

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CRR (F)-236-2017 (O&M)

Ashok

..... Petitioner

Versus

Rekha and another

..... Respondent

(ii) CRR (F)-285-2017 (O&M)

Rekha and another

..... Petitioner

Versus

Ashok

..... Respondent

Date of Decision : 10.04.2019

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Ms. Amrita Nagpal, Advocate
for the petitioner in CRR (F)-236 of 2017 and
for respondent in CRR (F)-285-2017.

Mr. Vijay Dahiya, Advocate
for the petitioners in CRR (F)-285 of 2017 and
for respondents in CRR (F)-236-2017.

RAJ SHEKHAR ATTRI, J. (Oral)

The purpose and object of granting maintenance to destitute women and children is to provide social justice to them and to prevent vagerancy by compelling those who can support those, who are unable to support themselves. The philosophy of social justice, as engraved in our constitution, is multi facet - which demands rightness and fairness in all the fields of life - which includes the political, the moral, religious and the

social. If the women of the country are undermined then the concept of social justice will certainly erode. Hon'ble Supreme Court in Richa Mishra vs. State of Chhatisgarh (Law Finder Doc Id 740568). has observed as under:-

“It is now realised that there is a bidirectional relationship between economic development and women's empowerment defined as improving the ability of women to access the constituents of development- in particular health, education, earning opportunities, rights, and political participation. This bidirectional relationship is explained by Prof. Amartya Sen by propounding a theory that in one direction, development alone can play a major role in driving down an equality between men and women; in another direction, continuing discrimination against women can hinder development. In this scenario, empowerment can accelerate development. From whichever direction the issue is looked into, it provides justification for giving economic empowerment to women. It is, for this purpose, there is much emphasis on women empowerment (as it leads to economic development) by United Nations World Bank and other such Bodies. Interestingly, the 2012 World Development Report (World Bank 2011) adopts a much more nuanced message. While it emphasizes the "business case" for women empowerment, it mainly takes it as given that the equality between women and men is a desirable goal in itself, and policies should aim to achieve that goal. Poverty and lack of opportunity breed inequality between men and women, so that when economic development reduces poverty, the condition of women improves on two counts: first, when poverty is reduced, the condition of everyone, including women, improves, and second, gender inequality declines as poverty declines, so the condition of women improves more than that of men with development. Economic development, however, is not enough to bring about complete equality between men and women. Policy action is still necessary to

achieve equality between genders. Such policy action would be unambiguously justified if empowerment of women also stimulates further development, starting a virtuous cycle. Empowerment of women, thus, is perceived as equipping them to be economically independent, self-reliant, with positive esteem to enable them to face any situation and they should be able to participate in the development activities.”

In both these revision petitions, the parties i.e. Sh. Ashok- (husband) and Smt. Rekha (wife) have challenged the order dated 17.04.2017, passed by the District Judge, Family Court-II, Faridabad vide which Master Bhupen, minor son of Smt. Rekha and Ashok, was awarded Rs.10,000/- per month from the date of order. However, the application for maintenance of Smt. Rekha-wife was dismissed.

Sh. Ashok (husband) has preferred CRR (F)-236-2017 for setting aside the maintenance awarded to his son whereas Smt. Rekha (wife) has come up with revision i.e. CRR (F)-285-2017 for grant of maintenance to her.

Admittedly, the marriage of Smt. Rekha and Ashok was solemnized on 25.02.2009. From their wedlock, minor son Bhupen was born.

Smt. Rekha preferred an application under Section 125 Cr.P.C. for grant of maintenance allowance asserting that she was treated with cruelty; she and her son were neglected and refused to maintain by her husband. She has further submitted that her husband is employed in Haryana police. Apart from it, he has an agriculture land and he can easily pay Rs.25,000/- as maintenance to her.

The application was contested and Sh. Ashok refuted the allegations of cruelty levelled against him and his family members.

However, he has claimed that his wife is highly qualified and she is M.Com., M.Ed., and doing tuition work, therefore, she is not entitled for maintenance.

After appreciation of evidence, the learned Family Court has observed that Smt. Rekha is not entitled to maintenance due to her higher qualification. It has been observed in para No.19 of the impugned order dated 17.04.2017 as under:-

“Otherwise also, the applicant no.1 Rekha is not entitled to any maintenance from the respondent. It is an admitted fact that the applicant Rekha is now M.Com., M.Ed. She is not disabled in any manner, nor she is suffering from any illness. Though, it is alleged by the respondent that the applicant no.1 is running VPS School at Faridabad in partnership with some advocate and earning heavy amount, but there is nothing to prove it nor there is any proof of any extract income of applicant Rekha from school or tuition. But the fact remains that applicant Rekha being well qualified (M.Com., M.Ed.) is capable to earn and maintain herself. She has capacity to work so she is not entitled to any maintenance. Reference can be made to Dhamanpreet Kaur's case (supra).”

I have heard learned counsel for the parties and have gone through the material available on record as well as the written arguments submitted on behalf of the husband.

The provisions of Chapter X Cr.P.C. should be liberally construed as the primary objective is to give social justice to women and children. These provisions provide a speedy remedy to those who are in distress.

In the cases relating to grant of maintenance to the women, children and old aged parents, the Courts are supposed to exercise

discretion in determining the proper relationship between subjective and objective purpose of law. There are a number of social justice - legislations giving special protection and benefits to women and children as well as to the old aged persons.

First of all coming to the entitlement of Smt. Rekha for maintenance. She has asserted that she has no earning capacity.

The factum of marriage and birth of a child is not in dispute. It is also understood fact that Ashok Kumar is serving in Haryana Police. No doubt, Smt. Rekha is well qualified being M.Com. and M.Ed. But the Family Court has observed at the same time that there is no evidence that she has been employed anywhere. Even before this Court, nothing has been produced on record if she is gainfully employed anywhere.

The mere fact that she is highly qualified is not a ground to thwart the right of maintenance. This Court is of the view that she is unable to maintain herself as well as her minor son.

It has been further argued on behalf of Ashok Kumar-husband that Smt. Rekha-wife is residing separately. It is also not in dispute that Smt. Rekha filed a petition under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act for dissolution of marriage. In that petition, initially her husband appeared, but lateron he abandoned the proceedings, therefore, he was proceeded against exparte.

The Family Court in said divorce petition has observed that there is ample evidence available on record to establish that Smt. Rekha-wife was treated with cruelty, both mentally and physically. She was also deserted by her husband, thus the petiton was allowed and the marriage of Smt. Rekha and Ashok was dissolved under Section 13 (1) (i-a) & (i-b) of

the Hindu Marriage Act, vide judgment dated 22.11.2017.

There is a clear finding of the Family Court that she was treated with cruelty and was deserted by her husband. In this situation if she resides separately from her husband she cannot be denied the maintenance on this score. Surprisingly all these facts have not been considered by learned family court, therefore, its findings and observations with regard to Smt. Rekha are not sustainable. To the mind of this court, denying the wife maintenance certainly affects our social and economic lives. Even there is no cogent reason to deny her the right to maintenance. The Hon'ble Supreme Court in **Badshah v. Sou. Urmila Badshah Godse and Anr., 2013 (4) RCR (Civil) 830**, has observed as under:-

"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of section [125](#), Code of Criminal Procedure While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasised that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be

very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as

change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

17. Cardozo acknowledges in his classic

...no system of jus scriptum has been able to escape the need of it", and he elaborates: "It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute.

Says Gray in his lecture

The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision-"libre recherche scientifique" i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like section [125](#) Code of Criminal Procedure, to fulfill its Constitutional duty in good

faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano, AIR 1985 SC 945 to Shabana Bano, AIR 2010 SC 305 guaranteeing maintenance rights to Muslim women is a classical example.

*19. In **Rameshchandra Daga v. Rameshwari Daga, 2005(1) R.C.R.(Civil) 615 : AIR 2005 SC 422**, the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.*

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case (1854) 3 Co. Rep. 7a, 7b which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for

defrauding the wife. Therefore, at least for the purpose of claiming maintenance under section [125](#), Code of Criminal Procedure, such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

*22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in **Capt. Ramesh Chander Kaushal v. Veena Kaushal (1978) 4 SCC 70**:*

The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts."

In view of the circumstances of the case and considering the monthly income of the husband, this Court is of the view that he can easily pay Rs.7,000/- per month to his wife-Smt. Rekha from the date of application. Thus, finding merit, the revision petition, filed by CRR (F)-285-2017 is allowed accordingly.

Now coming to the petition i.e. CRR (F)-236-2017, filed by Sh. Ashok. He being the father of the minor son is morally, socially and legally bound to maintain him. The minor is entitled to receive

maintenance for the purpose of his education, food, clothing and other necessities of life.

The bounden duty of the courts is to enlarge the objects enshrined in the constitution of India. The doctrine of social justice will gravely shaken if the women and children are denied the maintenance.

The minor respondent has no source of income and now he is enrolled in a school and is getting education. He requires the school expenses which includes fee, books, tuition charges, transportation charges etc. Apart from it, he also requires proper diet. Thus, the amount of maintenance awarded by Family Court to the minor son cannot be taken as exorbitant, rather it is appropriate.

Consequently, the revision petition i.e. CRR (F)-285-2017, filed by Smt. Rekha etc. is allowed and the petition i.e. CRR (F)-236-2017, filed by Ashok-husband is dismissed. Smt. Rekha-wife is awarded maintenance at the rate of Rs.7,000/- per month from the date of application filed before learned Lower court.

(RAJ SHEKHAR ATTRI)
JUDGE

10.04.2019
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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No