

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

I.

**CRM-M-45469-2016 (O&M)
Date of Decision: 14.5.2019**

Shashi Bhushan Garg

.....PETITIONER(s).

VERSUS

Smt. Anju Garg

.....RESPONDENT(s).

II.

CRM-M-46994-2018 (O&M)

Shashi Bhushan Garg

.....PETITIONER(s).

VERSUS

Smt. Anju Garg

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amar Vivek, Advocate,
for the petitioner.

Respondent in person with counsel
Mr. Vivek Gupta, Advocate

RAJ SHEKHAR ATTRI, J.

This order shall dispose of the aforesaid two petitions as the same are between the same parties. The facts are taken from CRM-M-45469-2016 and the parties would be referred by their status in this appeal.

The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of impugned order dated 9.9.2016 (Annexure P-10) passed by learned Additional Sessions Judge, Mansa upholding the order dated 3.1.2015 passed by learned Chief Judicial Magistrate, Mansa whereby the application of the respondent wife filed under Section 125 of the Code of Criminal Procedure has been allowed.

Undisputedly, the petitioner was married with Smt. Anju Garg (respondent herein). From this wedlock, two daughters namely Shohrat Garg and Hasrat Garg were born. Smt. Anju Garg moved an application under Section 125 of the Code of Criminal Procedure asserting that she has been treated with cruelty and is a victim of domestic violence.

Learned Chief Judicial Magistrate after considering the evidence available on record, awarded her a sum of ₹ 15,000/- per month towards maintenance etc.

Said order has been challenged by the petitioner by filing an appeal on the grounds, *inter alia*, that the amount of maintenance is highly exorbitant and he is unable to pay this amount. However, the learned appellate court dismissed the same vide impugned order dated 9.9.2016.

I have heard learned counsel for the parties and gone through the record as well as written arguments filed by the respondent.

Learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in **Sudeep Chaudhary v. Radha**

Chaudhary; AIR 1999 SC 536, Himachal Pradesh High Court in **Vinod Kumar v. Smt. Shakuntala**; 2016 ILR (H.P.) 286, Delhi High Court in **Renu Mittal v. Anil Mittal**; 2010 (7) RCR (Criminal) 1741; **Rachna Kathuria v. Ramesh Kathuria**; Crl. M.C. No.130/2010 & Crl. M.A. No.504/2010 decided on 30.8.2010, Bombay High Court in **Ravindra Haribhau Karmarkar v. Shaila Ravindra Karrnarkar**; 1992 Cril. J 1845, **Vishal v. Sow Aparna**; 2018 SCC Online Born 1207, **Prakash Babulal Dangi v. The State of Maharashtra and anr.** Crl. Writ Petition No.3791 of 2016 decided on 10.10.2017 and Madras High Court in **B. Prakash v. Deepa and minor Harini**; Crl. RC (MD) No.453 decided on 28.7.2015.

In support of his contention, learned counsel for the respondent has placed reliance on the judgments of Hon'ble Supreme Court in **Shamima Farooqui v. Shahid Khan**; 2015 (2) RCR (Civil) 628, **Kunapareddy @ Noonkala Shanka Balaji v. Kunapareddy Swarna Kumari and another**; 2016(3) RCR (Civil) 317, this Court in **Satpal v. Sheela and another**; 2016 (2) RCR (Criminal) 297, **Poonam v. Vijay Kumar Jindal**; 2015 (4) RCR (Criminal) 300; **Satish Kumar v. Kamaljit Kaur and another**; 2015 (3) RCR (Criminal) 829, **Vishal Saxena v. Swati Bhatnagar**; 2016 (2) RCR (Civil) 1022, **Gunjan and another v. Gaurav Kumar Bhatia**; 2016 (3) RCR (Criminal) 578, Rajasthan High Court in **Mohd. Rafique v. State of Rajasthan and others**; 2016(4) RCR (Civil) 240, Delhi High Court in **Gaurav Manchanda v. Namrata Singh**; Crl. Rev. No.343 of 2018 decided on

27.2.2019, **Richa Arya v. State of NCT of Delhi and another**; 2016(2) RCR (Criminal) 409; Bombay High Court in **Abhijit Bhikaseth Auti v. State of Maharashtra and another**; 2008(19) RCR (Criminal) 426 and Madhya Pradesh High Court in **Yogendra Nath Dwivedi v. Smt. Vinita Dwivedi and others**; 2016 ILR (M.P.) 575.

I have given my thoughtful consideration to the rival contentions and gone through the record.

The purpose and object of granting maintenance to destitute women and children is to provide social justice to them and to prevent vagrancy by compelling those who can support them, 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 v. State of Chhatisgarh** 2016 AIR (SC) 753 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."

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."

The petitioner has placed on record income tax return for the year 2015-16 (Annexure P-13 colly) showing his annual income as ₹ 4,03,804/-. Thus, the petitioner can easily pay the amount of maintenance and same cannot be said to be exorbitant.

In view of the above and after going through the material available on record, this Court is of the view that no case is made out by the petitioner-husband to set aside the impugned orders dated 9.9.2016 and 3.1.2015 or to reduce the amount of maintenance.

Consequently, both the revision petitions filed by the husband petitioner stands dismissed.

(**RAJ SHEKHAR ATTRI**)
JUDGE

May 14, 2019
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>