

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

% **Judgment delivered on: 10th November, 2017**

+ CRL.REV.P. 675/2015 and Crl.M.A.No. 15597/2015 & 15599/2015

1. JETENDER KUMAR @ RAJAN Petitioner

Through: Mr. Sudhir Tewatia, Advocate.

versus

1. KAMLESH @ GANGA

2. MASTER HIMINISH

3. BABY VAIBHAVI

..... Respondents

Through: Mr.Probhoo Dyal Tiwari, Mr.Surya
Kumar and Ms.Manisha Tiwari,
Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner- Jetender Kumar under Section 397 Cr.P.C. read with Section 482 Cr.P.C. to set-aside/reduce the interim maintenance amount directed to be paid to the respondent Nos.2 & 3, i.e. Kamlesh and Master Himinish, vide impugned order dated 09.03.2015 passed by the learned Principal Judge, Family Courts, North-East District, Vishwas

Nagar, Delhi in MT No. 24/14 titled as *Kamlesh & Anr. vs. Jitender*.

2. The brief facts stated in the petition for interim maintenance under Section 125 Cr.P.C. filed before the Court of Chief Metropolitan Magistrate, Karkardooma Courts, Delhi by the present respondents are that the marriage between the petitioner-Jetender Kumar and the respondent No.1- Smt. Kamlesh was solemnized on 08.12.2003 at New Delhi according to Hindu Rites and Customs. Out of their wedlock the respondent Nos. 2 & 3, i.e. Master Himinish and Baby Vaibhavi, were born on 02.06.2006 and 04.03.2009, respectively who are in custody of the respondent No.1. It is alleged that the respondent No.1-Smt. Kamlesh., was forced to leave the matrimonial home on 26.05.2012. Thereupon, a written complaint was made against the petitioner and his family member by the respondent No. 1 at Police Station Gokul Puri, Delhi and she was thereafter, given treatment at GTB Hospital vide MLC No. B-2325/12. Further it is alleged that the petitioner just to save himself and his family members filed a petition under Section 9 of Hindu Marriage Act, against the respondent No.1. Consequently, a settlement arrived between the parties on 13.08.2012 in Mediation Centre, Karkardooma Courts, Delhi and respondent No.1 came back to her matrimonial home. It is also the allegation of the respondent No.1 that on 09.04.2013 the petitioner came late in night and started abusing the respondent No.1 and had beaten the respondents (including the children respondent Nos 2 & 3) and kick them out of the matrimonial home and since 09.04.2013, the respondents are

residing in the parental home of the respondent No.1. It has been further alleged that the petitioner as well as his family never looked after the respondents and even at the time of the delivery of both the respondent Nos. 2 & 3 all the expenses incurred were borne by the mother and brother of the respondent No.1 as the petitioner flatly refused to bear the expenses of delivery. It was further pointed out that the respondents are residing with at the maternal home and all the expenses for the upbringing and education of the respondent Nos. 2 & 3 are being borne by their maternal grandparents. The petitioner is stated to be a man of means and till date he has not contributed even a single penny for the respondents upkeep therefore, the present respondents filed the interim maintenance petition against the present petitioner.

3. Consequently, after hearing the counsels for the parties and after perusal of the documents placed on record the learned Principal Judge, Family Courts, North-East District, Vishwas Nagar, Delhi vide impugned order dated 09.03.2015 in MT No. 24/14 directed the petitioner to pay an interim maintenance of Rs. 3,000/- per month each to his children, i.e. respondent no. 2 and 3 from the date of filing of application, i.e. 15.10.2013, and every month thereafter regularly till the disposal of main petition.

Hence the present revision petition.

4. The learned counsel for the petitioner has submitted that the learned Trial Court failed to appreciate the documents on record filed by the petitioner and the learned Trial Court has itself presumed the salary of the petitioner as Rs. 15,000/- per month,

whereas the petitioner had mentioned his salary as Rs. 8,200/- per month on record and the petitioner is not capable to provide the said awarded amount to the respondents.

5. It is further submitted by the learned counsel for the petitioner that the respondent No.1 has concealed her true status of income, she is a teacher in the same school where the respondents Nos. 2 & 3 are studying and she is drawing a handsome salary.
6. The learned counsel for the petitioner has further submitted that the impugned order passed by the learned trial Court is not sustainable in the eyes of law as the same is based on conjectures and surmises thus, is liable to be set aside.
7. On the contrary the learned counsel for the respondents has submitted that the maintenance awarded by the Trial court is for the minor children as the petitioner has to maintain his minor children and the petitioner till date has not paid a single penny as maintenance. It is further submitted that the petitioner is required to maintain his wife and children and the amount towards the maintenance is due till date and submits that the present petition is devoid of any merit and the same is liable to be dismissed.
8. The object of Section 125 Cr.P.C. is to provide speedy remedy to women and children who are unable to support themselves and are in distress. It is intended to achieve a social purpose and maintenance cannot be denied to the children on the premise that their mother is employed or has enough means to maintain them or that they are in the custody of their mother.

9. 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, even if, the means/income/salary of that spouse may be less than the means/income/salary of the other spouse.
10. 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.
11. It is an admitted fact coming on record that the main maintenance petition is pending before the Trial Court and the determination of the maintenance amount 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.
12. Furthermore, in the instant petition it is an admitted case on record that the children(respondent Nos. 2 & 3 herein) who are school going are staying with the mother-respondent No.1 and even the paternity is not disputed therefore, in the absence of denial of existence of the marriage and non denial of paternity of the two minor children, the petitioner cannot shy away from his statutory obligation of maintaining his legally wedded wife and his two minor children.

13. 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."

14. In view of the aforesaid discussion, I find no infirmity in the impugned order dated 09.03.2015 passed by the Family Court. Consequently, the present revision petition filed by the petitioner is dismissed.

However, this judgment shall not affect the merits of the case, 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.

15. The present petition is disposed of in the above terms. The Trial Court is directed to dispose of the maintenance petition as soon as possible and preferably within a period of six months from the date of this judgment.
16. Copy of this judgment be sent to the concerned Court. No order as to costs.
17. All the pending applications (if any) are also disposed of.

NOVEMBER 10, 2017

I.S.MEHTA, J

