

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 2589 of 2012(O&M)

Date of decision : 08.09.2016

Suryasnata Das and another

..... Petitioners

versus

Nishikant Das

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Mandeep S. Vinaik, Advocate for the petitioners

Mr. Neeraj Kumar Jain, Senior Advocate with

Mr. Gagan Gupta, Advocate for the respondent

ANITA CHAUDHRY, J.

This revision is directed against the order dated 16.4.2012 passed by District Judge, Family Court Gurgaon who allowed Rs. 50,000/- per month as maintenance to the child while the prayer for maintenance to the wife was declined.

Few facts are necessary to be delineated.

The petitioner was married to Suryasnata Das in January 2001. A child was born to them in 2009. Differences cropped up after about 8 years of their marriage. The marriage had taken place at Cuttack in Orissa. The parties moved to Bhubaneswar. The wife returned to Gurgaon and took up a job with Quest Diagnostic Private Limited Gurgaon in April 2011. She brought her daughter along and started living with her mother. The child was admitted in a school in Gurgaon. The petitioner besides making allegations regarding demand of dowry and the harassment pleaded that the husband had neglected to maintain them since March 2011. The wife had claimed that she was earning a salary of Rs. 65,000/- per month and she was taking care of her mother and the minor daughter and was paying Rs. 24,000/- as rent for the accommodation and the husband was highly educated and was Director with Global Markets Standard Chartered Bank in

Mumbai and his annual income was Rs. 2.5 crores and was maintaining two Cars and claimed Rs. 5 lacs per month as maintenance for the petitioners and Rs. 2.5 lacs as litigation expenses. The husband took the plea that the wife had knowingly and willingly deprived him of the company of his child. He denied all the allegations levelled against him. He admitted that he was earning Rs. 5 lacs per month as salary. He had also pleaded that he was paying EMIs of properties in Mumbai besides Society maintenance charges. It was pleaded that he had purchased properties in Mumbai and Bhubaneswar in the joint name of deponent and petitioner No. 1 and the properties stand registered in joint names and they were purchased entirely out of the earnings of the Deponent. In the affidavit filed before this Court it was also mentioned that he had taken child plan in April 2012 and when their child would complete the age of 18, the insurer would pay Rs. 48 lacs to the child on attaining the majority and he was paying annual premium of Rs. 3.4 lacs. It was pleaded that he was spending approximately Rs. 1.54 lacs on expenses that should have been shared jointly by him and petitioner No. 1. He had also attached copy of his Salary Slip, Form 16 and Registration of his car.

During proceedings the respondent counsel had submitted that he had received instructions from his client that he was willing to increase maintenance of the child from Rs. 50,000/- per month to Rs. 1 lac per month subject to the outcome of the petition and it is on account of this offer the Coordinate Bench had directed the parties to file their separate affidavits indicating their gross income as well as the deposits and the net amount payable on 10.12.2015. An interim order was passed and it reads :-

“Parties are present. With the intervention of learned counsel the broad contours of the settlement have been worked out. It is stated that the parties jointly own 2 residential premises, one in Mumbai and one in Bhubaneswar. It has been agreed that the property at Bhubaneswar shall be sold to buy a residential property in the name of the minor-

Palak in the National Capital Region. It has further been agreed that as regards the house in Mumbai it has been agreed by the parties that they will both execute respective Wills in favour of Palak.

The respondent has further agreed that he will continue to pay an amount of Rs.50,000/- towards the expenses of Palak. He will also continue the recurring deposit of Rs.50,000/- per month in future to be handed over to Palak on her attaining majority. He has further stated that apart from this he is investing Rs.30,000/- per month in a child plan favouring Palak which also he would continue to do. He has also agreed that he would give an amount of Rs.25.00 lacs to the petitioner.

The petitioner has accepted all these statements and the parties have further agreed that this would bring an end to all their disputes. On the effectuation of this settlement the petitioner undertakes to withdraw the complaint she has filed under Domestic Violence Act as well as petition for maintenance at Gurgaon. The parties have further agreed that they would move to get their marriage dissolved by way of decree of divorce by way of mutual consent.

The petitioner have further agreed that the respondent would be at liberty to visit the child at Delhi (depending on the comfort level of the child) and will also have the right to take her away along with him periodically during the school vacations so that she can remain in touch with him and his family.

Learned counsel has however prayed for a short adjournment to work out the exact modalities of this broad settlement.

Adjourned to 17.12.2015 as requested to enable the counsel to draw out the compromise document which would be the basis for the settlement of this case.”

Subsequently the parties had stated that they were unable to agree on the settlement and sought more time to see if the settlement was possible but they could not arrive at any settlement and final arguments were heard.

Learned counsel for the petitioner had urged that there was great disparity of income and the trial Court worked out on the basis of felicitous argument that if the income of the wife is sufficient for her survival then the actual

income of the husband became irrelevant and the test should be that if the spouse is earning less than she should be put in the same position had they been together in the matrimonial home and had relied upon *Annurita Vohra vs. Sandeep Vohra, 2004(3) RCR(Civil) 362*. Reliance was also placed upon *Maneesh Mittal vs. Brij Bala, 2013(1) Law Herald (OP&H) 284, Radhika Narang and others vs. Karun Raj Narang and another, 2009(2) RCR(Civil) 319, Jyotsna Soafat vs. Gaurav Sofat, AIR 2011 Delhi 112, Manoj Kumar Singh vs. Stae of U.P. and another, 2013(3) ALJ 181*. It was also submitted that they have to look into the capacity of husband to pay and the wife and child are entitled to same status and when the income of the husband was over 10 lacs and the wife was earning only Rs. 65,000/- per month, she was also entitled to maintenance and all the sources should have been put together and then divided.

The submission on the other hand was that the wife after her marriage had attained her Post Graduate Degree and shifted without telling him and she was working in Jaslok Hospital in Bombay and she abandoned the home to pursue her career and was maintaining a car but did not give the details as to how she was paying the installments. It was urged that the husband was paying EMIs for the properties purchased in the name of husband and wife with no contribution from petitioner No. 1 and the husband is regularly paying the amount and he had offered to pay Rs. 50,000/- more during the proceedings and if there were more expenses and if details were given then he was willing to pay that amount for the child. It was urged that the respondent was paying yearly amount for the child plan. It was urged that the authorities referred to by the petitioner regarding pooling the resources is not under Section 125 Cr.P.C. and here the wife was living separately in order to pursue her own career and object of Section 125 Cr.P.C. was to prevent vagrancy and destitution and deserted wife is entitled to maintenance if she is entitled to maintain herself and the other questions are only to be decided in the

proceedings initiated under the Hindu Adoption and Maintenance Act and the proceedings under Section 125 Cr.P.C. are summary in nature and were enacted for a summary and speedy relief and these are tentative. Reliance was placed upon *Bhagwan Dutt vs. Smit Kamla Devi and another*, 1975(2) SCC 386, *Chaturbhuj vs. Sita Bai*, 2008(2) SC 316, *Nagendrappa Natikar vs. Neelamma*, 2014(14) SCC 452, *Shali Kumari Devi and another vs. Krishan Bhagwan Pathak*, 2008(9) SCC 632, *Haunsa Bai vs. Bal Krishna Krishna Badigar*, 1981 CR.LJ 110 and *Sikandar vs. Kamlesh*, 1995(3) RCR(Crl.) 782.

It would be necessary to reproduce Section 125 Cr.P.C., the amended provisions read as under:-

“125. (1) If any person having sufficient means neglects or refused to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself.

The jurisdiction of the magistrate to award maintenance is not strictly criminal in nature. The remedy provided under Section 125 Cr.P.C. is a remedy to secure reasonable sum by way of maintenance subject to a degree that may be decided by the competent Civil Court. A direct question came up for consideration in *Savitri vs. Govind Singh Rawat*, (1985) 4 SCC 337 where the issue of grant of interim maintenance was considered. The primary object of the legislation and the decision of the Apex Court and amended provisions expressly authorized the Magistrate to grant interim maintenance. The objects and reasons were referred to

in *Shail Kumari Devi's case (supra)*.

The Apex Court in *Nagendrappa Natikar case (supra)* was considering the matter where a compromise had been entered into between the husband and wife where they had agreed for a consolidated amount in proceedings under Section 125 Cr.P.C. A suit was thereafter filed under Hindu Adoption and Maintenance Act. The question that arose for consideration was whether husband and wife who had agreed on a consolidated amount, would preclude the wife from claiming maintenance under the Hindu Adoption and Maintenance Act. Para 10 of the judgment reads thus :-

“Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceeding though are governed by the provisions of Cr.P.C. and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.”

The legislations had provided a summary and speedy relief by way of maintenance to a wife and the maintenance granted under these provision are tentative under the law and the burden is placed upon the wife to show that the means with the husband are sufficient.

In the instant case the husband has requisite means. There is another inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirements that the husband must have neglected or refused to maintain his wife. There is sufficient material to show that the wife was earning. She is highly educated. She has not pleaded that she was unable to maintain herself. The wife is a qualified Doctor and has admitted that she is earning salary of Rs. 1,35,000/- in the affidavit submitted in

the Court of CJM Gurgaon. The copy of that statement is also available on record. The wife is earning a respectable salary. The petitioner has not placed on record details of the expenses incurred for the child per month. The husband had offered to pay the actual amount spent on the school fees and the other related expenses i.e. transportation, expenses made extra curricular activities and had given an affidavit in this regard. He had also started depositing Rs. 50,000/- beyond what was allowed by the Courts below to show that the child gets the best education.

I have gone through the record. On perusal of the petition, I find that the petitioner had failed to plead that she was unable to maintain herself. The only plea taken in para 31 of the petition was that she was unable to meet the continuous growing needs of the minor daughter for her education and upkeep and had resorted to borrow money. In para 34 it was only pleaded that respondent had neglected and had refused to maintain them.

The respondent had placed on record the tentative changes to show that the wife was living the same standard subsequent to her separation and it is reproduced below:-

Pre-location	Post-relocation
Ownership of residential properties in Mumbai and BBSR	Ownership of residential properties in Mumbai and BBSR
Last job “Jaslok Hospital, Mumbai	Current Job : Jaypee Hospitals, Noida (as per petitioner's cross examination)
Last salary : Rs. 25,000/- per month	Current Salary : Rs. 1,50,000/- per month (as per affidavit filed in the High Court)
Did not own a car, however, had a chauffer driven car at her disposal provided by the respondent	Owns a car and has a hired chauffer (as per CE)
Resided in an apartment complex in Mumbai	Resides in an apartment complex in Noida
Had a well saffed house	Has a well staffed house (as per Cross Examination)
Had gone on overseas holidays	Has gone on overseas holidays
Used to save Rs. 25,000/- per month for herself (Her entire	Saves about Rs. 40,000-50,000 per month (since she spends about Rs. 97,000/- per month as per

salary since the respondent used to foot all the expenses)	her Cross Examination – Rs. 15,000 for chid, Rs. 32,000/- towards rent and Rs. 50,000/- for living expenses that include expenses incurred for her parents; also corroborated in her bank statement)
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Admittedly the net salary of the husband is almost Rs. 5.5 lacs per month. He is depositing Rs. 30,000/- for the child plan besides Rs. 50,000/- as maintenance ordered by the Court below. He is also depositing EMIs for the joint property charges in the joint names of the wife and himself. The wife is not contributing any amount in repaying the EMIs. The wife has not been able to place any material to show that the expenses of the child were beyond what was awarded. In my view there is no infirmity in the findings recorded by the Court below.

The petition is dismissed. The respondent has deposited Rs. 50,000/- p.m. in addition to the maintenance allowed by the Court below. The amount would remain deposited and can be utilized for the higher education of the child.

Lower Court record be sent back.

September 08, 2016
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(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No