

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

**CRL.REV.P. 596/2018**

Reserved on : 27.01.2020

Date of Decision : 29.01.2020

**IN THE MATTER OF:**

**ASHA KARKI**

..... Petitioner

Through: Mr.Amitabh Kumar Verma,  
Advocate with the petitioner in person.

versus

**RAJESH KARKI**

..... Respondent

Through: Ms. Charu Bhardwaj, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

1. The present proceedings have been instituted under Section 19(4) of Family Courts Act, 1984 read with Sections 397 Cr.P.C. assailing the final order dated 14.12.2017 passed by the Principal Judge (South), Family Court, Saket, Delhi in Complaint Case M. No. 346/2011.
2. Learned counsel for the petitioner submitted that the challenge in the present petition is limited only to the extent of award of the maintenance amount of Rs.20,000/- from the date of the passing of the order, i.e., 14.12.2017. It is contended that the maintenance ought to have been awarded from the date of filing of the petition i.e. 05.03.2011.
3. Learned counsel for the Respondent, on the other hand, has supported the final order. He has not challenged the quantum of maintenance awarded by the family court.

4. I have heard learned counsel for the parties and have also gone through the case records.

5. The marriage between the parties was solemnized as per Hindu rites and ceremonies on 19.01.2008.

6. Learned counsel for the Petitioner submitted that the Petitioner is a housewife, having no source of income and was totally dependent on the Respondent for her maintenance. It was stated that the respondent was working as a Caretaker at Qutab Minar, New Delhi under the control of Archaeological Survey of India (ASI), Government of India and was drawing a salary of Rs.30,000/- per month along with additional income. The respondent has not been maintaining the petitioner since November, 2009. It was further stated that in the marriage, besides other items, the petitioner's family also gave Rs.75,000/- in cash towards purchase of a car. The allegations of physical assault and beating were also mentioned in the complaint case. It was further stated that on 20.08.2008, the petitioner was beaten and also hospitalized.

7. In the final order, it was noted that in January 2009, the petitioner and respondent had shifted to a rented accommodation. Later, in November 2009, the respondent shifted back to his parental home without making any arrangement for the petitioner. It was further observed that the respondent had abandoned the petitioner without providing for her maintenance.

8. While passing the final order, the Family Court on the basis of the latest salary slip of the respondent for the month of October 2017 and other records, relied on the decision rendered in Annurita Vohra Vs. Sandeep reported as **(2004) 1 DMC 568 DEL** and held that the combined

income of the petitioner and the respondent comes to about Rs.75,000/- per month and awarded Rs.20,000/- as final monthly maintenance to the petitioner. The relevant portion of the final order is reproduced here under:-

*“Petitioner has admitted that she was drawing a salary of Rs.8,000/- per month, when the parties separated in 2011. The court is of the opinion that since she is capable of earning and had been working in the past her notional income can be taken to be Rs.15,000/-per month. Therefore, the family resource cake comes to Rs.75,000/- per month. Applying the principles of Annurita Vohra Vs. Sandeep reported as (2004) 1 DMC 568 DEL, petitioner is entitled to 2/4<sup>th</sup> share of the total income of the family resource cake of Rs.75,000/-. Her share i.e. 2/4<sup>th</sup> comes to roughly Rs. 37,500/- per month. Deducting her notional income of Rs. 15,000/-; share of petitioner comes to an amount of Rs.22,500/- per month. Thus, this court is of the opinion that an amount of Rs.20,000/- shall be just & adequate towards maintenance for the petitioner. It is clarified that the amount awarded shall include petitioner's expenditure towards rent, as well. She will be entitled to in all Rs.20,000/- from the date of order i.e. 14.12.2017. The interim maintenance order at the rate Rs.5,000/-+ Rs.8,000/- awarded by the Ld. MM (Mahila Court) shall continue till today.”*

9. Although assuming a notional income of Rs. 15000/- of the petitioner only because she had worked for some time in the past was fallacious but even deducting that from the family resource cake, the 1/3<sup>rd</sup> share of the petitioner comes to the same amount i.e, Rs. 20,000/- as awarded in the final order.

10. The present proceedings arise out of a complaint case filed under Section 125 Cr.P.C. by the petitioner/wife seeking maintenance from the respondent. Section 125 Cr.P.C. reads as under:-

***“125. Order for maintenance of wives, children and parents.***

***- (1) If any person having sufficient means neglects or refuses to maintain –***

*(a) his wife, unable to maintain herself, or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself,*

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

*Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:*

*[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*

*[Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]”*

11. The maintenance to a wife is not a bounty but is the award so that she can survive, it is normally to be awarded from the date of the application. In the present case, the Family Court, while passing the final order, has not given any reasons as to why the maintenance was awarded only from the date of the passing of the order and not from the date of filing of the petition.

12. Section 354(6) requires that every final order under Section 125, should contain the points for determination, the decision thereon and the reasons for the decision. It reads as under:-

***“354. Language and contents of judgment –***

*xxx*

*(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.”*

13. One of the points to be determined while awarding maintenance is the time from which such maintenance is to be granted. Since the final order does not mention any reason or justification for award of the maintenance from the date of the order, it is set aside only to the aforesaid limited extent.

14. In the present case, the Petitioner has filed an additional affidavit on record stating that she has never been employed since the filing of the maintenance petition before the family court and is unemployed till date.

15. In Jaiminiben Hirenbbhai Vyas and Another Vs. Hirenbbhai Rameshchandra Vyas and Another reported as **(2015) 2 SCC 385**, it was held as under:-

*“5. Section 125 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.*

*6. In Shail Kumari Devi v. Krishan Bhagwan Pathak this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumari Devi this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold 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. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such order. Thus, such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.*

*7. In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the circumstances eminently justified grant of maintenance with effect from the date of the application in view of the finding that the appellant had worked before marriage and had not done so during her marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the order of the High Court in this regard and direct that the*

*respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as maintenance granted under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered. Accordingly, the appeal is allowed.”*

16. In Bhuwan Mohan Singh Vs. Meena reported as **(2015) 6 SCC 353**, it was held as under:-

*“16. In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the Code and most of the time the husband had taken adjournments and some times the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the respondent, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. Learned counsel for the appellant did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.”*

17. Once the court comes to a conclusion that the wife is entitled to an award of maintenance, the assessment relates back to the date of the application and as such there have to be compelling reasons for the family court to restrict the award of maintenance from the date of the order and not from the date of the application. (Refer: Nisha Saifi Vs. Mohd Shahid reported as **2019 SCC OnLine Del 7902**).

18. Similarly, in Bimla Devi Vs. Shamsher Singh reported as **2015 SCC OnLine Del 11553**, a Co-ordinate Bench of this court held that:-

*“21. 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.”*

19. In view of the aforementioned discussion, the final order passed by the Family Court is modified to the extent that the respondent will pay the maintenance to the petitioner @ Rs.20,000/- from the date of the filing of the application, i.e., 05.03.2011. The respondent is further directed to clear the entire amount of arrears within a period of six months from the date of the passing of this order.

20. The petition is allowed in above terms.

(MANOJ KUMAR OHRI)  
JUDGE

**JANUARY 29, 2020**

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