

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

+ **CRL.M.C. 2805/2013**

Date of Decision: December 22nd, 2015

GOPAL KRISHAN PODDAR Petitioner
Through **Mr.Abhishek Kumar, Adv.**

versus

BHAWAN PODDAR & ORS. Respondents
Through **Mr.Chandra Shekhar Yadav,**
Adv.with Mr.Sumit Purohit, Adv.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India against the judgment dated 6th March, 2013 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi and well as against the judgment dated 24th July, 2012 passed by learned Metropolitan Magistrate, Karkardooma Courts, Delhi whereby the maintenance of the respondents was enhanced from Rs.4,000/- p.m. to Rs.10,000/- p.m.

2. The brief facts as emerge from the records are that the marriage between petitioner and respondent no.1 namely Ms.Bhawna Poddar, was solemnized as per the Hindu rites and ceremonies on 7th December, 1996

and out of their wedlock, a child Master Mridul (respondent no.2 herein) was born on 11th March, 1998. In February, 2003, the respondent no.1 stopped cohabitation with the petitioner and finally deserted him in December, 2003 without any rhyme or reason from the house which was owned by the father of the petitioner. The respondents had filed a complaint under Section 125 of the Cr.P.C. for maintenance @ Rs.20,000/- per month for respondent no.1-wife and Rs.7,000/- per month for respondent no.2-child.

3. The learned Metropolitan Magistrate vide judgment dated 24.07.2012 assessed the income of the petitioner as Rs.20,000/- per month and awarded the maintenance @ Rs.5,000/- per month to each respondent from the date of the order. Respondent no.2 has been awarded maintenance till he attains majority or law otherwise permits. Thereafter, the petitioner-herein preferred a criminal revision against the order of the learned Metropolitan Magistrate vide CR No.100/2012. The said revision petition was dismissed by the learned Additional Sessions Judge vide order dated 06.03.2013. Being aggrieved of the passing of the orders passed by the Courts below, the present petition has been preferred by the petitioner.

4. Learned counsel for the petitioner has submitted that due to cruelty inflicted upon the petitioner by the respondent no.1, he moved a divorce petition in which respondent no.1 filed an application under Section 24 of

the Hindu Marriage Act for maintenance. This application of the respondent no.1 was allowed and the maintenance for respondent no.1 & 2 was fixed at Rs.3,000/- and Rs.1,000/- per month respectively. It is submitted that this maintenance amount is being paid by the petitioner on a regular basis. It is further contended by learned counsel for the petitioner that besides the maintenance, the petitioner is also making payment of school fees, books, cloths, stationery etc. of the child after seeking assistance from his father.

5. Learned counsel for the petitioner has next contended that the learned Metropolitan Magistrate has wrongly passed the impugned order dated 24th July, 2012 without taking into account the facts and circumstances of the case and the evidence led by both the parties, thereby fixing the maintenance of Rs.5,000/- each to the respondents. The revision petition preferred by the petitioner against the impugned order dated 24th July, 2012 was dismissed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi.

6. It is alleged that the respondent no.1 has deserted the petitioner without any cause and as such, she is not entitled for any maintenance. It is further alleged that the learned M.M. has hypothetically assessed the income of the petitioner as Rs.20,000/- p.m. whereas his income was only Rs.4,000/-. It is contended that the learned M.M. has failed to appreciate the fact that the maintenance of minor child and the expenses borne on

books, uniform, cloths and other necessary articles, were being looked into and paid by the father of the petitioner out of love and affection. The judgment of the learned MM is also challenged on the ground that the observation made by the learned MM on the status of the petitioner from the investment in IDBI bonds and opening of account is baseless as the said IDBI bonds for Rs.5,000/- were purchased by the petitioner in the name of respondent no.1 from the Sagan amount upon which a maturity sum of Rs.18,470/- was also received by respondent no.1 which was later admitted by the respondent no.1.

7. It is further alleged that the learned ASJ and learned M.M. have failed to take into consideration the fact that the respondent no.1 is a graduate from Delhi University and has done a course in Fashion Designing and that she is doing the work of stitching and embroidery since 2004 and earning more than the petitioner.

8. The respondent no.1 has filed a reply to the petition refuting the allegations made by the petitioner. Learned counsel for the respondent submits that the petition is liable to be dismissed as the judgments passed by the Courts below have been passed taking into consideration the evidence placed on record. It was further submitted that the courts below have rightly assessed the income of the petitioner at Rs.20,000/- per month. It is contended that the petitioner is a Graduate from Delhi University and the amount shown as salary is much less than even

minimum wages. Therefore, it was rightly held by learned M.M. & ASJ that the petitioner was definitely earning more than he was showing as he was admittedly paying Rs.6,500/- to the respondents as per his own showings. It is alleged that the present petition is also not maintainable on the ground that the petitioner is not regularly paying the maintenance amount and was in arrears of maintenance to the tune of Rs.85,000/- as on January, 2014.

9. I have heard learned counsel for the parties at length and gone through the records.

10. Perusal of record shows that it was the admitted case of the petitioner himself that the respondent no.1-wife was not working anywhere and not earning any income from any source. Though, it has been submitted by the petitioner that it was the respondent no.1 who deserted the petitioner and has done a course in Fashion Designing and is good in stitching and embroidery work, but the fact remains that no evidence or material had been placed on record to show that she is gainfully employed or earning any money.

11. The evidence led by the parties and the material placed on record reveals that the petitioner-herein during his cross-examination had stated that he was a salesman in a readymade garments shop and was drawing salary of Rs.4,000/- per month, but he had not annexed any document to show that he was drawing salary as such. He admitted that he is the only

son of his parents and was residing with his parents. He stated that his father was running a imitation jewellery shop. He stated that he did not know whether his father had shown the amount of RS.2500/- given to him towards the school fee of his child in ITR or not. He further stated that his father spends on his food and clothing. He admitted that all the expenses relating to food, books, uniform, clothes and other essential of the child are born by him. He further stated that the books and stationery of the child were purchased at the time of admission in the new class and around Rs.3000-3500 were spent n the same which were born by him. He also stated that he used to give Rs.1000-1200 towards the uniform of the child and the expenses of food were included to the maintenance paid to the respondent no.1-wife in the HMA Court.

12. The sole question to be decided in the present case is the quantum of maintenance awarded by the learned Metropolitan Magistrate upheld by the Sessions Court. It has been categorically admitted by the petitioner-herein during his cross-examination before the trial court that he was paying Rs.2000-2500 as school fee of his child, but stated that it was paid by him after taking the same from his father. He could not say about the earning of his father. He also stated that he had no other liability except to maintain the respondents. He also stated that the expenses of his son/respondent no.2-herein regarding food, books, uniform, clothes and other essentials are borne by him and he spends

about Rs.3000-3500 at the time of admission of his son apart from Rs.1000-1200 on account of uniform.

13. The stand of the petitioner that he is earning only Rs.4000/- per month is not believable in view of own admission of the petitioner that he used to spend Rs.3000-3500 on account of food, books, uniform, clothes and other essentials of his son/respondent no.2-herein apart from expenses of Rs.1000-1200 towards uniform of his son.

14. In view of the above discussion, this Court is of the considered opinion that the concurrent findings recorded by the courts below are well reasoned and there is no illegality in the same in arriving at the income of the petitioner as Rs.20,000/- per month and the award of maintenance of Rs.5,000/- to the respondent no.1 & 2 each. The petitioner has failed to make out his case for invoking the inherent powers of this Court under Section 482 Cr.P.C.

15. In view of the above observations, the present petition is accordingly dismissed.

(P.S.TEJI)
JUDGE

DECEMBER 22, 2015
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