

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

% Judgment reserved on : 29th August, 2018
Judgment delivered on: 16th November, 2018

+ CRL.M.C. 3646/2014
REKHA SABHARWAL & ANR Petitioners
versus
JITENDER SABHARWAL Respondent
+ CRL.M.C. 5473/2014
JITENDER SABHARWAL Petitioner
versus
SMT REKHA SABHARWAL & ANR Respondents

Advocates who appeared in this case:

For the Petitioners : Mr.Dinesh Malik with Mr.Puneet Jain, Advocates for the petitioners in CRL.M.C. 3646/2014

Mr.Rajiv Ghawana with Ms.Akshita Chatwal, Advocates for the Petitioners in CRL.M.C. 5473/2014

For the Respondents : Mr.Rajiv Ghawana with Ms.Akshita Chatwal, Advocates for the respondents in CRL.M.C. 3646/2014

Mr.Dinesh Malik with Mr.Puneet Jain, Advocates for the Respondents in CRL.M.C. 5473/2014

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J.

1. These cross petitions, one by the wife and the other by the husband, have been filed challenging a common order dated 28.5.2014 passed by Revisional Court whereby the Criminal Revision Petition No.66/2014 filed by the wife and Criminal Revision Petition No.64/2014 filed by the husband were dismissed. The Revision Petitions were filed against order dated 30.06.2012 passed by the Trial Court whereby the Trial Court had disposed of the petition filed by the wife under section 125 of Cr.P.C seeking maintenance for herself and her minor daughter.

2. The operative part of the order dated 30.06.2012 passed by the Trial Court reads as under:

“Considering the discussions made above, I assess the income of respondent to be Rs.20,000/- per month. Keeping into account the fact that respondent has no other liability except than to maintain the petitioner, the income of the respondent is to be divided into four portions out of which two portions are to be retained by the respondent and remaining two portions are to be divided amongst petitioner no.1 and petitioner no.2. Accordingly, respondent is directed to pay maintenance to petitioners @ Rs. 5000/- each from the date of order. Petitioner No. 1 is entitled to claim maintenance till she gets re-married and petitioner no.2 is entitled to get maintenance till she attains majority or till the law otherwise permits.”

3. Aggrieved by the order dated 30.06.2012, the wife and minor daughter filed the Revision Petition seeking enhancement of the maintenance granted to them. On the other hand, the husband filed the Revision Petition seeking setting aside of the order.

4. The Revisional Court dismissed both the petitions. The Wife in her petition before this court seeks enhancement of maintenance awarded to her and her minor daughter and also seeks that the maintenance should be awarded from the date of filing the petition i.e. 18.10.2007 as against the date of the order as directed by the Trial Court. However, the husband seeks to set aside the impugned order.

5. Marriage between the Petitioner No.1 and Respondent was solemnized on 16.05.1998 as per Hindu rights and customs and out of the said wedlock Petitioner No.2 was born.

6. It is alleged that Petitioner No.1 was physically and mentally harassed by the Respondent and her in laws. Subsequently, on 08.07.2003 Petitioner No.1 lodged a complaint before CAW Cell pursuant to which an FIR under section 498-A/406/34 IPC was registered.

7. Further, it is alleged that, Petitioner No.1 was forced to leave her matrimonial house with her minor child/Petitioner No.2 due to constant harassment received by her. Petitioner No.1 & Respondent

have been residing separately since 13.10.2003.

8. Petitioner No.1 filed the subject application under section 125 Cr.P.C before the Trial Court seeking maintenance for herself and her minor daughter which was opposed by the Respondent herein.

9. The Trial Court after perusal of material on record and evidence led by the parties was of the view that Petitioner No.1 had concealed a part of her income, however held that she has been unemployed since 2007. Further it observed that even the respondent had concealed the income generated from various properties and thus assessed the income of the Respondent at Rs 20,000/- per month and directed that the income of the Respondent be divided into four portions out of which two portions are to be retained by the respondent and remaining two portions are to be divided amongst Petitioner No. 1 and Petitioner No.2.

10. The Trial Court while analysing the evidence led by the parties, held that the husband had concealed his income. While noticing the contention of the husband that he was not connected to the properties which were referred to by the wife, the trial court found that the husband had not come clean hands with regard to the disclosures about his connection with the properties. The trial court found that the husband had relinquished his share in favour of his mother in a property left behind by his father. He had however not stated as to

why he had relinquished his share in the property. The trial court held that he had executed the relinquishment deed so as to deprive the wife of maintenance and adverse inference could be drawn from the conduct of the husband that he must have taken his share in monetary terms after execution of the relinquishment deed in disguise.

11. The trial court found that on account of the fact that the husband had relinquished his share, he had deprived his minor daughter of a share in the said property. The trial court further found that the husband had sold his share in a property and received the sale consideration, however he had not disclosed the details of the account where the sale consideration was deposited. The trial court was of the view that the husband had clearly concealed all his transactions just to avoid giving maintenance to the petitioners. The trial court further found that the husband had not disclosed, in his affidavit, his connection with other immovable properties.

12. With regard to the allegation of the husband that even the wife had concealed her income, the trial court was of the view that even if it was presumed that the wife had concealed income, the difference was very meagre i.e. of ₹ 3000 – 4000. The trial court found that it was actually the husband who had concealed his income and who during his cross-examination had revealed that he was having several properties. The trial court accordingly assessed income of the husband

at ₹ 20,000 per month.

13. While assessing the income of the husband, the trial court found that the husband had concealed his true income and accordingly and adverse presumption had to be drawn. Even before this court learned counsel appearing for the husband has not been able to point out that the adverse inference drawn by the trial court was not liable to be drawn in the facts and circumstances of the case.

14. When a trial court comes to conclusion that true income has not been disclosed, the trial court is handicapped in said circumstances. When true income is not disclosed and the opposite party is not in a position to produce material to show correct income, the trial court has to assess income making certain assumptions. In the present case based on the material available that had come before the court during trial, the trial court assessed the income at ₹ 20,000. Even before the revisional Court, both husband-and-wife could not produce any material to show that the assessment done by the trial court, assessing the income at ₹ 20,000, was erroneous. As noticed by the revisional Court, when material is not available before the court on which an accurate assessment can be made, some guesswork/assumption has to be made. Before this court also, no material has been produced by either side to show that the assumption was erroneous.

15. Keeping in view in the facts and circumstances of the case, it

cannot be said that the assessment of income of ₹ 20,000 of the husband was erroneous. The trial court has divided the income of the husband into four parts. While giving two parts to the husband one part each has been given to the wife and the minor child. There is no error committed by the trial court in such division.

16. Accordingly, the assessment of the trial court of the income and its apportionment between the husband on the one side and the wife and minor child on the other does not warrant any interference.

17. Coming now to the next prayer of the wife that the award of maintenance should be from the date of the application and not from the date of the order, one has to look at the nature of the maintenance awarded under section 125 Cr.P.C. If the object of section 125 Cr.P.C is to afford a subsistence allowance to the wife, who is not able to maintain herself, then the award normally should be from the date of the application. For the court to award maintenance from the date of the order there have to be compelling circumstances for the court to take such a view. Maintenance awarded to a wife is not a bounty. It is awarded to her so that she can survive. The fact that time is spent between the date of the application and a final adjudication and an award in favour of the wife, does not mean that she had enough funds to maintain herself. When the trial court comes to conclusion after trial that the wife is entitled to an amount of maintenance the

assessment in fact relates back to the date of the application. When the assessment relates back to the date of the application then there have to be compelling circumstances for the trial court to restrict the award of maintenance to a period post the date of the order.

18. A coordinate bench of this court in *Bimla Devi Vs Shamsher Singh* (2015) 224 DLT (CN8) 8 held that “*Maintenance is a right which accrues to a wife against her husband since the inception of her getting married with him. A moral and legal obligation and duty is cast upon the husband to maintain his wife. The necessary corollary is that from the time the wife starts residing separately from her husband, she can claim maintenance from him*”.

19. The Supreme Court of India in *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 9 SCC 632 held that “*the High Court was not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order.*”

20. Further, in *Jaiminiben Hirenghai Vyas & Anr vs Hirenghai Ramesh Chandra Vyas & Anr.* (2015) 2 SCC 385 the Supreme Court held that “*Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good*

reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case”.

21. In the present case the trial court has merely recorded that maintenance is awarded from the date of the order. No reasons have been recorded by the trial court as to why maintenance is being awarded from the date of the order. As noticed above since maintenance is awarded to a wife so that she can survive and it is not a bounty, normally it should be awarded from the date of the application and for valid reasons, to be recorded, from the date of the order.

22. In view of the above, I do not find any infirmity with the order of the trial court granting maintenance to the wife and the minor child at ₹ 10,000 per month. However, as the trial court has erred in not recording any reason as to why maintenance is awarded only from the date of the order, the impugned order to the limited extent is not

sustainable and is accordingly quashed. The matter is accordingly remitted to the trial court to reconsider the same with regard to the date from which the maintenance is awarded. The trial court shall record its reasons for deciding so.

23. In case the trial court decides to award maintenance from the date of the application the trial court shall appropriately give credit for the interim maintenance awarded to the wife. Further the trial court shall also consider the application for grant of maintenance incrementally.

24. In view of the above, the petition filed by the husband (Crl.M.C. 5473/2014) is dismissed. The petition filed by the wife and the daughter (Crl.M.C. 3646/2014) is partly allowed.

25. The petitions are accordingly disposed of in the above terms. List the matter before the trial court on 26.11.2018. The trial court is directed to pass an appropriate order, after hearing the parties, within one month thereafter.

26. No orders as to costs.

27. Order *Dasti* under the Signatures of Court Master

NOVEMBER 16, 2018/HJ

SANJEEV SACHDEVA, J