

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

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Judgment reserved on: 01st November, 2018
Judgment delivered on: 08th January, 2019

+ CRL.REV.P. 146/2017



PANKAJ CHAWLA

..... Petitioner

versus

DIVYA KAPOOR

..... Respondent

+ CRL.REV.P. 172/2017

DIVYA KAPOOR

..... Petitioner

versus

PANKAJ CHAWLA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.R.D.Singh, Adv. in CRL.REV.P. 146/2017
Mr. Osama Suhail, Ms. Samana Suhail and Ms. Bharti Tyagi,
Advs in CRL.REV.P. 172/2017

For the Respondents : Mr. Osama Suhail, Ms. Samana Suhail and Ms. Bharti Tyagi,
Advs. in CRL.REV.P. 146/2017
Mr.R.D.Singh, Adv. in CRL.REV.P. 172/2017

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 146/2017 & CRL.REV.P. 172/2017

1. These cross-petitions impugn order dated 19.01.2017, whereby, the Family Court has disposed of the interim maintenance application filed by the Wife – Divya Kapoor and directed the husband – Pankaj Chawla to pay

a sum of Rs.24,000/- per month to the wife. Crl.Rev.P.146/2017 has been filed by the husband, *inter alia*, on the ground that the respondent is not entitled to any maintenance and Crl.Rev. P.172/2017 has been filed by the wife contending that the interim maintenance, assessed by the Trial Court, is on a lower side and way below the expenditure being incurred by the wife.

2. Parties married on 30.01.2013 according to Hindu rights and ceremonies. They separated on 10.04.2014. Subject application has been filed under Section 125 Criminal Procedure Code, 1973 (Cr.P.C. for short) on 25.07.2014 by the wife claiming maintenance at the rate of Rs.60,000/- per month besides litigation expenses of Rs.44,000/-. It is contended that the wife has no source of income of her own to meet out the daily expenses and day-to-day needs.

3. The application has been opposed by the husband, *inter alia*, on the ground that the wife is highly qualified and there is no justification for granting maintenance to her. It is contended that she has a Post Graduate Diploma in Business Administration and has the capacity and capability to maintain herself to earn her livelihood and is deliberately, willfully, knowingly and intentionally sitting idle and has not made any honest and sincere attempt to apply for any job.

4. It is further contended that the husband is already paying ad-interim maintenance at the rate of Rs.12,000/- and the wife has failed to show actual or real expenditure and, as such, there is no justification for granting her maintenance over and above the said amount.

5. The Trial Court, by the impugned order, has found that *prima facie* the affidavit of income, assets and expenditure, filed by the parties, show that the husband is a man of means and has sufficient source of income to maintain his wife and, accordingly, assessed the interim maintenance at Rs.24,000/-.

6. Learned counsel for the husband, during arguments, has relied on a report of CIBIL pertaining to the wife, wherein, CIBIL has reported that the annual income of the wife is Rs.9,58,320/-. The report of CIBIL is disputed by the learned counsel appearing for the wife, *inter alia*, on the ground that the report does not disclose as to on what basis it is reported that the wife is earning and has an annual income as specified therein. Further, it is contended that since the husband works in a Bank, he has manipulated the report and further that an individual has no control or is not privy to the documents, based on which, such a report is created.

Analysis and Reasoning

7. Perusal of the record shows that the husband has not placed any document to show that the wife is presently employed or working and is having any income. The report of CIBIL *per se* cannot be relied on to establish employment or source of income. The report does not disclose any basis on which income has been reported by CIBIL. There is no reference to any foundational document based on which income has been stated in the report of CIBIL. Apart from the report of CIBIL, the husband has not been able to establish that the wife is employed or has any source of income.

8. Admittedly, the husband is employed as Vice President in Barclays Bank. Records of the husband pertaining to his employment with Barclays Bank has been placed on record. As per the records the husband's annual salary, effective from 01.03.2017, is Rs.38 lakhs, which is inclusive to Flexible Benefit Plan. The gross monthly salary reported is 2,24,000/-. After deduction of statutory taxes etc., the net income is reported to be Rs.1,78,700/-.

9. Documents of Barclays Bank further show that the husband is entitled to House Rent Allowance of Rs.7,60,000/- per annum. The Flexible Benefit Plan comprises of several allowances, i.e., Telephone Reimbursement, Leave Travel Allowance, Medical Reimbursement, Special Allowance, Lunch Allowance, Conveyance Allowance, Car Allowance, Driver Allowance, Fuel Reimbursement, etc.

10. As per the income expenditure affidavit filed by the husband, it is admitted, that the net salary received is about Rs.1,80,000/-. Expenditure sought to be shown is Rs.1,98,000/-. Some of the expenditures, which have been sought to be claimed by the husband in income expenditure affidavit, are included in the Flexible Benefit Plan, i.e., allowances payable to the husband which take his gross salary to Rs.38 lakhs. *Prima facie*, such expenditure would not be admissible as a deduction since the same are being reimbursed by the office where the husband is employed.

11. The purpose of maintenance is to ensure that the wife, who does not have any independent source of income and is not in a position to maintain herself, is entitled to subsist and maintain a livelihood similar to the one

that she was maintaining at the time when she was living with her husband in her matrimonial house.

12. Wife has claimed that she has a monthly expenditure of Rs. 98,000/-. This is disputed by the husband contending that the same is on a much higher side and has been inflated. One method to ascertain whether the expenditure claimed by the wife is reasonable or not, is to compare the same with the expenditure claimed by the husband.

13. If one were to do a comparative analysis of the expenditure, claimed by the husband and wife, the following emerges:-

Sr. No	Description		Amount claimed by the wife	Amount claimed by the husband
1.	Household Expenditure	Groceries/Food/ Personal Care/ Clothing	Rs.20,000/-	Rs.22,000/-
		Water	Rs.200/-	Rs.400/-
		Electricity	Rs.3,500/-	Rs.3,000/-
		Gas	Rs.600/-	Included in Household Expense above
		Telephone	Rs.1,000/-	Rs.1,000/-
		TV Cable/ Set-top Box charges & Internet services Maintenance, replacement and repair of household items, appliances and kitchenware items.	Rs 400/- TV 1000/- (general package of broadband services	Rs.500/- Included in Household Expense above
		Telephone	Rs.2,000/-	
		Domestic full time/ part time	Rs.1000/-	Included in Household Expense above
2.	Transport	(i) Car/Scooter	Rs.3000/-	Car (Swift)
		(a) Driver(s)		Rs.8000/-

		(b) Fuel		Rs.8500/-
		(c) Repair/Maintenance		Rs.3,000/-
		(d) Insurance		Rs.650/-
		(e) Loan Payment		
		(ii) Public Transport		As per requirement.
		(a) Bus		Yes
		(b) Taxi	Rs.1500/-	Yes
		(c) Metro	Rs.800/-	Yes
		(d) Auto	Rs.1500/-	Yes
3.	Medical Expenditure	Doctor	Rs.500 on an average for any general illness	Rs.1000/-
		Medication	Rs 500/- for any general illness	Rs.2000/-
		Hospitalization	Health insurance cover would be required of Rs15000/- per annum to meet any exigency	
		Other Medical Expenditure	Rs 500/- For physiotherapy per session not going because of money crunch.	
		Other (Specify)	Rs 2000/- on Lenses and solution per month	
4.	Insurance	LIFE	Life in the name of the complainant taken by the Respondent. Same is in possession of the Respondent.	Yes Rs.529/-
		Annuity	N/A	Rs.1096 (Term Insurance) Rs.2000

				(ULIP Plan)
		Householders	N/A	Nil
5.	Entertainment and recreation	Club	Was a member of "C Privileges", (it's a Holiday and Entertainment club at Janak Puri) with husband (Respondent), cannot use it, as detail and access is with Respondent.	Nil
		Health Club	Rs 3100 per month, to Celebrity Fitness Prior to separation was paid by the Respondent Presently due to financial crunch, deponent is unable to carry on the same.	Nil
		GYM	No.	Nil
6.	Holiday and Vacation		No Holiday/Vacation after separation. Went to International: Singapore & Bimtan National: Vashmo devi, Amritsar, Jai pur, All trips were with husband (Respondent) in 3-5 Star category hotels before separation.	Rs. 2000/- (Average monthly expense on trip to VAISHNO DEVI, being a devotee)
7.	Gifts		All the gifts are in the possession of husband and	Rs.2,000/-

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			<i>inlaws.</i>	
8.	<i>Pocket Money/ allowance</i>		<i>Rs.2,000/-</i>	<i>Rs.5,000/-</i>
9.	<i>Legal/ Litigation Expenses</i>		<i>As raised from time to time.</i>	<i>Rs.5,000/- per month</i>
10.	<i>Discharge of Liabilities</i>	<i>Credit Card(S) Payment</i>		
		<i>Hire Purchase/ Lease</i>		
		<i>i. Repayment OF Loan</i>		
		<i>a. House Loan</i>		<i>Rs.68,880/-</i>
		<i>b. Car Loan</i>		<i>Rs.6,000/- (for Father's Car)</i>
		<i>c. Personal Loan</i>		<i>INR. 22,371 EMI starting from 04.06.15)</i>
		<i>d. Business Loan</i>		
		<i>e. Any other loan</i>		<i>Rs.14,400/-</i>
		<i>ii. Name of the lender</i>		<i>HDFC-Bank, Credit Card Loan</i>
		<i>iii. Mode of repayment</i>		<i>As per Credit Card Statement.</i>
		<i>iv. Instalment amount</i>		<i>As above.</i>
		<i>V. Other personal liabilities</i>	<i>Have to return at least 2.5 Lakh to my Brother in law & sister and Rs 15,000 to friend for old laptop.</i>	<i>Rs. 12000/- Paid as Maintenance to the Petitioner.</i>
11.	<i>Miscellaneous</i>	<i>Newspaper, magazines, book</i>	<i>Rs.400/-</i>	
		<i>Religious Contribution /Charities</i>	<i>Rs.500/-</i>	<i>Rs. 2000/- to Mata Vaishno Devi as per MANNAT</i>
		<i>Other (specify)</i>		
12.	<i>Other Expenditure Not specified above</i>		<i>Rs.5000/ under various heads.</i>	<i>Rs. 5000/- (Includes: Bank Charges, Festival Expense, Rent and other Personal Expenses</i>
Total Expenditure			Rs.98,000/-	Rs. 1,98,600/-
Give Monthly Expenditure			Approx	

14. The expenditure claimed by the wife is far less than the expenditure which has been claimed under the corresponding heads by the husband. A comparative analysis of the expenditure items shown by the husband clearly establishes that the expenditure claimed by the wife is not on a higher side.

15. Though the expenditure claimed by the wife is about Rs.98,000/-, however, keeping in view of the income of the husband, I am of the view that the Trial Court should have fixed ad-interim maintenance at least at 1/3rd of the income of the husband.

16. Keeping in view of the totality of facts and circumstances, I am of the view that the assessment in the impugned order of interim maintenance of Rs. 24,000/- is on a lower side, the wife is entitled to interim maintenance, pending final adjudication of her application under Section 125 Cr.P.C., at Rs.50,000/- per month.

17. In view of the above findings, I find no merit in the petition filed by the husband. However, the petition filed by the wife is liable to be allowed and the wife is, accordingly, held entitled to interim maintenance at the rate of Rs.50,000/- per month instead of Rs.24,000/-.

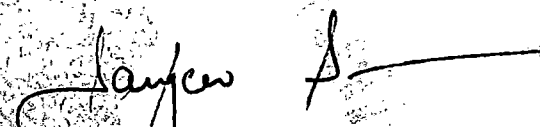
18. This amount of Rs. 50,000/-, as interim maintenance, shall be paid by the husband from the date of the impugned order, i.e., 19.01.2017. This would be in addition to the amount of Rs. 24,000/- directed to be paid by the impugned order from the date of the filing of the interim maintenance application till 19.01.2017. The husband shall clear the arrears of maintenance within a period of 4 months from today.

19. It is clarified that this Court has taken a *prima facie* view of the documents and the contentions of the parties and the Trial Court would be free to determine maintenance and the period from which it would be payable based on the evidence led by the parties without being influenced by anything stated herein. The amount paid by the husband under orders of this Court would be subject to adjustment, on final adjudication of maintenance by the Trial Court.

20. The petitions are, accordingly, disposed of in the above terms.

21. Order *Dasti* under signatures of Court Master.

JANUARY 08, 2019
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SANJEEV SACHDEVA, J



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