

CIVIL REVISION PETITION No.75 of 2016

ORDER:

The revision petitioner is the petitioner in I.A.No.473 of 2012 for interim maintenance under Section 24 of the Hindu Marriage Act (for short 'the Act') read with Section 20 of the Family Courts Act, pending disposal of F.C.O.P.No.1279 of 2011 maintained against her by her husband, for the relief of dissolution of their marital tie. Needless to say, she also filed petition under Section 9 of the Act in O.P.No.1063 of 2012, which is subsequent to the date of filing of the divorce application. It is pending the divorce application, she sought the interim maintenance. Undisputedly, there are criminal cases particularly C.C.No.1569 of 2014, outcome of crime No.527 of 2014 under Section 323 read with 506 I.P.C. for alleged causing hurt and criminal intimidation by her husband and inmates in respect of residential accommodation enjoyment provided as an interim measure pending disposal of D.V.C.No.236 of 2012 on the file of III Additional Metropolitan Magistrate, Hyderabad.

2. Undisputedly, in D.V.C.No.236 of 2012, there was interim measure of not only residential accommodation for shared residence from the joint family house or separate house of her husband as the case may be, but also Rs.4,000/- p.m. and said amount even made final and enhancement application made is not in consideration, which is after elaborate enquiry and she is enjoying the shared residence. The record speaks and it is also not in dispute that she is enrolled as an advocate on the rolls of the High Court and practicing, though claims she is not getting sufficient income there from. She did not file any proof regarding what is her income, if at all for the returns to be submitted irrespective of its taxable limit or not. According to her, her husband is still earning in a better position having earlier job resigned, though it is the contention of him that he lost job having been terminated and is with no avocation practically. In the factual scenario, the interim maintenance claimed under Section 24 of the Hindu Marriage Act by the wife against the husband, for a further sum in addition to what is awarded in the D.V.C.No.236 of 2012, was negated by the lower Court and the same is impugned in the revision.

3. A perusal of the order could not be demonstrated with any illegality or impropriety, for this Court to sit in revision within its limited scope, contemplated by Article 227 of the Constitution of India.

4. The learned counsel for the revision petitioner (wife) placed reliance on eight expressions of the different High Courts. One of the expression is of Delhi High Court in Lalit Bhola v. Nidhi Bhola^[1], wherein it was observed that in awarding interim maintenance either under Section 24 of the Hindu Marriage Act or interim maintenance *pendente lite* maintenance claim under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, the relevant factors to be considered are status of parties, liabilities, if any, of husband and number of persons to be maintained by husband etc., It is placed reliance from para-7 of the expression referring to another learned Single Judge expression of the Delhi High Court in **Dev Dutt Singh v. Smt.Rajni Gandhi (AIR 1984 Delhi 320)**, saying there is no mathematical formula but for by estimation out of guess work, as to any inflexible formula of 1/3rd or such other portion of the net salary of the husband to be awarded as maintenance to the wife. In fact, the subsequent expression placed reliance in Gaurav Nagpal v. Sumedha Nagpal^[2], Kondaparthi Leelavathi v. State of A.P.^[3], Sanjeev Sharma v. Sulaxmi Sharma^[4], Durga Prasad Ray v. Meenu^[5], D.Pradeep Kumar Rao v. D.Lathabai^[6], Rakesh Amarsinh Dami v. Bharti Rakesh Damir^[7], are in one voice mostly saying 1/4th out of net income of the husband to the wife, where he has no other dependents, is the just and reasonable sum and the other criteria is status of the parties, independent income of party making claim, number of persons including the non-applicants also if any to be maintained in determining the amount, which should aid the applicant to live in similar life and style of other spouse on provisions for food, clothing, shelter, educational expenses of children, any medical attendance and treatment to be kept in mind in making guess work to arrive the amount by the Court depending upon facts of each case. There is an observation in one of the expressions that award of maintenance under Section 125 Cr.P.C. including interim maintenance thereunder is no bar to claim interim maintenance under Section 24 of the Hindu Marriage Act or even under Section 20 of the Family Courts Act or even under Section 18 read with 3 of the Hindu Adoptions and Maintenance Act, but for to say in awarding subsequently, despite awarded in one or other way in the first matter, has to be taken into consideration for any entitlement further and in saying if at all further entitled, the highest sum to be collected either in both the matters including in the matter earlier awarded and subsequently further granted.

5. The sum and substance of the expression there from is that the means of the husband, his social status, capacity and other non-applicants to be maintained by the person against whom claim is made are all criteria to be kept in mind. Here, undisputedly, though there is no disentitlement by virtue of amount awarded in D.V.C.No.236 of 2012, once Rs.4,000/- p.m. awarded apart from shared

residence already provided as per order in D.V.C.No.236 of 2012 and she is a practicing advocate and she can independently prosecute her case, for this Court while sitting in revision against the impugned order of the lower Court negating claim of further maintenance, by virtue of all these factors, there is nothing to interfere.

- 6. Accordingly, this Civil Revision Petition is dismissed. No costs.
- 7. The miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:27-07-2016

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[\[1\]](#) II (2013) DMC 271 (Delhi)

[\[2\]](#) 2008(1) DMC 166 (DB)

[\[3\]](#) 2012(II) DMC 414

[\[4\]](#) 2012(III) DMC 282

[\[5\]](#) 2012(III) DMC 51

[\[6\]](#) 2012(III) DMC 480

[\[7\]](#) 2012(II) DMC 602