

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

Date of decision: 26.02.2020

IN THE MATTER OF:

+ **CRL. REV. P. 805/2018**

SAPNA & ANR

..... Petitioners

Through: Mr. Narendra Gautam, Mr. Subhash
Yadav and Mr. Vikas Yadav, Advocates with
petitioner No.1 in person

Versus

THE STATE (GOVT.OF NCT OF DELHI) & ANR

.....Respondents

Through: Ms. Manjeet Arya, APP for State
Mr. Ranjan Roy, Advocate for respondent No.2
with respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

1. The present petition is directed against the order dated 06.04.2018 passed by Principal Judge, Family Court, Saket, New Delhi in M.No.-29/2017 and 30/2017 filed under Sections 125 and 127 Cr.P.C. respectively. Vide impugned order, the Family Court granted maintenance to the petitioners i.e, the wife and minor son of respondent No.2 @ Rs.2,000/- p.m. and Rs.1500/- p.m. respectively from the date of passing of the impugned order till they are legally entitled to receive the same.

2. Learned counsel for the petitioners contended that the Family Court erred in providing a meagre maintenance amount to the petitioners without considering the latest salary slip of Respondent No.2. It was further contended that petitioner No.1 has no source of income and all her expenses are being borne by her parents. It was also submitted that the Family Court failed to take into account the additional income earned by Respondent No. 2 from his family business of dry-cleaning and also from the rental income.

3. Per Contra, learned counsel for respondent No.2 has supported the impugned order and submitted that petitioner No.1 is capable of maintaining herself as she is running a beauty parlour business in the name of 'Sapna Beauty Parlour' and is earning an amount of Rs. 25000/- per month. He further submitted that the respondent has other liabilities including that of maintaining his ailing father.

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

5. The parties got married to each other in Delhi on 09.11.2008. Out of the said wedlock, Master Dhairya i.e., petitioner no.2 was born on 10.02.2010 who has been living with petitioner No.1.

6. During trial, it has come in the evidence of petitioner No.1 that on account of constant harassment and dowry demands made by her in-laws, she was forced to leave the matrimonial home on 08.07.2009. At that time, she was pregnant. Since then, she has been residing with her parents, who are bearing all the expenses for her as well as the minor child as she has no source of income.

7. The Family Court, while passing the impugned order observed that respondent No.2 did not bring any evidence on record to prove that the petitioner No.1 was self-employed at the aforementioned beauty parlour and earning.

8. While granting maintenance, the Family Court took into account the respondent's salary slip for the month of February, 2017, which was proved on record by petitioner No.1. As per said salary slip, the respondent's gross salary was Rs. 11,320/- and after deductions, the net salary was Rs. 8,981/-. As far as his liability towards his ailing father is concerned, the Family Court observed that respondent No.2 has two more brothers who are gainfully employed and as such, he was not solely liable to maintain his father.

9. On the basis of the evidence led by the parties, it has been proved that petitioner No.1 has no independent source of income and both the petitioners are dependent on respondent No.2. The Family Court rightly came to the conclusion that the petitioners were entitled for the grant of maintenance.

10. However, while granting maintenance, the Family Court erred in computing the maintenance amount. Since no positive evidence was led by respondent No.2 to the effect that petitioner No. 1 had any source of income, the family resource cake which comprised of the income earned by respondent No.2 only, ought to have been divided in terms of decision in Annurita Vohra v. Sandeep reported as **(2004) 110 DLT 546**. I deem it appropriate to quote the following observations from the captioned case:

“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.”

11. Thus, dividing the family resource cake of Rs. 8,981/- on the basis of the salary slip for the month of February, 2017, in four equal shares, the petitioners' share come to about Rs.4490/- collectively. Accordingly, respondent No.2 is directed to pay maintenance @ Rs.4490/- to the

petitioners from the date of application till the passing of the impugned order by the Family Court.

12. While passing the impugned order, the Family Court also disposed of an application filed by the petitioners under Section 127 Cr.P.C. being M.No.30/2017 for enhancement of the interim maintenance amount. During the course of the arguments, learned counsel for respondent No.2, on instructions, submitted that respondents' present net salary is Rs.13,600/-.Accordingly, dividing the family resource cake of Rs.13,600/- into four equal shares, the petitioners' share come to Rs.6800/- collectively. The respondent No.2 is directed to pay maintenance @ Rs.6800/- to the petitioners from the date of passing of the present order till the petitioners are entitled for the same.

13. A perusal of the records reveal that during the pendency of the maintenance petition, the Family Court had awarded interim maintenance @ Rs.1,500/- to petitioner No.1 and Rs.1,000/- and to petitioner No.2. The maintenance amounts already paid to the petitioners shall be adjusted.

14. There is yet another aspect which needs to be addressed. The Family Court while awarding the maintenance did not give any specific reason for the award of maintenance from the date of passing of the order and not from the date of filing of the petition. This Court in Asha Karki v Rajesh Karki reported as **2020 SCC OnLine Del 444** held that the maintenance ought to be directed from the date of filing of petition unless in the opinion of the court circumstances exists warranting award of maintenance from the date of passing of the order. This court in Asha

Karki(supra) referred to the judgment of Jaiminiben Hirenbhai Vyas and Another v. Hirenbhai Rameshchandra Vyas and Another reported as **(2015) 2 SCC 385**, wherein it was held as follows:-

“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.”

15. As noted above, it has not come on record that the petitioner no.1 had any source of income during the pendency of the petition, hence it is directed the maintenance amount shall be payable from the date of filing of the maintenance petition. The same shall however, be subject to the maintenance already paid before the Family Court.

16. The present revision petition is allowed in the aforesaid terms.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 26, 2020

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