

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.Nos.5828 and 5917 of 2016

COMMON ORDER

Since both these revisions under Article 227 of the Constitution of India are filed challenging the order dated 01.11.2016 passed in I.A.No.351 of 2013 in FCOP No.415 of 2013 by the Judge, Family Court, Secunderabad, granting interim maintenance at Rs.15,000/- per month each to the petitioner and her daughter, by name, Vrinda, totally Rs.30,000/-per month, they are being disposed of by this common order.

2. The parties hereinafter will be referred as petitioner and respondent for convenience.

3. The petitioner-wife filed I.A.No.351 of 2013 under Section 24 of Hindu Marriage Act, 1955 (for short 'the Act'), for grant of interim maintenance of Rs.50,000/-per month to her and Rs.25,000/- per month to her daughter, in total Rs.75,000/- per month, pending disposal of the petition, stating that the respondent-husband filed O.P. to dissolve the marriage by granting a decree of divorce on various grounds and that she was ill-treated and subjected to physical abuse and mental agony by the respondent. It is stated that on 27.04.2009, petitioner's brother, by name, Eshwar, sent E-mail to the respondent's employer i.e., Infosys Technologies Limited, Hyderabad, complaining the ill-treatment against her and thereafter, the respondent and his family members discontinued harassment for some period, but renewed harassment once again

making her matrimonial life miserable. The respondent at the behest of his mother and brother took away all her jewellery, and on demand made by her, her brother and mother, respondent deposited the dowry amount and value of jewellery in her savings Bank accounts in the form of fixed deposits in various Banks and the interest thereof were being utilized by the family. She further stated that there are three term deposits to a tune of Rs.43,50,000/- with State Bank of India, Patny Branch, State Bank of Hyderabad, Begumpet Branch and Oriental Bank of Commerce, Ameerpet Branch and holding a joint account with respondent in ICICI Bank, Jayanagar Branch, Bangalore, and she was necked out from the matrimonial home on 30.06.2013. She was staying along with her minor daughter at her parents' house at Kondapur, Hyderabad, and she was not even allowed to collect her belongings including her Bank passbooks, cheque books, pan card, Aadhar card, jewellery and other miscellaneous items and that the respondent after collecting all the amounts from her Bank accounts was attempting to leave India. The petitioner has no means to maintain herself and her daughter, aged about 2½ years. She further stated that the respondent had fraudulently withdrew the entire amount from her Bank accounts and cancelled the fixed deposits by forging her signatures allegedly and that he worked in Infosys Technologies Limited till July, 2013 and later, discontinued his employment with a view to secure a better job. She further stated that while the respondent was working in Infosys Technologies Limited, he was drawing a sum of Rs.1.5 lakhs per month and that on account of

sweeping away all the fixed deposits and the amounts in her Bank Accounts by the respondent, she has no other source to maintain herself and her daughter and hence, requested to grant interim maintenance as claimed in the petition.

4. The respondent-husband filed counter denying the material allegations while admitting the marriage between him and the petitioner and birth of a daughter, named, Vrinda, on 12.10.2010, and she was aged about 2 years 8 months by the date of filing the counter, *inter alia*, contending that the petitioner used to demand him to set up a separate family by leaving his aged parents and used to insult him and his aged mother and subjected him to cruelty. She did not show any interest even on the baby girl and refused to give feeding to the baby girl and failed to take motherly care. The petitioner used to stay with her mother at Gachibowli by leaving the minor girl with them. The petitioner had three sisters and one brother by name Eshwar Prasad, who discontinued his Engineering studies, addicted to bad vices and used to demand money for his lavish expenses and the petitioner used to support him and whenever the respondent failed to comply the same, he used to instigate the petitioner to leave the matrimonial home. He also put E-mails to his employer with false and frivolous material and thus, both the petitioner and her brother subjected him to cruelty.

5. The respondent further contended that the petitioner's younger sister's marriage was fixed in January, 2011, during the said period, petitioner and her mother requested the mother of

respondent and brothers to adjust amount to a tune of Rs.60 lakhs for performance of marriage and requested them to deposit the said amount in fixed deposits in the name of petitioner so that they could utilize the said amount for the marriage and promised to return the amount within one and half years and that believing their words, his mother obtained amount from her maternal family and deposited the same in the name of petitioner in fixed deposits with various Banks. Due to unwarranted reasons, the marriage of petitioner's sister was cancelled, but neither the petitioner nor her mother returned the amount borrowed from his mother, and her brothers. He further contended that during first week of May, 2013, when the brothers of his mother pressurized the petitioner for return of amount, the petitioner grew wild against him and his mother and that on 15.05.2013, without informing him, petitioner left the matrimonial home, leaving the minor girl in his house and filed a false complaint against him on 17.06.2013 before the Women Police Station, Begumpet, Hyderabad, making serious allegations and that the petitioner is not entitled to claim any interim maintenance for herself or to the minor daughter and prayed for dismissal of the petition.

6. During enquiry, no oral evidence was adduced on behalf of the parties, but Exs.P1 to P5 were marked on behalf of petitioner and Exs.R1 to R4 were marked on behalf of respondent.

7. Upon considering the rival contentions of both parties and perusing the material available on record, the trial Court held that the

petitioner and her minor daughter are entitled to interim maintenance at Rs.15,000/- per month each during pendency of the petition.

8. Aggrieved by the said order, CRP No.5828 of 2016 is filed by the respondent mainly contending that the interim maintenance at Rs.15,000/- per month each awarded by the trial Court is excessive, more particularly, when he is un-employed since December, 2014 and in the absence of any evidence that the respondent is working as Freelancer Cost Accountant, the maintenance awarded by the trial Court at Rs.15,000/- per month, each to the petitioner and her minor daughter is illegal and he prayed to set aside the order.

9. During hearing, learned counsel for respondent/husband, while reiterating his contentions, placed reliance on the judgment of the Apex Court in **Kulbhushan Kumar v. Raj Kumari and another**¹ and in the later judgment in **Kalyan Dey Chowdhury v. Ritta Dey Chowdhury Nee Nandy** in Civil Appeal No.5369 of 2017 and contended that the petitioner being a literate person is not expected to spend time idle during pendency of the petition by depending upon the interim maintenance. In support of his contention, he placed reliance on the decision in **Smt Mamta Jaiswal v. Rajesh Jaiswal**². On the strength of the principles laid down in the above judgments, learned counsel requested this Court to set aside the impugned order passed by the Judge, Family Court, Secunderabad in I.A.No.351 of 2013 in FCOP No.415 of 2013 by allowing this revision.

¹ 1971 AIR 234

² 2001(2) All India Hindu Law Reporter 228

10. Sri Eranki Phani Kumar, learned counsel for petitioner/wife, has supported the order in all respects, mainly, contending that the respondent had intentionally resigned his job and practicing as Freelancer Cost Accountant and thereby he is expected to earn more than the income while working in Infosys Technologies Limited and therefore, the income which he earned while working in Infosys be taken into consideration for awarding maintenance and prayed to dismiss the petition affirming the impugned order.

11. Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is;

“Whether the petitioner is entitled to claim interim maintenance along with her minor daughter, by name, Vrinda, during pendency of the petition filed under Section 13(1)(1a) of Hindu Marriage Act, 1955, if so, at what rate and on what basis the amount of maintenance can be awarded”?

12. **POINT:**

Undisputedly, the marriage between the petitioner and the respondent was performed and they blessed with a daughter, by name, Vrinda, aged about 2 years 8 months by the date of filing of counter and she was staying with her mother-petitioner and both of them were living with the parents of petitioner. So separate living of the petitioner along with the child is an undisputed fact. At her matrimonial home, she enjoyed all facilities which her husband

enjoyed and therefore, she is entitled to maintain the same standard of life though she is living separately.

13. Though the minor daughter, who is not a party to the petition, is not covered by Section 24 of the Act, she is entitled to claim maintenance if strict interpretation is given to Section 24 of the Act. In **Lanka Venkatapathi Rao V. Smt Lanka Vijayasree**³ and **Meka Prakash v. Smt Meka Deepa Rani and another**⁴, the two single Judges of this Court interpreted Section 24 of the Act and held that under Section 24 of the Act, even the minor child is entitled to claim maintenance without giving any restricted meaning to the wife. In the both the judgments, this Court relied upon the judgment in **Smt Jasbir Kaur Sehgal v. District Judge, Dehradun and others**⁵. In the facts of the above judgments, maintenance was claimed by both wife and minor daughter under Section 24 of the Act during the pendency of the petition filed under the provisions of the Act. Before the Supreme Court in **Smt Jasbir Kaur Sehgal's** case, referred to supra, it was contended that the wife has to maintain the unmarried daughter, who is under her care and custody and her grievance was that the Court below did not take into account the fact that she has to maintain the unmarried daughter. It was opposed by the husband on the ground that in a petition under Section 24 of the Act, maintenance cannot be granted in favour of the child. The further argument was that such maintenance for a child comes under Section 26 of the Act. Considering the said contentions, the

³ 2008(6) ALT 218

⁴ 2012(3) ALT 16 (S.B.)

⁵ AIR 1997 SC 3397

Supreme Court in **Smt Jasbir Kaur Sehgal's** case answered in paragraph No.6 as under:

“Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife.

14. An identical question also came up before the Division Bench of this Court in **Narendera Kumar Mehta v. Suraj Mehta**⁶ and the Division Bench held in the same lines.

15. Therefore, the settled law is that while claiming maintenance by wife for herself, she can also claim maintenance to her minor daughter, who is under care and custody, since it includes the maintenance of minor child, who is under custody of any of the spouse under Section 24 of the Act. Therefore, granting maintenance to the daughter, Vrinda, along with the wife is not bad and it is consistent with the law laid down by the Apex Court in **Smt Jasbir Kaur's case**, referred to supra. In **Anu Kaul V. Rajeev Kaul**⁷, the Apex Court granted maintenance to the daughter, who is under the custody of mother, during pendency of the appeal, while considering the scope of Section 24 of the Act. Therefore, the daughter though not a party to the main petition, in the interlocutory application, the wife can claim maintenance for herself and minor daughter, who is under her custody.

⁶ AIR 1982 AP 100

⁷ (2009) 13 SCC 209

16. The other contention raised by the learned counsel for respondent before this Court is that the respondent has resigned to his employment in Infosys Technologies Limited and while working in the said company, he used to draw a sum of Rs.1.50 lakhs per month and now, he is unemployed without any means to maintain himself. In such case, the finding recorded by the trial Court that the respondent can earn as Freelancer Cost Accountant more than the income which he earned is without any basis and in the absence of any evidence, granting maintenance @ Rs.15,000/- per month each is illegal, as per the contention of the learned counsel for respondent. But, in the judgment reported in **K. Lalchandani v. Meenu Lalchandani**⁸, this Court held that when husband sold the house property to avoid maintenance, the sale proceeds received by husband can be taken into consideration to award maintenance. In **Ruta Dutta and another V. Subhendu Dutta**⁹ the Apex Court held that the wife is entitled to claim interim maintenance under Section 24 of the Act to lead the same standard of life which she led along with her husband during matrimonial days. Therefore, the petitioner and her minor daughter are entitled to lead the same standard of life, which they led while living with the respondent. Undoubtedly, the respondent has resigned to his service on account of the complaint sent by the brother of petitioner. The respondent is a registered Cost Accountant and is entitled to practice as a Freelancer Cost Accountant and normally expected to earn some

⁸ 1998(3) ALT 11.2(DN OHC)

⁹ (2005) 6 SCC 619

income being a private practitioner (Cost Accountant). But no material is produced before this Court to substantiate the contention that he was earning any amount monthly either as an employee or by his profession. When the respondent is a registered Cost Accountant, it is for him to substantiate his contention that he is not a registered Cost Accountant and not practicing as Accountant by producing the certificates, but filing income tax returns before the Court to establish that he was not earning anything cannot be accepted since he is capable of earning income being a registered Cost Accountant with the institutions of ICWA. Therefore, taking into consideration of his capacity to earn and his previous earnings while working in Infosys Technologies Limited, the Court can award appropriate maintenance to the wife and minor child, who are expected to lead same standards of life which they led with the respondent. But the trial Court did not consider the same, but on the ground that the respondent is a Freelancer Cost Accountant, it awarded maintenance @ Rs.15,000/- per month each to the wife and minor child. However, granting maintenance at Rs.15,000/- per month to the minor child appears to be excessive. Therefore, the interim maintenance awarded to the daughter is liable to be reduced.

17. Learned counsel for respondent while contending that the petitioner and her daughter are not entitled to claim maintenance and at best they are entitled to claim maintenance not more than 25% of the earnings of the husband, has placed reliance in **Kulbhushan Kumar's** case and **Kalyan Dey Chowdhury's** case,

referred to supra, and held that 25% of the net salary of husband would be just and proper to award maintenance. Here, there is absolutely no evidence to establish the income of the husband of petitioner before this Court, but he was earning Rs.1.50 lakhs per month during his employment in Infosys Technologies Limited. Thus, the petitioner is expected to earn same salary even if he is employed any where, but now he is not employed as per material. However, taking into consideration the earnings of the husband, who has resigned from service on account of different reasons or to avoid payment of maintenance or otherwise, the wife and children cannot be denied the right to claim maintenance since this provision is intended to avoid vagrancy of wife and children and to lead the same standards of life which the husband is leading. Therefore, taking into consideration the facts and circumstances of the case and the earning capacity based on the employment in which he was engaged earlier, the interim maintenance awarded to the wife is just and reasonable. Whereas the interim maintenance awarded to the child, Vrinda, is excessive and the same is reduced to Rs.10,000/- per month. Accordingly, the order of the trial Court is modified to the extent of reducing the maintenance awarded to the child to Rs.10,000/- while affirming the interim maintenance awarded to the wife.

18. Since the matter pertains to 2013, to avoid unnecessary further complications, the Judge, Family Court, Secunderabad, is directed to decide the FCOP as expeditiously as possible, in any

event, not less than six months from the date of receipt of a copy of this order. The respondent is directed to pay the arrears of maintenance, if any, within four months from today.

19. With the above direction, the Civil Revision Petitions are disposed of. No order as to costs. Miscellaneous petitions, if any, pending in these revisions shall stand dismissed.

M. SATYANARAYANA MURTHY, J

19th July, 2017
sj

