

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

% Judgment delivered on: 30th April, 2019

+ CRL. REV. P. 42/2016

LOPAMUDRA KONWAR BHUYAN & ANR Petitioners

versus

SURAJIT SINGH Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Mayank Wadhwa with Ms.Kritika Nagpal, Advs.

For the Respondents: Ms.Madhusmita Bora with Mr.Bijoy Kumar Pradhan,
Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioners impugns order dated 14.09.2015 whereby the trial court, under section 125 Code of Criminal Procedure (Cr.P.C.), held that Petitioner No. 1 – wife was not entitled to any maintenance and directed Respondent to pay maintenance @ Rs.10,000/- per month to Petitioner No. 2 – minor child from the date of the order till she attains the age of majority.

2. Marriage between the parties was solemnized on 23.06.2002 under the Special Marriage Act and a female child was born from the wedlock on 07.03.2004. It is alleged that Petitioner No. 1 was forced to leave her matrimonial house on 03.04.2005 on account of being

mentally and physically tortured by the Respondent and his family members. The marriage between the parties was dissolved on 22.03.2007 by way of an ex-parte decree.

3. Petitioners filed the subject petition under section 125 Cr.P.C. seeking maintenance Rs 50,000 per month for both the Petitioners.

4. Trial court, on the basis of evidence and income tax returns held that Petitioner No. 1 had not correctly disclosed her income and was employed as a “client tech support specialist” in Dell and had an income of approximately Rs 6,35,000 per annum. It further held that the income of Petitioner No. 1 and Respondent was in the same range and thus held that Petitioner No. 1 was not entitled to any maintenance as she was capable of maintaining herself. The trial court directed Respondent to pay maintenance to Petitioner no. 2 – minor child @ Rs. 10,000/- from the date of the order.

5. Learned counsel for the Petitioners submits that trial court has erred in fixing the quantum of maintenance. He submits that Respondent is a class – I government contractor and a business man having business of clothing and computers. It is alleged that Respondent draws an income of approximately 10 lakhs a month. On the other hand, Petitioner No. 1 is an employee in a private company and does not earn sufficient to meet daily expenditure of herself and the child as the monthly expenditure of minor child is approximately Rs 45,000. He further submits that the Trial Court has erred in awarding maintenance from the date of the order (i.e. 14.09.2015) and

should have awarded maintenance from the date of the application i.e. 13.07.2010

6. Per contra, learned counsel for the Respondent contends that Petitioner No. 1 holds a managerial post and draws a salary of Rs 40,000 – 50,000 per month. He further disputes the income of the Respondent alleged by the Petitioners. He submits that Respondent earns approximately Rs 35,000- 40,000/- per month and has a minor child to maintain who is born from the second marriage.

7. Trial court has inter alia held as under:

15. The Petitioner no. 1 has not disclosed in her entire evidence affidavit as well as her petition filed in July, 2010 as to what was her avocation or salary/earnings. It was only during her cross-examination on 14.08.2014 that the Petitioner no. 1, Smt. Lopamudra Konwar Bhuyan, PW-1 has disclosed that she moved to Bangalore in December, 2012 and that she has joined M/s BMWARE Software India Pvt. Ltd. and earlier she was working with M/s Dell, Gurgaon as Client Technical Support Specialist. PW-1 has also disclosed during her cross-examination on 14.08.2014 that her gross salary is Rs.6,35,000/- per annum. As per the income tax return filed by the Respondent during assessment year 2011-12, his gross income was Rs.6,29,197.33 paise and the same, during the assessment year 2012-13, was Rs.4,08,275/-. Thus, the Petitioner no. 1 was gainfully employed even at the time of the institution of the present petition and continues to remain in the job even today. The earnings of the Petitioner no. 1 and the Respondent are almost in the same range. In these circumstances, the Petitioner no. 1 cannot be said to be unable to maintain herself.....

8. The Petitioner No. 1 in her cross examination admitted that her gross salary was Rs. 6,35,000/-. Respondent in his affidavit stated that his income was about 35,000/- to 40,000/- per month. However, during cross examination, he has admitted that he was engaged in garment business wherein he was assisted by his father. He stated that it is a joint family business. He further admitted that he was involved in furniture business in the name of Satluj Enterprises. He also admitted that he owned a showroom-shop by the name of K- 7 Shoppe.

9. Trial Court has held that during assessment year 2011-12, Respondent's gross income was Rs. 6,29,197.33 and the same, during the assessment year 2012-13, was Rs. 4,08,275/-.

10. Trial Court has held that the Petitioner No. 1 is gainfully employed and maintaining herself and particularly when her earnings are similar to that of the Respondent, she is not entitled to any maintenance from the Respondent.

11. The Trial Court has held that Petitioner No. 2 being minor daughter of the Respondent is entitled to maintenance as she is residing with Petitioner No. 1 and is in the custody of the Petitioner No. 1. Both parents are responsible for meeting the day to day expenses, nourishment, medical and other expenses of the child i.e. Petitioner no. 2.

12. Petitioner No. 1 has placed on record of the trial court evidence to show that the tuition fee alone of Petitioner No. 2 was in excess of Rs. 5,000/- per month for the academic year 2011 – 2012. Besides the tuition fee there are other expenses towards for clothing, food, medicines, extra-curricular activities etc. of the child.

13. The view taken by the trial court that both the parents are responsible for meeting the day-to-day expenses, nourishment, medical and other expenses of the child, in my view is erroneous. Admittedly the custody of Petitioner No. 2 is with Petitioner no. 1. A child for her upbringing does not only require money. A lot of time and effort goes in upbringing of a child. It would be incorrect to hold that both the parents are equally responsible for the expenses of the child. A mother who has custody of a child not only spends money on the upbringing of the child but also spent substantial time and effort in bringing up the child. The trial court has erred in equalizing the effort of both the parents in upbringing of the child. One cannot put value to the time and effort put in by the mother in upbringing of the child. No doubt, mother, if she is earning, should also contribute towards the expenses of the child but the expenses cannot be divided equally between the two.

14. Respondent did not correctly disclose his businesses. Initially he denied having any business, however during cross examination he has admitted that he is engaged in several businesses. He has deposed as under:

“ We are engaged in garment business wherein I am assisted by my father. It is a joint family business. We are also involved in furniture business and it is in the name of Satluj Enterprises. It is wrong to suggest that we own a showroom-shop by the name of K- 7 Shoppe. It is correct that I own K- 7 Shoppe, document pertaining to which is Ex. RW-1/P-1.

I have not filed any income tax return of the past 10 years on record. Vol. I have filed the copy of letter of my Chartered Accountant.

I am aware of the Voyage Group and the same was Travel Agency and also dealing into flight tickets. I was one of the partners out of two partners.

I also run an NGO which is not registered under the name of my daughter Muskan. We educate the poor girl child. We get collections and donations from people. Vol. That there is no bank account of the said NGO.

My Travel Agency was in loss and I closed it this year. I have not filed any documents on record with respect to the Travel Agency I have not filed anything on record to show the income from my garments business or the furniture business as stated above. Vol. It is now stated that I do not own the garment business. Apart from the businesses stated above I was also engaged in another garment business by the name of KOUTONS which was subsequently closed down.

15. Further, the trial court has erred in granting maintenance to Petitioner No. 2 only from the date of the order. The object of section 125 Cr.P.C is to afford subsistence allowance to the dependents mentioned in the provision, who are not able to maintain themselves, thus the maintenance awarded ideally should be from the date of

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. The fact that sufficient time has been spent between the date of application and a final adjudication and an award in favor, does not mean that they had enough funds to maintain themselves. When the trial court comes to conclusion, after trial, that the person claiming maintenance 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.

16. 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*”

17. Further, in *Jaiminiben Hirenbbhai Vyas & Anr vs Hirenbbhai 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”.

18. In view of the above, I find no infirmity in the view taken by the trial court that Petitioner No. 1 is in a position to maintain herself and as such is not entitled to any maintenance. However, the monthly maintenance awarded to Petitioner No. 2 is enhanced to Rs. 20,000/- per month, which, shall be payable from the date of the application i.e. 13.07.2010.

19. Respondent is directed to clear the arrears in three equal monthly installments.

20. Petition is accordingly allowed in the above terms.

21. Order *Dasti* under the signatures of Court Master.

APRIL 30, 2019/rk

SANJEEV SACHDEVA, J