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

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Judgment delivered on: 19.03.2019

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CRL.REV.P. 374/2017 CRL.M.A. 8510/2017, 8512/2017

PUSHPA & ORS.

.....Petitioners

versus

RAM AVATAR

..... Respondent

**Advocates who appeared in this case:**

For the Petitioners : Ms. Manika Tripathy Pandey, Mr. Ashutosh Kaushik,  
Mr. Brahm Kumar Pandey, Advocates

For the Respondent : Mr. Neeraj Bhardwaj, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**J U D G M E N T**

**SANJEEV SACHDEVA, J. (ORAL)**

**CRL.M.A. 8510/2017 (condonation of delay in refiling)**

**CRL.M.A. 8512/2017 (condonation of delay in filing)**

1. Condonation of delay in refiling and filing the revision petition is sought by petitioners on the ground that petitioner No.1 is an uneducated lady and not conversant with the legal process and the proceedings were being looked after by her brother, who was suffering from kidney problem and was hospitalized from time to time and was in a serious condition because of which the present petition could not be filed within time.

2. In my view, the petitioners have sufficiently explained the delay

caused in filing the petition. For the aforesaid reasons, the application is allowed and the delay in filing and refiling is accordingly condoned.

3. The applications are disposed of.

**CRL.REV.P. 374/2017**

1. Petitioners impugn order dated 27.01.2016 whereby trial court has assessed the maintenance for petitioner No.1 and her children at Rs.10,000/- per month i.e. Rs.2,000/- for each of the petitioners from the date of the order till the time they are legally entitled to receive it.

2. Learned counsel for the petitioners submits that the trial court has erred in assessing the maintenance from the date of the order and in not relating it back to the date of filing of the application.

3. Learned counsel for the petitioners relies upon a judgment of this Court dated 16.11.2018 in Crl.M.C. 3646/2014 titled *Rekha Sabharwal & Anr. Vs. Jitender Sabharwal* to contend that ordinarily the assessment of maintenance has to be from the date of the filing of the application and for reasons to be recorded, from the date of the order. She submits that no reasons have been recorded by the trial court as to why the maintenance has been awarded only from the date of the order and not from the date of the filing of the petition.

4. Learned counsel for the respondent submits that the trial court has erred in assessing the income of the respondent at Rs.30,000/- and awarding maintenance to the petitioners of Rs.10,000/-. He submits that he has already filed an application under Section 127 of Cr.P.C. for reduction

of the maintenance amount.

5. Learned counsel for the petitioners submits that petitioners are entitled to enhancement of maintenance on account of changed circumstances, *inter alia*, that two more children are now residing with petitioner No.1. She submits that petitioners are in the process of filing an application under Section 127 of Cr.P.C. for enhancement of maintenance.

6. Since there is no challenge by the respondent impugning order dated 27.01.2016, his original petition (Crl.Rev.Petition No.746/2016) having been dismissed for non-prosecution, the scope of the present petition is limited to the plea of the petitioners for relating back the order of payment of maintenance from the date of filing of the petition and not from the date of the order.

7. Reference may be had to the judgment of this Court in *Rekha Sabharwal (supra)* wherein this Court relied on the judgment of a Co-ordinate Bench of this Court in *Bimla Devi Vs Shamsher Singh (2015) 224 DLT (CN8) 8* wherein it was held that “*Maintenance is a right which accrues to a wife against her husband since the inception of her getting married with him. A moral and legal obligation and duty is cast upon the husband to maintain his wife. The necessary corollary is that from the time the wife starts residing separately from her husband, she can claim maintenance from him*”.

8. The Supreme Court 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”.*

9. Further, in *Jaiminiben Hirenghai Vyas & Anr. Vs. Hirenghai 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”.

10. In the present case, the trial court has merely recorded that maintenance is awarded from the date of the order. No reasons have been recorded by the trial court to submit that the maintenance has to be awarded from the date of the order and not from the date of the filing of the petition.

11. Maintenance is awarded to a wife and children so that they can survive and is not a bounty. It is awarded to wife and dependent children who are not in a position to maintain themselves. Normally, it should be awarded from the date of the application and for valid reasons to be

recorded, from the date of the order.

12. In view of the settled position of law, impugned order to the extent that it makes the payment of maintenance applicable from the date of the order and not from the date of the filing of the petition, without recording any reasons, is not sustainable. Accordingly, the impugned order is modified to the extent that the respondent shall be liable to pay the maintenance from the date of the application i.e. 17.12.2011.

13. The petition is allowed in above terms. However, it is clarified that this order will be without prejudice to the subsequent application filed by respondent under Section 127 of Cr.P.C. and the proposed application by petitioners also under Section 127 of Cr.P.C., which applications shall be considered by the trial court in accordance with the law, without being influenced by anything stated in the order.

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

**MARCH 19, 2019**  
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**SANJEEV SACHDEVA, J**