

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

% **Judgment delivered on: 11<sup>th</sup> October, 2017**

+ CRL.REV.P. 117/2015 & CRL.M.A. 2941/2015, 19194/2016

1. DR. NIHAL SINGH ..... Revisionist

Through Mr. Vinay Sharma with Mr. Rahul  
Sharma, Advocates

versus

1. DR. (MRS.) PRIYANKA SINGH BADALIA

2. BABY HARSHA ..... Respondents

Through Mr. Panna Lal Sharma, APP for State  
Mr. K. G. Sharma, Advocate with  
Mr. K. S. Badatia, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**JUDGMENT**

**I. S. MEHTA, J.**

1. The instant revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 has been preferred by the revisionist, i.e. Dr. Nihal Singh, for quashing/setting aside of the impugned order dated 21.11.2014 passed by the learned Additional Sessions Judge-3, Dwarka Courts, New Delhi, in Criminal Appeal No. 42/2014.

2. The brief facts stated are that, the revisionist was married to the respondent No.1, i.e. Dr. Priyanka Singh Badalia, on 22.11.2009 as per Hindu rites and customs at Dwarka, New Delhi and out of the said wedlock one female child was born to them on 29.10.2010, i.e. Baby Harsha/respondent No.2. Thereafter, on 12.12.2010 families of both the parties had altercation among themselves as a result of which the respondent no.1 left the matrimonial house along with the newly born child, i.e. respondent no. 2, and since 13.12.2010 both the parties are living separately.
3. On 06.05.2011, the respondent no.1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 bearing Complaint Case No. 1003/1/2011 for maintenance for herself and her minor child/respondent no.2 before the Court of the learned Metropolitan Magistrate, Dwarka Courts, New Delhi. Consequently, the learned Metropolitan Magistrate vide order dated 24<sup>th</sup> June, 2011 directed the present revisionist to pay Rs. 15,000/- (Rupees Fifteen Thousand Only) per month to respondent no.2 only through respondent no.1 since the date of filing of the case, i.e. 06.05.2011.
4. Aggrieved from the aforesaid order dated 24.06.2011, the revisionist as well as the respondents filed Criminal Appeal Nos. 73/11 and 54/11 respectively before the Court of the learned Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi and the learned Additional Sessions Judge remanded back the case to the learned Metropolitan Magistrate with the direction to hear the arguments on the application under Section 23

of Protection of Women from Domestic Violence Act, 2005 and then decide the interim relief to be awarded to the respondents herein.

5. The learned Metropolitan Magistrate after hearing both the parties and pursuing the respective affidavits of income of both the parties vide order dated 03.06.2014 awarded a maintenance of Rs. 10,000/- per month in favour of respondent no.1 towards her maintenance, Rs. 10,000/- towards rent/alternative rental accommodation and Rs.5000/- per month towards maintenance of their minor daughter i.e. respondent no.2, from the date of filing of petition, i.e. 06.05.2011, till the disposal of the petition on merits. It was further ordered that the aggrieved person shall be entitled to 10% yearly increase in the awarded maintenance.

6. Aggrieved from the aforesaid orders dated 03.06.2014 the present revisionist filed a Criminal Appeal No. 42 of 2014 in the Court of learned Additional Sessions Judge-3, Dwarka Courts, New Delhi on the ground that the interim maintenance awarded by the learned Trial Court, is excessive in view of the fact that the revisionist/appellant is unemployed having no source of income. Consequently, the learned Additional Sessions Judge dismissed the said Criminal Appeal No.42 of 2014 of the present revisionist vide order dated 21.11.2014 for want of merit.

Hence the present revision petition.

7. The learned counsel for the revisionist has submitted that the revisionist is the husband, a doctor MBBS and is unemployed and

the respondent No.1 is physiotherapist; running a clinic from House No. 740, Palam Extn., Dwarka, Delhi. It is further submitted that since the revisionist is qualified MBBS, does not tantamount any capacity on part of the revisionist whereas the wife, i.e. respondent no.1, is a physiotherapist and running her clinic and earning handsome amount by practicing physiotherapy.

8. The learned counsel for the revisionist has further submitted that the revisionist is suffering from moderate depression, which fact is supported by the medical certificate issued by the Board of AIIMS. Further, the revisionist is unable to pay any maintenance amount to the wife but is ready and willing to pay an amount of Rs.5,000/- per month towards maintenance of minor daughter, i.e. respondent No2.

9. The learned counsel for the revisionist has relied upon the following judgments in support of his arguments:-

- 1) ***Rupali Gupta v. Rajat Gupta; 2016 Law Suit (Del) 5143.***
- 2) ***Damanreet Kaur v. Indermeet Juneja & Anr.; Manu/DE/2693/2012.***
- 3) ***Sanjay Bhardwaj & Ors. v. The State; Crl. M.C. No. 490/2009 decided by this Court on .***
- 4) ***Mamta Jaiswal v. Rajesh Jaiswal; AIR 2005 MP 227.***
- 5) ***Nisha Jain v. Amit Jain; APP. (F.C.) 106/2015 decided by this Court on 24<sup>th</sup> August, 2016.***

10. The learned counsel for the revisionist has further submitted that the orders passed by learned Metropolitan Magistrate, i.e. order dated 03.06.2014, and the learned Additional Sessions Judge, i.e.

order dated 21.11.2014, are harsh and the Court below deviated from the material evidence placed on record to reach the conclusion of maintenance amount which is liable to be set aside.

11. On the other hand, the learned counsel for the respondents has submitted that the impugned maintenance awarded is under Section 23 of the Protection of Women from Domestic Violence Act, 2005. He further submitted that it is an admitted fact on record that the revisionist is the husband and respondent No.1 is the wife and minor daughter-Baby Harsha respondent No.2 was born out of the wedlock and there is no dispute of paternity *qua* respondent no.2.
12. The learned counsel for the respondents further submitted that the revisionist being husband is under legal obligation to maintain his wife as well as the minor daughter. He further submitted that though it is an admitted fact that the wife/respondent No.1 has qualified physiotherapy examination as an education qualification; that educational qualification *ipso facto* does not brings any competency or capacity to earn any livelihood. It is for the husband to maintain his wife and minor daughter.
13. The learned counsel for the respondents has submitted that the revisionist is doing medical practice apart from rental income and earning huge amounts through investments and the revisionist has himself admitted earning an amount of Rs. 7 lakhs per month. It is submitted that the orders of the Courts below are based on evidence available on record and it is prayed that the present revision petition be dismissed for want of merit.

14. The learned counsel for the respondents has relied upon the following judgments:-

1) *Shalija & Anr. v. Khobbanna*, MANU/SC/0537/2017.

2) *Sunita Kachwaha & Ors. v. Anil Kachwaha*; 2014 42 SCD 44.

15. It is a settled principle of law that both the parents have a legal, moral and social duty to provide to their child the best education and standard of living within their means. The mere fact that the spouse with whom the child is living is having a source of income, even if sufficient, would in no way absolve the other spouse of his obligation to make his contribution towards the maintenance and welfare of the child.

16. It is an admitted fact coming on record that the main application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is pending before the Trial Court. The determination of the same will be done by the Trial Court after leading of evidence by the respective parties and on the basis of material documents and income affidavits of the parties.

17. The Apex Court in *Noor Khatoon vs. Mohd. Quasim*; 1997 *Crl. L.J. 3972* has made the observation that a father having sufficient means has the obligation to maintain his minor children who are unable to maintain themselves till they attain majority and in case of females till they get married.

18. Furthermore, in the instant petition it is an admitted case on record that the minor child is staying with the respondent No.1/mother, and since the respondent No.1 and the minor

child/respondent No.2 are to be maintained by the revisionist and even the paternity is not disputed therefore, in the absence of denial of existence of the marriage and denial of paternity of the minor child the revisionist cannot shy away from his statutory obligation of maintaining his legally wedded wife and his minor child.

19. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds. Reliance is placed on the judgment of the Hon'ble Punjab and Haryana High Court in the case ***Dr. R.K. Sood vs. Usha Rani Sood; 1996 (3) 114 PLR 486*** and the relevant paragraph is reproduced as under:-

*"17. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds."*

20. The contention of the learned counsel for the revisionist that the revisionist is unemployed and he is unable to pay the maintenance

amount is a matter of dispute which will be determined by the Trial Court during the course of trial and not by this Court at this stage.

21. However, the order dated 03.06.2014 passed by the learned Metropolitan Magistrate is an interim maintenance and the determination of the main maintenance application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is yet to be decided. The interim maintenance granted by the trial Court is without prejudice to the rights and contentions of the parties.

22. In view of the aforesaid discussion, I find no infirmity in the impugned order dated 21.11.2014 passed by the learned Additional Sessions Judge-3, Dwarka Courts, New Delhi in Criminal Appeal No. 42 of 2014. The present revision petition filed by the revisionist is dismissed.

However, this judgment shall not affect the merits of the case, application under Section 12 of DV Act pending between the parties as the determination of the maintenance amount will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.

23. The present petition is disposed of in the above terms. The Trial Court is directed to dispose of the application under Section 12 of DV Act filed by the respondent-wife as soon as possible and preferably within a period of six months from the date of this judgment.

24. Let one copy of this Judgment be sent to the concerned Court(s).

25. Trial Court Record be sent back to the concerned Court forthwith.
26. All the pending applications (if any) are disposed of accordingly. No order as to Costs.

**I.S.MEHTA, J.**

**OCTOBER 11, 2017**

