

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

CRL. REV. P. 590/2018 & CRL. M.A. 12681/2018 (Stay)

Reserved on : 19.02.2020

Decision on : 24.02.2020

IN THE MATTER OF:

CRL.REV.P. 590/2018

SARWAN KUMAR SHARMA

..... Petitioner

Through: Mr. S K Bhardwaj, Advocate

Versus

RANJANA SHARMA @ RANJANA RANI & ANR. Respondents

Through: Mr. R.S. Rai, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition is directed against the order dated 16.03.2018 passed by Principal Judge, Family Court (Distt. Shahadara), Karkardooma Court, Delhi in CC No. 22/2017 whereby the respondent no.1/wife and respondent no.2/the minor son, Master Lowish were granted interim maintenance @ Rs.12,000/- p.m. and Rs.8,000/- p.m. respectively from the date of filing of the petition till further orders.

2. The respondents had filed the aforesaid petition under Section 125 Cr.P.C. seeking maintenance. It was stated that the marriage of respondent no.1 was solemnized with the petitioner on 22.06.2004 in Delhi. Out of the wedlock, respondent no.2 i.e., Master Lowish was born on 08.10.2006, who

has been living with his mother/respondent no.1. It was stated that respondent no.1/wife was humiliated and taunted for bringing insufficient dowry. A demand for a plot of 50 square yards in Delhi was made by the father of the petitioner however, when the said demand could not be met, the respondent no.1/wife was thrown out of the matrimonial home and thereafter she along with the petitioner started living in the house of the mother of respondent no.1/wife at Ashok Nagar. Later on, the petitioner himself renewed the demand for a plot of 50 square yards and stated that unless the demand was met, he would not live with respondent no.1/wife and from 06.01.2013, the petitioner started living separately.

3. Learned counsel for the petitioner has assailed the impugned order on the ground that in the entire petition, it was not averred by respondent no.1/wife that she was unable to maintain herself. It was contended that the interim maintenance granted by the Family Court by the impugned order is excessive. It was further pleaded that respondent no.1/wife is qualified and has capacity to earn but in order to harass and pressurize the petitioner, respondent no.1/wife has left her job.

4. So far as contention of the learned counsel for the petitioner with respect to lack of averment in the maintenance petition that respondent no.1/wife was unable to maintain herself is concerned, I find that in her petition, it was specifically averred that she has no source of income to maintain herself and her school going child. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Code of Criminal Procedure. [Refer: Chaturbhuji v. Sita Bai reported as (2008) 2 SCC 316 and Vinny Parmvir Parmar v. Parmvir Parmar reported as (2011)13SCC112].I

also deem it profitable to reproduce the observations of Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as **(2014) 16 SCC 715** as follows :-

“8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

5. Learned counsel for the petitioner also contended that respondent no.1/wife is capable of earning. The capacity to earn and actual earning are entirely two different things. The respondent no.1/wife in her affidavit has stated that she has not been employed and is totally dependent on her mother and brother for maintenance. The issue, whether the wife can be denied maintenance only on account of the fact that she is capable of earning, came before this court in Arun Vats v. Pallavi Sharma, reported as **(2019) SCC OnLine Delhi 11817** wherein while relying on decision rendered in the case of Shaliya v. Khobbana reported as **(2018) 12 SCC 199**, it was held that ‘capable of earning’ and ‘actual earning’ are two different things. Merely because the wife is capable of earning is not a sufficient reason to deny her the maintenance.

6. In Annurita Vohra v. Sandeep reported as **(2004) 110 DLT 546**, it was

held as under :-

“2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to

restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.”

7. The parties filed their income affidavits before the Family Court. The petitioner/husband filed his affidavit of assets, income and expenditure wherein he disclosed that he was employed with the BSES, East Delhi as a Consultant and his gross income is Rs.38,500/- p.m. The respondent no.1/wife also filed her affidavit of assets, income and expenditure and disclosed that she was a housewife, dependent on her mother and brother. The Family Court noted that as per the affidavit filed by the petitioner, his net income was Rs.34,650/-.

8. While granting interim maintenance, the Family Court noted that the monthly expenses claimed by the petitioner was Rs.22,300/- out of which Rs.8,000/- p.m. was claimed as fuel expenses though he did not disclose any vehicle used or owned by him. Thus, deducting Rs.8,000/- from the total expenses shown by the petitioner, the Family Court came to a *prima facie* conclusion that the respondents are entitled to interim maintenance @ Rs.12,000/- and Rs.8,000/- respectively.

9. The maintenance petition is pending before the Family Court at the stage of evidence. In view of the decision in Annurita Vohra (supra),

dividing the petitioner's net income in four shares, the respondents' two shares come to about Rs.17,325/-. Accordingly, the order dated 16.03.2018 passed by the Family Court is modified to the aforesaid extent.

10. The revision petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. The Family Court shall consider the award of the final maintenance on the basis of evidence on record and uninfluenced by the observations made herein, which are only a prima facie view for disposal of the present petition for interim maintenance.

11. A copy of this order be communicated to the concerned Family Court, Karkardooma Courts, Delhi.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 24, 2020
ga