

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

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Judgment reserved on: 13th March, 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 855/2018

FAROOQ AHMED SHALA

..... Petitioner

versus

MARIE CHANEL GILLIER

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Adab Singh Kapoor with Ms. Shefali Menezes,
Advocates

For the Respondents : Mr. Mrinal Madhav with Mr. Tarunesh Kumar, Mr.
Kaushikesh Kumar, Advocates with Respondent in
person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 855/2018 & Crl.M.A.33331/2018 (stay)

1. Petitioner impugns order dated 02.08.2018, whereby, appeal of the petitioner challenging order of interim maintenance dated 14.09.2017 has been dismissed.

2. Order of interim maintenance @ Rs.60,000/- per month was passed by the Trial Court on 14.09.2017. Petitioner impugned the

same by an appeal which has been rejected by the impugned order dated 02.08.2018 by the Appellate Court.

3. Petitioner is a Muslim while respondent is a Christian. They performed Nikah on 28.11.2004. Their marriage was registered under the Special Marriage Act and a certificate dated 30.05.2006 was issued. Parties separated in March 2015.

4. From the previous marriage petitioner husband had two daughters and from the present wedlock two daughters have been born. It is an admitted position that three minor daughters are residing with the respondent wife and one of the daughters from the previous wedlock of the petitioner, who has turned major, out of her own will is residing with the petitioner.

5. Further, the admitted position is that the respondent wife is taking care of not only her two biological daughters but also the younger daughter of the petitioner husband from his previous marriage.

6. Allegations of domestic violence have been leveled by the respondent wife and a petition under the Domestic Violence Act was filed.

7. In the petition filed by the respondent under Section 23 of the Act, the Trial Court held that the income of the petitioner would not be less than Rs.2 lakhs and accordingly awarded Rs.60,000/- to the

respondent as she was taking care of the three daughters of the petitioner.

8. The Trial Court observed that the petitioner had claimed himself to be a pauper but had not correctly disclosed his assets or his income. The Trial Court found that the petitioner had incorporated a Company titled M/s. MOVINDIA and was carrying on a business of travel agency.

9. From the bank account of M/s. MOVINDIA, the Trial Court found that several lakhs of rupees were being paid by the petitioner to different hotels as also to a law firm, which was allegedly hired for business purposes. The Trial Court further found that several lakhs of rupees had been withdrawn by the petitioner from the bank account in his own name. Trial Court further found that the petitioner had contended that he had purchased a property jointly with the respondent at Jasola and had made payments for the same but had failed to disclose the mode of payment.

10. The Trial Court on perusal of the bank statements of the petitioner found that he had been receiving huge amounts of money in the name of M/s. MOVINDIA, and also in other companies and he was hiding the same from the Court with the sole purpose of shying away from the responsibility of the complainant and three minor daughters. Trial Court further found that there was no dependent member on the petitioner.

11. On perusal of the income and expenditure affidavit filed by the parties, Trial Court found that that the bank account statement of the petitioner showed withdrawals of Rs.3 lakhs per month but petitioner had failed to place on record any document in support of his claim.

12. Trial Court found that the respondent wife was maintaining not only two biological daughters of the petitioner from this marriage but also one other minor daughter from the previous marriage of the petitioner. Trial Court accordingly assessed petitioner's income at Rs.2 lakh per month and directed payment of Rs.60,000/- as interim maintenance.

13. Aggrieved by the said findings, the petitioner filed an appeal before the Sessions Court *inter alia* contending that he is a pauper and does not have any source of income. Further, it is contended that respondent herself is running a business and the business which was earlier being run by the petitioner has now been taken over by the respondent and the petitioner has been ousted from the same.

14. The Appellate Court rejected the appeal of the petitioner primarily on the ground that the petitioner has not fairly and truthfully disclosed his income and has concealed the same. The Appellate Court accordingly concluded that the petitioner was a man of means and also has a responsibility to maintain his minor daughters.

15. Before this Court also the contention of the petitioner is the same that he is a pauper and does not have any source of income. He

continues to contend that the business that was being run by him has now been taken over by the respondent and as such he should not be saddled with the liability of maintaining either the respondent or the minor daughters.

16. The admitted position that emerges is that three of the minor daughters, who are dependent on the petitioner and the respondent, are being taken care of solely by the respondent. The Trial Court as also the Appellate Court has noticed that the petitioner in his income and expenditure affidavit has not truthfully and fairly disclosed his assets, his source of income and his expenditure. Both the Court have found that though petitioner has claimed himself to be a pauper yet the bank statements placed by him on record revealed inflow and outflow of substantial amount of money. He had not placed on record his income tax returns.

17. On the other hand, as noticed by the Trial Court as well as the Appellate Court, respondent had filed detailed affidavit giving details of her income and expenditure and bank accounts and assets.

18. Mere fact that the respondent wife is earning does not absolve the petitioner of his responsibility to maintain his three minor daughters. Admittedly, the petitioner is a businessman and was running businesses not only in Delhi but also in Jammu & Kashmir, before the time disputes commenced and even after that for some time. No reason or material has been placed on record by the

petitioner to even *prima facie* show that he is incapable or incapacitated from earning.

19. On the other hand, *prima facie* evidence has been placed on record by the respondent to show that petitioner is still running a business under the name and style of M/s. MOVINDIA, which is a travel agency and in the accounts of which concern there are transactions running into several lakhs.

20. From the material that is placed on record before the Trial Court and the Appellate Court, both the Courts have found that the petitioner has not been truthful in his disclosure and has concealed his income and expenditure for the purposes of avoiding to pay any maintenance to the daughters.

21. Petitioner has a legal, social and moral responsibility to not only maintain his wife but also his children. Even if assuming that the respondent is earning, the same cannot be a reason for the petitioner to avoid the responsibility and duty of maintaining his minor daughters.

22. 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. 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.

23. 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.

24. The expenditure as disclosed by the respondent wife on the three daughters is far in excess of Rs. 60,000/- per month, the amount that has been fixed as an interim measure by the Trial Court. Clearly, the remaining expenditure for bringing up the three children is being borne by the respondent wife from her own sources. Merely because Respondent – wife is earning, does not give an excuse to the husband to avoid working or undertake the responsibility of maintaining his children.

25. Based on the material that has been placed on record both the Trial Court as well as the Appellate Court has drawn adverse inference against the petitioner and have concluded that he is a man of adequate financial resources and status.

26. The Appellate Court has rightly held that the respondent wife is singlehandedly raising the children regardless of the fact that she is also bringing up the biological child of the petitioner from his previous marriage.

27. Perusal of the record as also the income and expenditure affidavit filed by the parties shows that there is no error committed by

the Trial Court as also the Appellate Court in drawing an adverse inference against the petitioner.

28. Petitioner admittedly was a businessman having businesses earning several lakhs of Rupees per month. Even presently, the petitioner is engaged in the travel business in the name and style of M/s. MOVINDIA. Record reveals transaction of several lakhs in the account of M/s. MOVINDIA. The plea of the petitioner that he is a pauper and is not earning anything and is dependent upon his nephew is *ex facie* untenable.

29. I find no infirmity in the view taken by the Trial Court as well as the Appellate court in drawing an adverse inference against the petitioner and in assessing that the petitioner would at least be earning Rs.2 lakhs per month.

30. Keeping in view of the dependency factor and the fact that the only dependent member of the petitioner are his three minor daughters, who are presently in the custody of the respondent, who is taking care of them, the award of interim maintenance of Rs.60,000/- per month, to my mind, is not unjustified.

31. In view of the above, I find no infirmity in the impugned order dated 14.09.2017 of the Trial Court as also the impugned order dated 02.08.2018 of the Appellate Court dismissing the appeal of the petitioner.

32. In view of the above, I find no merit in the petition. The Petition is, accordingly, dismissed.

33. Petitioner is granted 6 weeks time to clear the entire arrears of maintenance.

34. It is clarified that above observations are *prima facie* in nature and would have no bearing on the final adjudication of the application for grant of maintenance, which would be considered by the Trial Court based on the evidence led before it, without being influenced by anything stated in this order.

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

JULY 01, 2019
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SANJEEV SACHDEVA, J