient income and a house to himself. The Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and

circumstance of each case. Some scope for leverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs.5,000/- per month payable by respondent-husband to the appellant-wife."

9. The Apex Court has held that while disposing of an application under Section 24 of the Hindu Marriage Act, courts must also take into consideration the status of the parties as also it should be seen that the order should not be punitive in nature nor the maintenance awarded should be so low as to make the order meaningless. Statement of the respondent husband was recorded in Court on 26.8.2010 wherein he had stated that he owns a mobile phone, which he had purchased about six months back; he owns a Bajaj motor cycle, which was purchased four years back; and he had sold his car (Hyundai Santro). Besides this he does not possess any credit card. While there is no quarrel to the proposition that an income tax return is the reliable piece of evidence as it cannot be forged it does not mean that the income which has been shown in the income tax return is to

be treated as a gospel truth and reliable. In fact it is often observed that Income tax return of self-employed persons do not reflect the correct financial earning. At least in the facts of this case this cannot be the only inference in view of the fact that person who runs his business in a shop of which he is paying property tax and other dues cannot be earning less than ₹ 10000/-, per month, and even otherwise a person who earns ₹ 10000/-, per month, cannot be expected to be paying LIC premium of ₹ 31795/-, annually. Also the Income Tax Return does not reflect the earnings out of the agreement entered into with regard to the pharmacy licence. Thus, I am of the view that the husband is concealing his correct income both before the Income Tax Authorities as well as before the court.

10. Submission of learned counsel for the respondent that the amount of insurance premium should be deducted from his income can be of no help to this respondent as in case ₹31795/- is deducted from ₹ 111007/- it will barely reach a figure of ₹80000/-, annually, and a person who earns approximately ₹80000/-, annually, cannot be expected to be paying salaries and other expenses for running the shop, and also paying maintenance @ ₹ 5500/- to the wife and his son. The respondent has not disclosed his correct and true income. The respondent has also not placed any document on record to show the understanding/arrangement between

him and his brother with regard to shop and on what basis he is paying the property tax of the shop. There is nothing on record to show as to what is the arrangement between the respondent and his brother with respect to the shop and as to why the brother would give a shop in Malviya Nagar to his brother without any consideration. There is no explanation as to how the respondent is maintaining himself including petrol for the motor cycle, medical expenses and other expenses. The respondent has also not disclosed his arrangement with respect to the person with whom he has entered into an arrangement with regard to his pharmacy licence and the amount being received by him, as it is not possible that the respondent has allowed a stranger to take benefit of his pharmacy licence. Respondent has willfully not disclosed his true income from this Court. A rough idea of the facts which have been narrated hereinabove certainly show that the respondent husband is capable of paying further maintenance to his wife and school going child. The wife has no independent source of income and is struggling to bring up her child, thus, in these circumstances, it cannot be said that merely if she has the capacity to earn, she is not entitled to maintenance. The respondent is bound to maintain his wife and child. The maintenance is accordingly enhanced from ₹ 6000/-, per month to ₹ 15000/-, per month. It is pointed out by counsel for the parties that the application for

enhancement was made on 31.10.2005 and the petition for divorce has since been dismissed on 1.2.2010. The payment as per this order is to be made during this period after giving adjustment.

11. Petition stands disposed of in above terms.

September 14, 2010
'msr'

G.S. SISTANI, J.