

27.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 3/2009

% *Judgment Delivered on: 31.03.2011*

CHANCHAL CHAKRAORTY Petitioner
Through : Mr. Diwakar Singh, Adv. along with
petitioner.

versus

TAPASHI CHAKRABORTY Respondent
Through : Ms. Annu Narula and Mr. Abhay Kumar,
Adv. along with 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 21.11.2008 passed by learned trial court on an application filed by respondent (wife) under Section 24 of Hindu marriage Act seeking interim maintenance. The petitioner (husband) is aggrieved by the aforesaid order, by which the trial court has directed the petitioner to pay to the respondent a sum of ₹20,000/- as interim maintenance and ₹11000/- as litigation expenses.
2. Learned counsel for the petitioner submits that the trial court has failed to take into consideration the admitted documents, which have been placed on record by the petitioner, to show that the

petitioner is earning a sum of ₹44500/-, per month. It is submitted that the trial court has failed to consider that petitioner is paying for all the expenses of the minor son, who is studying in Doon International School, Dehradun, which is a boarding school. It is further submitted that in addition to maintaining the minor son the petitioner was looking after and contributing towards the medical expenses of his old and aged father, who was suffering from cancer and died on 27.02.2011. Additionally the counsel submits that the petitioner has the responsibility of looking after his mentally retarded sister. Counsel further submits that out of the salary of ₹44,500/- received by the petitioner approximately ₹12000/- to ₹15000/- per month is being spent on the education of the child and the annual expenditure of the school is approximately ₹1.13 lakhs. It is next submitted that in addition to this, the petitioner has to incur various other expenses towards other facilities such as providing of clothes, money for picnics, toiletries and other related items for the minor child.

3. It is submitted by counsel for the petitioner that as per his company's policy, which is applied universally, the petitioner has to make an investment of ₹1.00 lac in order to derive the benefit under the Income-tax Act. The petitioner next submits that the tuition fee of the minor child, which is about ₹79,000/- per annum is considered as an investment for the purpose of tax saving, and the petitioner is only to make a further investment of ₹21,000/- to

derive the income tax benefit. It is next submitted that trial court has exceeded its jurisdiction by assessing the income of the petitioner to be approximately ₹60,000/-, per month without any basis whatsoever. The petitioner has also placed on record his salary certificate and the income tax return in support of salary being received by him. It is next submitted by counsel for the petitioner that in case the income of the petitioner is divided into four parts, petitioner would be entitled to two parts, one part for the son and the other part for the wife as per the settled position of law. Accordingly it is submitted that learned trial court has erred in granting a maintenance of ₹20,000/- which is in excess of the share that the respondent, wife is entitled to.

4. Learned counsel for the petitioner submits that petitioner is spending more than one portion of the income towards the education expenses and other expenses of his son out of his own accord, while it is the responsibility of both parents to maintain the child and provide for his education and upkeep. Counsel further submits that in addition to looking after the minor son, petitioner is also paying a rent of ₹14,000/- per month; he also has to incur expenditure on the maintenance of his car; and pay EMIs towards the loan taken for the purchase of the same. In addition thereto the petitioner has to incur other day-to-day expenditure for himself.
5. It is submitted by counsel for the petitioner that the respondent is a well qualified person. She has a degree from Calcutta University in

B.A (Philosophy) and accordingly she is capable of maintaining herself and is not entitled to any maintenance.

6. Learned counsel for the respondent has refuted all the submissions and contentions of the petitioner. Learned counsel submits that trial court has rightly assessed the income of the petitioner to be over ₹60,000/-. It is next submitted that the petitioner has concealed his actual income, which is much more than ₹44,500/-, per month. Counsel further submits that respondent is entitled to enjoy the same status which she was enjoying in her matrimonial home. Counsel also submits that respondent has purchased a flat in Calcutta in the name of his mentally retarded sister, which is a benami transaction and the petitioner is receiving rent therefrom. In addition to salary, petitioner also owns one property in Calcutta, from which he is also receiving rent. Counsel next submits that the petitioner has large investments, which have been concealed from the Court. It is next submitted that petitioner enjoys a luxurious lifestyle which is evident from the copies of air tickets, which have been placed on record, to show that petitioner normally travels from Delhi to Calcutta and certain other places by air. Learned counsel submits that the petitioner drives an AC WagonR Car, while the respondent travels in buses. The counsel for respondent submits that in view of the aforestated amenities that are being enjoyed by the petitioner, it is clear that the petitioner is a man of

means. Accordingly, it is prayed that the maintenance awarded is proper and there is no infirmity in the order of the trial court.

7. Counsel for the respondent submits that in addition to the school fee petitioner does not spend a penny on his child as the break-up of the school fee, which has been handed over in court includes pocket money, charges for sports, charges for sports shoes and various other expenses, such as picnics, outings and other activities.
8. Learned counsel for the petitioner refutes the same and submits that petitioner in addition to the fee break up as provided in court also has to pay for toiletries and other expenses for the son, including medical expenses, expense incurred for picnics and other activities. It is also submitted that petitioner also provides pocket money in addition to the pocket money mentioned in the statement of accounts, which is only ₹300/-, per month and is insufficient.
9. Learned counsel for the petitioner refutes the submissions of the respondent and submits that the respondent has made baseless and wild allegations. It is submitted that petitioner does not own any immovable property. It is submitted that one property stands in the name of his father and the second flat in Calcutta was purchased out of the funds contributed by the family members for the future and security of the mentally retarded sister and no rent is being received by the petitioner from the same. It is next submitted that in the absence of any documents (rent records),

placing reliance on the rental income derived from the flat, which is not even in his name cannot be included in his income. In response to the frequent travels to Dehradun and elsewhere the counsel for the petitioner submits that petitioner is working with an event management company and it is for his official trips that he travels by air and petitioner's company pays for the air tickets.

10. I have heard counsel for the parties and also perused the order passed by learned trial court.
11. A preliminary objection has been raised by the respondent that present petition is not maintainable as Order 32 CPC has not been invoked as the case of the petitioner is that respondent is suffering from Schezofrania. However, in my opinion, neither any such objection was taken in reply nor such permission was taken on behalf of the respondent while moving a petition under Section 24 of Hindu Marriage Act nor this objection was taken or pressed at any time during the pendency of this matter since January, 2010. Accordingly, objection is without any basis and the same is dismissed.
12. The trial court awarded a sum of ₹20,000/- as maintenance to the wife, on the premise that given that the petitioner is incurring an expenditure of ₹40,000/- approximately, it cannot be expected that he is earning only ₹45,000/-.
13. The submissions made by counsel for the petitioner can be summarized as under:

- (A) The trial court has failed to consider that the petitioner is looking after all the expenses of the minor son, who is studying in a boarding school.
- (B) The trial court has over-looked the settled position of law that the earning spouse is entitled to two portions of the salary and one portion each is to be apportioned for the wife and the son.
- (C) The trial court has over-looked that the respondent is well-qualified and is capable of maintaining herself.
- (D) The trial court has not considered that the petitioner was maintaining his father, who was suffering from cancer and petitioner has to look after his mentally retarded sister. Petitioner has not purchased any immovable property, nor he has any rental income, nor, any document has been placed on record to this effect.

14. The submissions made by counsel for the respondent can be summarized as under:

- (A) Petitioner has concealed his true income.
- (B) Respondent is entitled to the same life-style, as was being enjoyed by her in the matrimonial home.
- (C) Petitioner has immovable property in his name and he is receiving rent.

(D) Petitioner is enjoying luxurious life-style which is evident from the fact that he travels by air and drives an AC WagonR Car.

15. I have carefully perused the order passed by the trial court, the pleadings as well as the documents placed on record. In support of his income, petitioner has placed on record his Income-tax return as also a certificate issued from his employer. There is nothing on record to suggest that the copy of the income-tax return and the certificate issued by the employer are unreliable and to be disbelieved. It is not in dispute that the son of the petitioner is studying in a boarding school in Dehradun and petitioner is not only paying his fee but is also looking after and taking care of all his needs and expenses. In fact the respondent had handed over in court a copy of the statement of account of Doon International School, Dehradun, where the son is studying, which shows the yearly expenditure to be ₹1,12,948/-. I find force in the submission of counsel for the petitioner that in addition to this amount the petitioner also has to incur expenditure for medical expenses and additional pocket money, as the statement of account shows that consolidated pocket money only ₹300/- is to be paid by the parents, which in today's day and age is extremely insufficient. It is also expected that the father would be spending money on the clothes, toys and other unlisted items, which the petitioner would be

providing to his son. I also find force in the submission made by counsel for the petitioner that earning spouse is entitled to two portions of the income and one portion each for the dependents. I also find that the petitioner has justified his travels by air, as he is working in Event Management Company and he would be entitled to travel by air. I also find force in the submission of counsel for the petitioner that the trial court has failed to take into account that petitioner was looking after his old ailing father who was suffering from cancer and died on 27.02.2011 and also has to look after his mentally retarded sister.

16. While fixing the maintenance the court should have taken into consideration that maintenance fixed should not be so harsh so as to make either spouse impossible to pay nor it should be unreasonably low.
17. It is trite law that a wife is entitled to a similar status as was enjoyed by her in her matrimonial home. However, the maintenance must not be so excessive that it is punitive for the party who has to pay it.
18. It is settled position of law that the law makes provision to strike a balance between the standard of living, status and luxuries that were enjoyed by a spouse in the matrimonial home and after separation. It has been held by the Apex Court that the needs of the parties, capacity to pay must be taken into account while deciding quantum of maintenance.

19. In the case of ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others***, reported at (1997) 7 Supreme Court Cases 7, it has been held as under:

“8. 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 liverage 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.”

20. The Supreme Court of India in the case of ***Jasbir Kaur (Smt.)*** (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision”.

21. Further in a recent decision the Apex Court in **Neeta Rakesh Jain v. Rakesh Jeetmal Jain** reported at AIR 2010 SC 3540, has laid guidelines which the courts may keep in mind at the time of fixing the quantum of maintenance.

“In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute”.

22. The purpose of section 24 of Hindu Marriage Act is to provide support to a spouse who has no independent source of income and is incapable of maintaining himself/herself. It is trite law that the term ‘support’ is not to be construed in a narrow manner so as to mean bare subsistence. It means that the other spouse, who has no independent source of income, is provided with such maintenance so as to live in a similar status as was enjoyed by her in their matrimonial home. It is the purpose of section 24 that the wife or the husband who has no sufficient source of income for her or his support or for the expenses of the proceedings must be provided with such reasonable sum that strikes equity between the spouses.

23. In the present case I find that the petitioner is willfully incurring the expenditure towards the minor son's education and upkeep; while it is the duty of both the parents to look after the maintenance and upkeep of the child. I find no force in the submission of the counsel for the respondent that the petitioner is merely paying for school expenses and does not pay a penny more. It is clear that the petitioner is providing for all the needs and requirements of the minor child. Further the counsel for the respondent has not been able to substantiate her claim that the petitioner is enjoying rental income from the properties. Further in view of the salary certificate of the petitioner which has been placed on record it shows that the petitioner is drawing a salary of Rs.44,500/-. Taking into consideration the settled position of law that states that two portions of the salary must be given to the spouse who is earning and one portion each would be granted to the other spouse and the child/children.
24. Taking into consideration the income of the petitioner to be ₹44,500/-, the respondent would be entitled to roughly ₹11,000/- per month. There is nothing on record to suggest that the petitioner has any rental income. The impugned order dated 21.11.2008 passed by trial court is modified to the extent that petitioner will pay maintenance to the respondent @ ₹12,000/-, per month, to be paid from the date of filing of the application under Section 24 of Hindu Marriage Act. The petitioner shall clear the

arrears, if any, within a period of two months from the date of receipt of this order.

CM NOS.14975/2010 & 17351/2010.

25. Application stands disposed of in view of the orders passed in main petition.

March 31, 2011
'msr'

G.S. SISTANI, J.