

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

Reserved on: 31.08.2015

Date of decision: 07.09.2015

+ CRL.REV.P. 480/2013

SANTOSH KUMARI & ANR Petitioner
Through: Mr. S.P. Mishra, Mr. Anil Bhatnagar
and Mr. K.K. Tiwari, Advocates along
with petitioners in person

versus

DHARMENDRA KUMAR Respondent
Through: Mr.Arvind Wishwabandu and
Mr.Ajay Kumar, Advocates.

+ CRL.REV.P. 569/2013 & CrI.M.A.15389-90/2013

DHARMENDRA KUMAR Petitioner
Through: Mr.Arvind Wishwabandu and
Mr.Ajay Kumar, Advocates.

versus

SANTOSH KUMARI & ANR. Respondents
Through: Mr. S.P. Mishra, Mr. Anil Bhatnagar
and Mr. K.K. Tiwari, Advocates.
along with petitioners in person

**CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

ASHUTOSH KUMAR ,J.

1. Both the petitions have been heard together and they are being disposed of by a common order.

2. The order dated 12.8.2004, passed in Maintenance Petition No.256/2011 by Judge-01, South, Family Courts, Saket Court Complex, New Delhi, has been impugned in both the petitions, whereby the respondent in Crl.Revision Petition No.480/2013 has been directed to pay a maintenance amount of Rs.6000/- per month to petitioner no.1 Santosh Kumari and Rs.4000/- per month to the minor daughter of petitioner no.1 from the date of filing of the petition i.e. 12.8.2004.

3. In Criminal Revision Petition No.480/2013, the petitioners who are the wife and the daughter of the respondent have challenged the aforesaid order on the ground of inadequacy of the quantum of maintenance, whereas the petitioner in Criminal Revision Petition No.569/2013, Dharmendra Kumar, the husband has challenged the aforesaid order on the premise that the order is unduly harsh to him.

4. The admitted facts are being reproduced below.

5. Santosh Kumari (Petitioner No.1) in Criminal Revision Petition No.480/2013 got married to Dharmendra Kumar, (petitioner in Criminal Revision Petition No.569/2013) at Delhi in accordance with Hindu religious rites. A report was lodged by Santosh Kumari to the ACP, CAW Cell, Amar Colony, New Delhi on 24.12.2003 that she was not being treated properly in her matrimonial home. With the intervention of the police and friends and well wishers, a compromise was arrived at on 16.11.2003. An assurance was given to Santosh Kumari that she would be treated well. Out of the wedlock of Santosh Kumari with Dharmendra, a girl child was born on 22.6.2004. The relationship between the spouses, according to Santosh Kumari

worsened and an FIR No.314/2004 (P.S.Kotla Mubarakpur) came to be registered against Dharmendra Kumar on 13.7.2004. It was alleged by Santosh Kumari that she was administered poison (mercury) in her food leading to her hospitalization for some time. Santosh Kumari and the minor baby were thereafter neglected by Dharmendra Kumar. Since there was no source of income of the wife and she and her child were totally dependent upon her husband who refused to maintain her, an application under Section 125 of the Code of Criminal Procedure was filed before the Family Courts, Saket.

6. Though some part of the aforementioned statement was not admitted by Dharmendra Kumar but there was no dispute with respect to the date of marriage, lodging of criminal case and the wife preferring a petition under Section 125 of Cr.P.C for her and her daughter's maintenance. According to Dharmendra Kumar, his wife, immediately after the marriage, started misbehaving with the near family members and relatives and pressurized him to stay separately from his parents. This led to filing of a false case in CAW Cell regarding cruelty and harassment for not bringing sufficient dowry. It was also stated by the husband that on wrong and incorrect set of facts FIR No.314/04 (P.S.Kotla Mubarakpur) was lodged against him and his other relatives under Sections 307/328/406/498A and 34 of the IPC. Dharmendra Kumar was arrested in the aforesaid FIR and he remained in police custody for some time. As a result of such incarceration, Dharmendra Kumar was suspended w.e.f. 15.7.2004 by his employer i.e. Rajya Sabha Secretariat. During the suspension period, the petitioner was awarded subsistence allowance. The further case of

Dharmendra Kumar is that he is required to maintain his ailing mother and children of his sister who has pre-deceased him and who are dependent upon him. It is also asserted by Dharmendra Kumar that his wife is a trained beautician and has been earning good money by putting her training to profitable use. Her father, it has been stated, is working as a driver with a private company.

7. Santosh Kumari, through her petition under Section 125 of the Code of Criminal Procedure, filed on 12.8.2004, sought maintenance amount of Rs.5000/- each for her and her daughter.

8. Before the Family Court, Santosh Kumari was examined as PW-1 who admitted of being married to Dharmendra Kumar on 5.3.2003 and delivering a girl child on 22.6.2004. She has deposed that all the dowry articles and her stridhan are still lying with her husband. In her deposition before the Family Court, Santosh Kumari has narrated about the inhumane treatment meted out to her. With respect to her financial status and that of her husband, she has stated that her husband worked as an IBM operator whereas she lived in a rented accommodation in Tuglakabad Extension on a monthly rental of Rs.2000/-. Rent receipts (Ex.PW-1/B1 to B5) have been produced as proof of the same. All the expenses are stated to have been made by her parents. The salary of her husband was stated to be Rs.15,000/- per month.

9. Dharmendra Kumar (RW-1) tendered his evidence by way of affidavit (RW-1/A) and relied upon documents which have been exhibited as Ex.RW-1/A to H. He has stated that his salary, at the relevant time was Rs.9725/- per month. A further statement was made

by Dharmendra Kumar that his mother was receiving pension after the death of his father. However, Dharmendra Kumar, had been maintaining the children of his sister (since deceased) whose husband worked as ASI in Haryana Police.

10. The Family Court after analyzing all the relevant facts came to the conclusion that Santosh Kumari and her minor daughter are required to be maintained by Dharmendra Kumar.

11. With respect to the quantum of maintenance the Court below took into account the guidelines given in *Bharat Hegde vs. Saroj Hegde*: 140 (2007) DLT 16, namely, (i) status of parties; (ii) reasonable wants of the claimant; (iii) independent income and property of the claimant; (iv) number of persons which the non-applicant has to maintain; (v) the amount required by the applicant to lead a similar lifestyle as he/she enjoyed in the matrimonial home; (vi) non-applicant's liabilities, if any; (vii) reasonable expenses for basic provisions; (viii) financial strength and the capacity of the non-applicant etc., and thereafter decided the quantum of maintenance.

12. From the records, it appears that Dharmendra Kumar did not place on record any material/evidence regarding the income of Santosh Kumari from her vocation as a beautician. On the other hand it was confirmed that Dharmendra Kumar is gainfully employed with the Rajya Sabha Secretariat. The gross salary of Dharmendra Kumar in the year 2012 was Rs.51,275/- p.m. and the net salary came to Rs.37,415/- p.m. The salary slip of Dharmendra Kumar reflected that Rs.15,000/- per month was being deducted as GPF. Santosh Kumari,

on the other hand, was held by the Family Court to be without any income.

13. The Family Court has rightly disbelieved the assertion of Dharmendra Kumar that he has been maintaining the children of his late sister. Admittedly, the brother-in-law of Dharmendra Kumar is an ASI in Haryana Police. Such an assertion of Dharmendra Kumar that he is required to maintain the children of his later sister is not acceptable for the reason that the father of those children is also well placed in life. Considering the aforementioned facts, the Family Court has awarded maintenance of Rs.6000/- to Santosh Kumari and Rs.4000/- per month to the petitioner No.2 in Crl.Revision Petition No.480/2013 who is the daughter of Santosh Kumari and Dharmendra Kumar. Otherwise also, a total of Rs.10,000/- as maintenance has been prayed for by the petitioner Santosh Kumari.

14. This Court does not find any anomaly/ flaw with the assessment regarding quantum of maintenance which is required to be paid by Dharmendra Kumar for the maintenance of his wife and daughter. The assertion of the petitioners in both the petitions are, therefore, not fit to be sustained in the eyes of law.

15. Both the petitions are dismissed.

16. However, the respondent in Crl.Revision Petition No.480/2013 who is the petitioner in Crl.Revision Petition No.569/2013 (Dharmendra Kumar) is directed to pay to Santosh Kumari and her daughter the maintenance amount of Rs.10,000/- in all (Rs.6000/- per month for Santosh Kumari and Rs.4000/- per month for the daughter of Santosh Kumari) by the 7th day of each calendar month, failing

which Santosh Kumari would be entitled to proceed against Dharmendra Kumar in accordance with law. It is also made clear that whatever arrears of the maintenance amount has accrued in the meanwhile, shall be paid in equal installments within a period of six months from today.

17. Both the petitions are disposed of accordingly.

Crl.M.A.15389-90/2013 in CRL.REV.P. 569/2013

1. In view of the petition having been dismissed, no orders are required to be passed in the instant applications.
2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 07, 2015

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