

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CRM M-43900-2015 (O&M)

Bahadur Singh

..... Petitioner

Versus

Surinder Pal Kaur and another

..... Respondents

(ii) CRM M-7064-2016 (O&M)

Surinderpal Kaur and another

..... Petitioners

Versus

Bahadur Singh

..... Respondent

Date of Decision : 13.05.2019

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Rajbir Singh, Advocate
for the petitioner in CRM-M-43900-2015 and
for the respondents in CRM-M-7064-2016.

Mr. H.R.Kapil, Advocate
for the respondents in CRM-43900-2015 and
for the petitioners in CRM-M-7064-2016.

Mr. V.G.Jauhar, Sr. DAG, Punjab.

Mr. Harmanjit Singh Jugait, Advocate
for Accountant General (A&E), Punjab.

RAJ SHEKHAR ATTRI, J. (Oral)

This order shall dispose of CRM M-43900-2015, filed by
Bahadur Singh for quashing of the impugned order dated 24.09.2015,
passed by the learned District Judge, Family Court, Barnala and the CRM-

M-7064-2016, filed by Surinderpal Kaur and another, for amendment/modifying the aforesaid order.

Undisputedly, Bahadur Singh was married with Smt. Surinderpal Kaur and from this wedlock, one boy namely Avitarangdeep Singh was born, who is staying with his mother. Smt. Surinderpal Kaur and her son filed an application under Section 125 Cr.P.C. for maintenance on 08.09.1997 which was disposed of vide order dated 24.04.1998 granting maintenance at the rate of Rs.500/- per month each to both Surinderpal Kaur and her son Avitarandeeep. Thereafter they filed an application under Section 127 Cr.P.C. on 21.02.2005 asserting that Bahadur Singh-husband is earning Rs.15,000/- per month. Apart from it, he has agriculture land and house. The said application was also disposed of vide order dated 17.10.2007, passed by the learned Judicial Magistrate Ist Class, Barnala, vide which the maintenance awarded to Surinderpal Kaur was enhanced to Rs.1200/- per month and the maintenance awarded to her son was enhanced to Rs.800/- per month. Thereafter, they again filed an application under Section 127 Cr.P.C. for enhancement on 17.02.2010 asserting that Bahadur Singh-husband is a teacher and is earning more than Rs.25,000/- per month. The said application was also disposed of vide order dated 29.01.2014, passed by the learned Addl. Chief Judicial Magistrate Barana, granting maintenance at the rate of Rs.2500/- per month (Rs.1500/- to Surinderpal Kaur-wife and Rs.1,000/- to her son) from the date of application.

The said order was challenged by Surinderpal Kaur and her son by filing a revision petition before the Sessions Court, Barnala which was allowed vide order dated 24.09.2015 to the extent that the maintenance to

Smt. Surinderpal Kaur was enhanced to Rs.3500/- per month.

The said order has been challenged by Bahadur Singh-petitioner by filing CRM-M-43900-2015, asserting that the said order of enhancement by the revisional court is exorbitant and he is unable to pay the said maintenance.

Smt. Surinderpal Kaur and her minor son have also filed CRM-M-7064-2016, for modifying the said order asserting that the amount of maintenance at the rate of Rs.3500/- per month is too less and it should be enhanced to Rs.10,000/- per month.

I have heard learned counsel for the parties and have gone through the record.

It has come into the evidence that Smt. Surinderpal Kaur has no source of income and in her old age she is residing separate from her husband.

It is also undisputed fact that Bahadur Singh has now retired from his service and he has already received retiral benefits. He is also a co-sharer in agriculture land bearing Khewt No.11/3 in the area of Village Salempur, District Sangrur.

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 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."

This court is of the view that Smt. Surinderpal Kaur is looking after herself and her son and she is imparting him education. Moreover, she is in her old age.

Bahadur Singh-husband is a retired teacher. He will get pension but surprisingly his pension case was returned with some objection. He is not willing to submit the pension papers. In his affidavit, the Senior Deputy Accountant General (Pension) on behalf of Accountant General (A&E), Punjab has submitted that the incomplete pension case of Bahadur Singh for authorizing the pension gratuity has been returned. However,

ultimately, the basic pension of Rs.10815/- per month w.e.f. 01.06.2013 and gratuity of Rs.4869675/- dated 04.09.2017 has been authorised to him.

Keeping in view the totality of the circumstances, this court is of the view that Smt. Surinderpal Kaur is entitled for maintenance. However, the maintenance awarded to her by the courts below is highly meagre and it is difficult for her to make both ends meet. This court is of the view that the maintenance awarded to Surinderpal Kaur should be enhanced to Rs.7000/- per month.

Consequently, the CRM-M-43900-2015, preferred by Bahadur Singh-husband is dismissed whereas CRM-M-7064-2016, preferred by Smt. Surinderpal Kaur and her son is allowed and the maintenance awarded to her is enhanced to Rs.7,000/- per month from the date of application till realization. However, charge is created on the immovable property qua the arrears of maintenance.

(RAJ SHEKHAR ATTRI)
JUDGE

13.05.2019
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No