

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

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Judgment reserved on: 28th February, 2019

Judgment delivered on: 31st May, 2019

+ CRL. REV. PET. 849/2018 & CrI. M.A. 33234/2018

KANUPRIYA SHARMA

..... Petitioner

versus

STATE & ANR.

....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. K.K. Sharma, Advocate

For the Respondents: Mr. Kusum Dhalla, Addl. PP for the State
Mr. Tushar Sannu, Adv. for R-2

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns judgment dated 25.08.2018 whereby the Appellate Court allowed the appeal filed by Respondent no. 2/husband, impugning order dated 26.06.2018 of the Trial Court and set aside the same. The Trial Court has awarded interim maintenance to the Petitioner/wife of Rs. 16,500/- per month from the date of filing of the petition under Section 23(1) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act).

2. Petitioner and Respondent no. 2 married on 14.02.2015. As per the Petitioner, her parents had spent lavishly on her marriage and fulfilled all

demands of Respondent no. 2 and his family. After the marriage, Petitioner started residing with Respondent no. 2 at her matrimonial home in Muradnagar, Ghaziabad (U.P.) along with him and his family. It is alleged that thereafter Petitioner was subjected to cruelty by her in-laws who were dissatisfied with the dowry articles. Further, it is alleged that all her jewellery articles and Istridhan were taken by her in laws on the pretext of keeping them safe in a bank locker.

3. It is further alleged that she was consistently harassed by her husband and her in-laws. It is alleged that without informing the Petitioner, Respondent no. 2 left the matrimonial house at Muradnagar, Ghaziabad and started living at Pune (Maharashtra) and refused to return to the matrimonial home.

4. Subsequently, when Petitioner went to live with her husband at Pune, she came to know that he was living in a flat which was in a dilapidated condition and did not even have separate toilet facilities; however, she was still forced to live with her husband there. It is alleged that she was also neglected because of which she became unwell and was forced to leave her matrimonial home and live with her parents at Muradnagar. Thereafter she shifted to Laxmi Nagar, Delhi as she was preparing for bank examination.

5. Petitioner filed subject petition under Section 12 of the D.V. Act. On the interim application under Section 23(1) of the D.V. Act, the Trial Court by its order dated 26.06.2018, held the income of Respondent no.2/husband

to be Rs. 50,000/- and apportioned the same into three parts and awarded Rs. 16,500/- to the Petitioner per month as maintenance.

6. Aggrieved by the order passed by the Trial Court, Respondent no. 2 filed an appeal which has been allowed by the impugned judgment dated 25.08.2018.

7. The Appellate Court has reversed the maintenance awarded by the Trial Court primarily on the ground that Petitioner was duly qualified and educated person and there was no reason mentioned as to why she was unemployed. Further, the Appellate Court was of the view that Respondent no. 2 had produced material to show that Petitioner was gainfully employed and had been working in Aastha Infracity Ltd. Further the Appellate Court held that uncle of Respondent no. 2 had managed to get her a job in Indian Railways and she was receiving salary therefrom.

8. Further, the Appellate Court held that Petitioner had failed to disclose her employment and had not approached the court with clean hands. The Appellate Court held that as Petitioner was in a position to work and earn her livelihood, she could not be said to be a victim of vagrancy and being a self-created situation, she was disentitled to maintenance.

9. Learned counsel for the Petitioner submits that Petitioner was not gainfully employed. It is submitted that Petitioner had made several attempts to secure an employment but was unable to do so. Learned counsel submits that Petitioner has never worked with the Indian Railways. Uncle of the Respondent no. 2 had fraudulently secured an employment in her

name in Indian Railways from which salary was being credited to an account opened in her name and the money deposited in the said account was being debited by the uncle and credited to his son's account.

10. It is contended that Petitioner has never worked at the said job and has even made a complaint to the Prime Minister's Office about the fraudulent employment. Further, it is submitted that as per records, said service was terminated in February, 2017.

11. With regard to the allegation of the employment with Aastha Infracity Ltd., it is submitted that she was never gainfully employed there but had worked there for gaining some experience and had never received any salary from the said company.

12. Learned counsel further submits that the issue as to whether the Petitioner was gainfully employed or not is a matter of trial and Respondent no. 2 has failed to produce any record to show that she was gainfully employed and receiving salary.

13. Per contra, learned counsel for the Respondent no. 2 has contended that the Petitioner was duly employed and had concealed her employment and as such had not come to court with clean hands. Learned counsel for Respondent no. 2 further submits that the evidence in the form of CD was produced before the court to show that the Petitioner was gainfully employed and it was a self-created situation by her and she is disqualified from claiming any maintenance.

14. The allegation of the Petitioner before the Trial Court was that Respondent no. 2 was having a monthly salary of Rs. 52,000/-. On the contrary, Respondent no. 2 had contended that his monthly salary was Rs. 42,429/-.

15. The Trial Court, on perusal of the documents filed by Respondent no. 2, noticed that in the statement of account filed by him, there were fluctuations in the monthly salary. Based on the documents filed with the Trial Court, a rough estimate was drawn and the Trial Court held that Respondent no. 2 was earning roughly Rs. 52,000/- per month.

16. With regard to the contention of Respondent no. 2 being gainfully employed, Trial Court was of the view that the said dispute would require evidence to be led by the parties and at the stage of determining interim maintenance, court has to form a prima facie view.

17. Holding that the Petitioner was the sole dependent member of Respondent no. 2, the Trial Court apportioned the salary into three parts; two parts were allocated to the husband-Respondent no. 2 and one part allocated to Petitioner and accordingly maintenance of Rs. 16,500/- per month was awarded to the Petitioner.

18. The sole reason given by the Appellate Court for reversing the order passed by the Trial Court is that the Petitioner has been working prior to her marriage as well as after her marriage. The Appellate Court held that the Petitioner had occasion to work in the Indian Railways but did not report for work. Reliance was placed on the Passbook of Account being

maintained with Axis Bank which showed salary being received by her from the Railways and being deposited in her account.

19. The dispute as to whether Petitioner was employed in Railways or that it was a fraudulent employment secured by the uncle of Respondent no. 2 and She had even made a complaint to the PMO and further that uncle of Respondent no. 2 is already facing an inquiry and that the money deposited in the account opened in her name in Axis Bank was being withdrawn by the uncle and then being deposited in the account of his own son are all disputed questions of fact requiring trial. Further dispute as to whether Petitioner was employed with Aastha Infracity Ltd. or that she had never received any salary from Aastha Infracity Ltd. but had gone there to gain experience are all disputed facts requiring trial.

20. There is no material produced by Respondent no. 2 either before the Trial Court, Appellate Court or before this court to show that the Petitioner, in fact, had secured any employment or was receiving any salary or income.

21. An application under Section 23(1) of the D.V. Act is an application for fixing interim maintenance. Interim maintenance is fixed on taking a prima facie view of the matter. Serious disputed questions of facts raised at that stage, requiring evidence cannot be gone into. Unless undisputed evidence is produced by the husband clearly establishing that the wife is gainfully employed, relief of interim maintenance cannot be declined.

22. The Supreme Court of India in *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 has held that *Section 125 of the Code of Criminal*

Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

23. The rationale for grant of maintenance under section 125 Cr.P.C. as expounded by the Supreme Court in *Bhuwan Mohan Singh (supra)* applies on all fours to the grant of maintenance under the DV Act.

24. In case there is a dispute as to whether the wife is gainfully employed or not, court cannot assume, as has been done in this case by the Appellate Court, that because she is educated or was employed prior to her marriage, she would be gainfully employed.

25. The Appellate Court while reversing well-reasoned finding of the Trial Court has erred in holding that it is a self-created situation of the Petitioner. The Appellate Court had clearly ignored the settled position of law and erred in holding “*that maintenance is meant to take care of vagrancy where the other person is not able to maintain for herself or has reasons beyond control and if found that person is deliberately not working so as to maintain herself that maintenance cannot be awarded as a mark of punishment against the other spouse.*”

26. In the facts of the present case, there is no basis or justification for the Appellate Court to have returned such a finding without trial on the disputed facts as noticed hereinabove.

27. The Appellate Court had further erred in holding that the judgment in *Shailja & Anr. Vs. Khobbanna* (2018) 12 SCC 199 of the Supreme Court cannot be made applicable to the facts of the present case. The Supreme Court in *Shailja & Ors. Vs. Khobbanna* has categorically held that whether the wife is capable of earning or whether she is actually earning are two different requirements. The legal principle laid down by the Supreme Court in *Shailja & Ors. Vs. Khobbanna* squarely applies to the facts of the present case.

28. Further, it may be seen that claim of maintenance by a wife under section 125 Cr.P.C. is qualified by the expression “*unable to maintain herself*”.

29. There are no such qualifying words under the DV Act. Under section 12 of DV Act, an aggrieved person can approach the Magistrate seeking one or more of the reliefs under the DV Act. Under section 20 DV Act, the magistrate has powers to direct Respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may *inter alia* include the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 Cr.P.C. or any other law for the time being in force. Under section 20(2) the monetary relief granted has to be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

30. The grant of maintenance under the DV Act has not been made dependent upon the expression “*unable to maintain herself*”. Further, the expression “*unable to maintain herself*” does not mean *capable of earning*.

31. In the present case, whether Petitioner is *actually earning* or *qualified and capable of earning* are again two different things. As noticed above, no material has been produced by Respondent no. 2 to show that the Petitioner is gainfully employed or receiving any salary and actually earning. The pleas raised by the Respondent no. 2 would be required to be

established at trial. Till Respondent no. 2 establishes by leading cogent evidence that Petitioner is gainfully employed and receiving salary, there is no justification to deny maintenance to the Petitioner-wife.

32. In view of the above, clearly the impugned order dated 25.08.2018 passed by the Appellate Court reversing the award of maintenance by the Trial Court in favour of the Petitioner is not sustainable.

33. In view of the above, the impugned order dated 25.08.2018 is set aside. The order passed by the Trial Court dated 26.06.2018 awarding maintenance of Rs. 16,500/- per month to the Petitioner is restored. Respondent no. 2 is directed to pay maintenance @ Rs. 16,500/- per month to the Petitioner from the date of filing of the application seeking grant of maintenance (i.e. 03.05.2017).

34. Respondent no. 2 is granted four weeks' time to clear the entire arrears of maintenance.

35. Petition is allowed in the above terms.

36. It is clarified that the Trial Court would be at liberty to assess final maintenance, after parties have led their evidence, without being influenced by anything stated herein.

37. Order *dasti* under signatures of the Court Master.

MAY 31, 2019/‘rs’

SANJEEV SACHDEVA, J