

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

(i)

CRR (F)-6425-2018 (O&M)

Karoon Bharti

..... Petitioner

Versus

Sonia Bharti and another

..... Respondents

(ii)

CRR (F)-6430-2018 (O&M)

Sonia Bharti and another

..... Petitioners

Versus

Karoon Bharti

..... Respondent

Date of Decision : 16.07.2019

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Harsh Garg, Advocate
for the petitioner in CRR(F)-6425-2018 and
for the respondents in CRR(F)-6430-2018.

Mr. Amit Chaudhary, Advocate
for the respondent in CRR(F)-6425-2018 and
for the petitioners in CRR (F)-6430-2018.

RAJ SHEKHAR ATTRI, J. (Oral)

This order shall dispose of CRR(F)-6425-2018, filed by Karoon Bharti and CRR(F)-6430-2018, filed by Sonia Bharti and Satvik Bharti, against the order dated 10.10.2018, passed by the learned District Judge (Family Court), Moga, vide which Sonia Bharti-wife was granted maintenance at the rate of Rs.6,000/- per month and Satvik-son was granted maintenance at the rate of Rs.3500/- per month.

Karoon Bharti-husband, by filing CRR (F)-6425-2018, has

challenged the said order on the ground that it is highly exorbitant and misappropriate to his means of earning whereas Smt. Sonia Bharti has preferred the CRR (F)-6430-2018 for enhancement of the maintenance.

Undisputedly, both Sh. Karoon Bharti and Smt. Sonia Bharti were married with each other on 30.01.2012 and out of this wedlock, minor son Satvik was born. Both Smt. Sonia Bharti and her minor son had preferred an application under Section 125 Cr.P.C. for grant of maintenance at the rate of Rs.25,000/- per month on the ground that they have been neglected and refused to be maintained by Sh. Karoon Bharti.

So far as the income of the husband is concerned, it is specifically pleaded in that application that Karoon Bharti is working as Chief Manager in five star hotel and getting monthly salary of Rs.1,50,000/-. The said application was contested by the husband inter-alia on the ground that Smt. Sonia Bharti is working and earning Rs.35,000/- per month. She is an income tax assessee and this fact has been concealed by her in her application for maintenance. However, he did not specifically deny his working. In the written statement, it is stated that he is working as a Chief Manager in a Five Star Bank. Learned court below had afforded adequate opportunities to the parties to adduce their evidence.

On appreciation of evidence, the application for grant of maintenance was allowed, as stated above.

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

Learned counsel for the husband has vehemently contended that Smt. Sonia Bharti failed to prove her income and that she has herself been working with Sriyansh Knitters Private Limited, Ludhiana and was

getting salary of Rs.35,000/- per month and she has concealed this fact, therefore, she is not entitled for maintenance. Apart from it, it has been further submitted that the husband has no earning capacity and he is without any work, therefore, the maintenance granted to the wife and son is exorbitant.

On the other hand, learned counsel for the wife has contended that Sh. Karoon Bharti-husband was working as a Chief Manager in a five star hotel both in India and in Tanzania but he did not disclose his actual income and he is well educated person. So far as the income of the wife is concerned, it has been submitted that earlier she was suspended and ultimately terminated from her service.

I have given my thoughtful consideration to the rival contentions.

The husband did not step into the witness box. He was employed as a Manager in a Five Star Hotel in Tanzania. His salary and working condition were in his special knowledge. Section 106 of the Indian Evidence Act requires that when any fact is especially within the knowledge of any person, the burden of proving of that fact is upon him.

The income of the husband was a fact which was in his exclusive personal knowledge. The onus to prove his income was upon him. Since he did not lead any evidence or placed any material to prove this fact on account of which the assertions made by the wife shall be taken as true.

A bare perusal of his reply to relevant paragraph of the application for maintenance makes it abundantly clear that he has simply denied the averments.

Apart from it, he is an able bodied person. It is moral and legal duty of the husband to maintain his wife and child, therefore, the plea that his wife and minor child failed to prove his income is of no help to him. Thus, it stands established that he has ample income to maintain his wife and child. Apart from it, an adverse inference can be drawn against him for his non-appearance as his own witness.

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."

After going through the evidence and other material available on record and having regard to ratio of authority in **Badshah's case** (supra), this court is of the view that no case is made out for reduction of the claim for maintenance or modification thereof.

Now coming to the petition, filed by Smt. Sonia Bharti and her minor child Satvik Bharti. Although, the onus to prove the income of the

wife was upon the husband yet in this case the maintenance awarded appears to be appropriate according to the facts and circumstances of the case. Thus, no case is made out for interference.

Consequently, this court is of the view that the impugned order does not suffer from any illegality, irregularity and infirmity and it does not require for any interfere and is hereby affirmed.

Accordingly, both the aforesaid petitions stand dismissed.

16.07.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

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