

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

+ **Crl.Rev. P.No. 87/2010**

Reserved on : 28.04.2011
Date of Decision : 19.05.2011

SHRI JAI PRAKASH

..... Petitioner

Through: Mr. S. S. Dahiya, Adv.

Versus

SMT. RAM ROSHNI

..... Respondent

Through: Mr. M. K. Vaid, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. This is a criminal revision petition filed by the petitioner against the order dated 30.11.2009 passed by the learned Principal Judge, Family Court, Dwarka, in M. No. 171/2009 under Section 127 Cr.P.C. in case titled **Smt. Ram Roshni Vs. Shri Jai Prakash** wherein the maintenance of Rs.500/- was enhanced to Rs.2,000/- per month from the date of filing of the petition i.e. **15.05.2003** and Rs.2,500/- from the date of order i.e. 30.11.2009 till the time she is legally entitled.
2. Briefly stated that facts of the case are that the respondent was awarded a maintenance of Rs.500/- by the learned

Metropolitan Magistrate, Delhi vide order dt. 4.5.1995 in pursuance to the proceedings initiated by her under Section **125 Cr.P.C.** It may be pertinent here to mention that after the amendment in Cr.P.C. w.e.f. 24.09.2001, the Court is empowered to fix the maintenance as per the earning capacity of the respondent. The respondent filed a petition under Section 127 Cr.P.C. in the Court of Ms. Deepa Sharma, the learned Principal Judge, Family Court, Dwarka, New Delhi on 15.05.2003 that is after a lapse of eight years from the date of grant of maintenance. She prayed that the amount of maintenance be increased from Rs.500/- per month to Rs.5,000/- per month as there has been a change in the income of the petitioner apart from the fact that he owns a kothi in his name. It was alleged that the petitioner was earning a rental income also. The petitioner contested the claim of the respondent for enhancement and stated that he himself is dependent on his parents for his own existence. It has been stated by the petitioner that he is a poor man and unemployed. As a matter of fact, he is living on the charity of his brother. It was also stated by him that he is having only 5 Kanal 8 Marlas of agricultural land which is barren and unirrigated. The factum of maintaining a dairy and consequently the income on account of dairy was also denied by him. The petitioner had stated that he is only

earning about Rs.**4,500/-** per month excluding the expenses from his land. The learned Principal Judge after permitting the parties to adduce the evidence with regard to the enhancement of maintenance heard the arguments and passed the impugned order by virtue of which the maintenance of Rs.500/- was increased to Rs.2,000/- per month with effect from 15.05.2003 and Rs.2,500/- per month from the date of order till the time she is legally entitled to the same.

3. The reasoning which has been given by the learned Principal Judge for enhancement was that, there is an increase in the cost of living considerably from 1995 till dated, and consequently, the increase is justified.
4. I have heard the learned counsel for the parties and have also gone through the record.
5. The main contention of the learned counsel for the petitioner is that the order of enhancement which has been passed by the learned Principal Judge is without any evidence & is based on the reasoning which is totally erroneous. It has been contended that the learned Principal Judge erroneously observed that since 1995 there has been an increase in the pay scale of the government employees (on account of pay commission in the year 1996

and 2006) but that cannot form the basis of enhancement of maintenance of the respondent.

6. It was further contended that there has been absolutely no change in the circumstances of the present petitioner further no cogent evidence has been brought on record by the respondent to show that the petitioner is earning any rental income or from diary or from agriculture, except that she has made a bald statement that petitioner is earning Rs.15,000/- to Rs.20,000/- per month. It has been stated that the observation passed by the learned Principal Judge that the present petitioner is an able bodied person, is equally applicable to the respondent herein. The learned counsel has also placed reliance on the judgment of this Court in case titled **Ritu Raj Kant Vs. Anita** 154 (2008) DLT 505, wherein the order of the learned Additional District Judge was set aside on the ground that no material was brought on record by the respondent and it was observed that the learned Court below has simply observed that the husband was an able bodied person. It was observed since the wife is equally able bodied, this would not be a ground for grant of maintenance. The learned counsel has also relied upon a judgment in case titled **N Sampath Vs. Rajkumari** AIR 2010 (NOC) 339 (MAD.)

7. The learned counsel for the respondent contested the claim of the petitioner and urged that there is no illegality, impropriety or incorrectness in enhancing the maintenance **from Rs.500/- to Rs.2,000/- and to Rs.2,500/-** on account of the fact that the cost of living has considerably increased, and therefore, even this bare minimum amount for existence of the respondent is only a hand to mouth.
8. I have carefully considered the respective submissions and have gone through the impugned order.
9. I do not find that there is any irregularity or incorrectness or illegality or impropriety in the order of enhancement passed by the learned Principal Judge. Though, it must be observed that the reference of the Fifth and the Sixth Pay Commissions by the learned Principal Judge was only for the purpose to support her point that from 1995 to 2009 i.e. almost after 14 years, there has been a considerable increase in the prices of essential commodities. It is in this background that the learned Principal Judge has referred to the factum that even the minimum wages of the skilled or unskilled workers both by the Central Government and the State Government has been considerably increased, therefore, this Court or for that matter the Court of learned Principal Judge cannot be oblivious to the realities of the life. An

amount of Rs.500/- per month which was sufficient for the bare minimum existence in the year 1995 would be grossly inadequate even to have one square meal a day in the present day conditions.

10. The contention of the learned counsel for the petitioner that the respondent has not produced any cogent evidence with regard to the income of the present petitioner, does not in my opinion cut any ice. If one looks at sub Section (1) of Section 127 Cr.P.C. it lays down a contingency for alteration in the maintenance allowance as a result of change in circumstances. It may be pertinent here to reproduce Section 127 Cr.P.C. which read as under:

“127. Alteration in allowance

[(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]”

11. It appears from the language of the aforesaid sub-Section that change in circumstances envisaged by it, is a change in pecuniary or other circumstances of a party paying or receiving allowance which would justify an increase or decrease of the amount of maintenance originally fixed.

The language of the section does not show that the section contemplates a change in the status of the parties. The word 'alteration in the allowance" clearly indicates that reference is to change in circumstances which would necessitate an alteration in the amount of allowance. In the instant case notwithstanding the fact that the respondent has not been able to produce any documentary evidence with regard to the income of the petitioner, the fact of the matter is that the petitioner himself admitted that he has 5 Kanal 8 Marlas land which is substantially a large chunk of land. The mere plea that the aforesaid land is unirrigated or barren in my view is only a ploy to get away from the liability to discharge his responsibility of paying maintenance, therefore, irrespective of the fact as to whether the petitioner's income has increased or not the fact of the matter remains as the cost of index has gone high, the essential commodities for existence of a person have become costlier and the prices have almost tripled if not gone higher, the order of maintenance have been justifiably varied in favour of the respondent by the learned Principal Judge.

12. I feel that the increase of the maintenance allowance from Rs.500/- to Rs.2,000/- from the date of filing of the petition and to Rs.2,500/- from the date of passing of the

order till the time she is legally entitled is appropriate and justified in view of the facts & circumstances of the case.

13. So far as the judgment of this Court in case titled **Ritu Raj Kant (Supra)** is concerned, that was a case where the maintenance was being claimed for the son against the step father and not against the natural father apart from the fact that the order was passed under Section 24 of the Hindu Marriage Act, therefore, the facts of that case were distinguishable from the facts of the present case. So far as the second judgment which has been relied upon is concerned, it is only a note, and therefore, it cannot be taken cognizance of.

14. For the aforementioned reasons, I feel that there is no illegality, impropriety or incorrectness in the impugned order passed by the learned Principal Judge thereby enhancing the maintenance allowance from Rs.500/- to Rs.2,000/- from the date of filing of the petition and to Rs.2,500/- from the date of passing of the order till the time she is legally entitled. Accordingly, the petition is without any merit and the same is dismissed.

V.K. SHALI, J.

May 19, 2011
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