

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

Date of Decision: 28.11.2019

+ CRL. REV. P. 851/2019

IN THE MATTER OF:

LAVLESH SHUKLA

..... Petitioner

Through: Mr. Vikas Tripathi, Advocate.

versus

RUKMANI

..... Respondent

Through: Mr. R.N. Mishra and Mr. Tarun
Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

1. The present criminal revision petition has been filed assailing the order dated 03.05.2019 passed by the Family Court in M.T. No. 714/18.
2. The respondent/wife filed an application for interim maintenance for herself and her minor child on the ground that she was not having any source of income. It was stated that the petitioner/husband was working as an Accounts Officer and earning Rs.44,000/- per month. In the application, interim maintenance to the tune of Rs.25,000/- per month was claimed.
3. The Family Court considered the income affidavits of the parties and noted that the petitioner/husband was earning about Rs.45,000/- per month after deduction of income tax his monthly salary was Rs.44,700/- per month. The Family Court also noted the contention that the petitioner/husband was paying loan instalment of Rs.27,869/- per month.

4. After considering the aforesaid submissions, the Family Court awarded 1/3rd of the total salary of the petitioner/husband i.e. Rs.14,900/- as the interim maintenance in favour of the respondent and her child. The interim maintenance was awarded from the date of filing of the application till final disposal of the maintenance petition.

5. Learned counsel for the petitioner/husband has submitted that the petitioner/ husband is paying Rs.23,000/- as loan amount in the form of monthly instalments for purchasing a flat in Mumbai. It is also submitted that initially, the petitioner had paid Rs.8,000/- per month to the respondent, however, after he was dispossessed from his own flat he has stopped paying the same and now he is paying Rs.800/- towards the education of the child. It is also submitted that the Family Court ought not to have granted the maintenance from the date of filing of the application.

6. I have heard counsels for the parties and have gone through the records.

7. Vide impugned order dated 03.05.2019, while noting the peculiar facts and circumstances of the case, the Family Court has awarded 1/3rd of the total salary of the petitioner as an interim maintenance to the respondent and her minor child. The said order has not been challenged by the respondent/wife.

8. In so far as the contention that respondent/wife ought not to have been granted the interim maintenance from the date of filing of the application is concerned, the same needs to be answered in light of the decision rendered by the Supreme Court in Jaiminiben Hirenbbhai Vyas & Anr. Vs. Hirenbbhai Rameshchandra Vyas & Anr. reported as **(2015) 2 SCC 385**. In the captioned case, while referring its earlier decision in Shail Kumari Devi vs.

Krishan Bhagwan Pathak reported as **(2008) 9 SCC 632**, it was held that it shall be open to the Magistrate to award the maintenance from the date of the application though, reasons need to be recorded in support of such an order. In the present case, it has come on record that the respondent/wife has not been earning. The maintenance awarded to a wife is to overcome the financial crunch which has occurred on account of her separation from the husband. It is neither a matter of favour to the respondent/wife nor any charity done by the petitioner/husband, it is her right which is being enforced by the Court. The purpose of the provision is to prevent vagrancy and destitution in the society. In the present case, the Family Court has noted that though the respondent/wife is a graduate but she is unemployed. As the respondent/wife is not earning and has incurred expenses towards maintenance of herself and the minor child, the Family Court rightly awarded the maintenance from the date of the application.

9. The next contention raised by the learned counsel for the petitioner/husband is that he had paid monthly maintenance @ Rs.8,000/-. The said contention is already taken care of by the impugned order where it mentions that any amount paid as maintenance in favour of the respondent/wife and the child for the period in question would be liable to be adjusted.

10. In view of the above discussions, I do not find any illegality or perversity in the impugned order passed by the Family Court. The revision petition is accordingly dismissed.

MANOJ KUMAR OHRI, J

NOVEMBER 28, 2019/ga