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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.02.2021

Pronounced on: 22.02.2021

(1) + **CRL.M.C. 1992/2020 & Crl.M.A. 14264/2020**

POOJA

..... Petitioner

Through: Mr.Ajay Digpaul, & Mr.Kamal R.
Digpaul, Advocates

Versus

SANJAY CHOPRA

..... Respondent

Through: Ms.Anjana Gosain & Ms.Shalini
Nair, Advocates

(2) + **CRL.REV.P. 134/2020 & Crl.M.A. 3193/2020**

SANJAY CHOPRA

..... Petitioner

Through: Ms.Anjana Gosain & Ms.Shalini
Nair, Advocates

Versus

POOJA

..... Respondent

Through: Mr.Ajay Digpaul, & Mr.Kamal R.
Digpaul, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The first captioned petition has been preferred by petitioner-Pooja seeking setting aside of order dated 17.12.2019 passed by the learned

Sessions Judge, whereby she has been awarded interim maintenance @Rs.7,500/- per month, while claiming it to be on lower side.

2. In the second petition, revisionist- *Sanjay Chopra* is seeking setting aside of order dated 17.12.2019 vide which he has been directed to pay interim maintenance @Rs.7,500/- per month to his wife- *Pooja*.

3. The basis of these petitions is a matrimonial discord between *Pooja/wife* and *Sanjay Chopra/husband* which has resulted into various complaints and litigations between the parties. What has made parties reach this Court is the order dated 18.05.2018 vide which application for interim maintenance filed by the wife was dismissed by the learned Metropolitan Magistrate. Aggrieved against the said order, wife preferred an appeal and the learned court of Sessions while allowing the said appeal vide order dated 17.12.2019, directed husband to pay Rs.7,500/- per month towards maintenance to wife and the said order is impugned in these petitions by both the parties.

4. In short, the background of the case is that the parties got married on 24.07.2016 as per Hindu Rites. It was a second marriage for both the parties. The wife had a son-*Hitesh* from first marriage, which was in her custody and care at the time of marriage with (second) husband. However, due to

temperamental differences, the parties started living separately since 01.10.2016 i.e. within three months of their marriage and on 21.10.2016, the wife filed a complaint against the husband and his family alleging domestic violence.

5. In proceedings under the Protection of Women from Domestic Violence Act, 2005, the wife filed an application seeking interim maintenance and the Metropolitan Magistrate vide order dated 07.06.2017, directed the husband to pay interim maintenance @Rs.25,000/- per month (Rs.12,500 per month, each for wife and son).

6. Against the said order dated 07.06.2017, husband filed an application before the Metropolitan Magistrate and placed his income affidavit, income tax returns and bank statement on record and taking the said documents into consideration, the Metropolitan Magistrate dismissed the application of wife for interim maintenance while holding as under:-

“During courts of arguments, the complainant has filed copy of her termination letter dated 05.11.2016. Copy of final warning letter from M/s Marketing Times Automobiles Pvt. Ltd. The complainant has not disclosed the factum of her previous employment in her income Affidavit, despite being bound to do so. Further as per documents filed by the complainant, she was terminated from services due to indiscipline . No efforts have been shown to be made by the complainant to obtain another employment. The complainant cannot be given the benefit of her own wrong.

Thus considering the material available on record, this court holds that the complainant has not come to the court with clean hands and thus she is not entitled to grant of any interim relief. For these reasons, the application at hand is dismissed.”

7. The appeal preferred by the wife was allowed by the Court of Sessions while observing as under:-

“11. It is an admitted fact that for both the appellant and the respondent, it was their second marriage. It is also not in dispute that appellant had a son from the previous marriage and that she is 9th Class pass. Though, it is brought on record that the appellant/complainant had worked for sometime on monthly stipend of Rs. 6,000/-, but her services were terminated. Merely because, she has not been able to get re-employment, it cannot be said that she has intentionally chosen not to work. Her qualification and her situation do not arrant any such conclusion to be drawn that she is intentionally not working.

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17. Considering the Bank Statement of the respondent and the totality of circumstances, it is held that Appellant is entitled to interim maintenance. A sum of Rs. 7,500/- per month is granted as maintenance to the appellant/complainant from the date of filing of the ,application till realization. The regular monthly maintenance shall be paid on 7th day of each calendar month and the arrears be paid by the respondent to the appellant/complainant within four months w.e.f. today. The Appeal is, therefore, allowed.”

8. The stand of wife in the present petitions is that in the affidavit of income filed before the Metropolitan Magistrate, she had disclosed that she was working and getting stipend of Rs.6,000/-, but thereafter she had lost her job in 2016. However, learned Metropolitan Magistrate has failed to take into consideration this fact and dismissed her application.

9. In the appeal filed before the court of Sessions, the learned court while taking into consideration bank statement of husband, observed that he is getting salary of Rs.10,000/- and besides a sum of Rs.10,000/- has been credited to his account as income and that also there is another deposit of Rs.20,000/- per month and held that husband is earning Rs.30,000/- per month and thereby, fixed interim maintenance @Rs.7,500/- per month for the wife, which she claims to be on the lower side.

10. The wife has pleaded before this Court that the learned Appellate Court has failed to take into consideration the fact that wife is only 9th class pass and was then jobless and hence, unable to maintain herself and her son. She has also stated that the Appellate Court has failed to take into consideration that she had lost her job on 25.11.2016, besides the fact that husband is not an employee of *M/s Pehchan Properties* but is rather the owner and that he is also running a paying guest house and thus, he has a

good source of income. She has also averred that the learned Appellate Court has failed to take note that in his affidavit of income, in Coloum No.9, husband has stated his expenditure as Rs.10,000/-, whereas in Chapter V of affidavit, he has shown the expenditure of Rs.12,000/- per month. It is also submitted that the learned Appellate Court has failed to notice that husband is living at Vikram Vihar, Lajpat Nagar in a house owned by him and has misrepresented that he is living in a rented accommodation and paying rent of Rs.7,000/- per month. The wife has pleaded that she has a monthly expenditure of Rs.25,000/- p.m. and in addition, she has to spend a sum of Rs.3,000/- for the day care of the son. The wife has submitted that at the first instance, the learned Appellate Court has not calculated husband's income in right perspective and even if it is taken to be @Rs.30,000 p.m., as already determined, still she is entitled to receive its 50% , as it is his bounden duty to maintain her and the son. Hence, the wife has sought increase in the amount of interim maintenance awarded by the Appellate Court.

11. On the other hand, husband has pleaded that the wife has left the matrimonial home of her own will and has roped him in various false and baseless cases. He has submitted that it is an admitted fact that the wife has

studied till class 9th, but as per her own statement dated 16.08.2018 she is earning Rs.6,000/- per month. He has submitted that the plea of wife that she has expenditure of Rs.25,000/- p.m. is false, as she is living with her parents and her assertion that she has to spend Rs.3,000/- for day care of the son is also ruled out, as she herself has admitted that she is unemployed. The husband has pleaded that it is his brother who is running the paying guest house and not him and that he is an employee at *Pehchaan Properties* and earning monthly income @Rs.20,000/- p.m., out of which he has to meet out his expenditure such like paying rent etc. The husband has pleaded that the view taken by the learned Metropolitan Magistrate vide order dated 18.05.2018 is required to be restored and the order dated 17.12.2019 passed by the learned Appellate Court deserves to be set aside.

12. The arguments advanced by learned counsel appearing from both the sides were heard at length. I have also gone through the impugned orders and material placed on record.

13. The Hon'ble Supreme Court in ***Bhuwan Mohan Singh Vs. Meena (2015) 6 SCC 353*** has observed as under:-

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) 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."

14. It stands categorically noted in the impugned order dated 17.12.2019 that the wife was working but lost her job on 25.11.2016 and therefore, in her income affidavit filed on 29.05.2017 she had correctly stated that she was not working. It also stands noted in the said order that there is nothing on record to show that she had been working on regular basis nor any

intention has been established to show that she was not willing to work further. Keeping this view in mind coupled with the fact that the wife had studied only upto class 9th, the learned Appellate Court has rightly rejected the finding returned by the Metropolitan Magistrate that the wife has failed to disclose her employment or that she has not made efforts for re-employment. The Hon'ble Supreme Court in ***Sunita Kachwaha Vs. Anil Kachwaha (2014) 16 SCC 715*** has held that merely because wife was earning something, would not be a ground to reject her claim for maintenance particularly when proof of her earnings were not placed on record before the courts below.

15. In view of ratio laid down by the Hon'ble Supreme Court in ***Bhuwan Mohan Singh(Supra)*** and ***Sunita Kachwaha (Supra)***, I find that the Appellate Court has rightly held that the wife is dependent upon husband and he is liable to pay interim maintenance to the wife.

16. So far as determination of income of husband is concerned, the husband has pleaded that he is a salaried employee and earning Rs.20,000/- only, though the claim of wife is that he is the owner of *M/s Pehchan Properties* and is owner of a paying guest accommodation and his approximate monthly income is Rs.90,000/- p.m. The wife has claimed that

the husband is living in the house owned by him. However, no document is forthcoming on record in support of these assertions.

17. In the impugned order of the Appellate Court, there is no whisper with regard to salary slip or income tax return (ITR) of husband, having placed on record by either of the parties. In the absence of any documentary evidence, the Appellate Court has rightly relied upon the bank statement of husband placed on record and has assessed his monthly income @Rs.30,000/- p.m.

18. As far as allocation of amount of interim maintenance is concerned, the pertinent observations of the Hon'ble Supreme Court in **Jasbir Kaur Sehgal Vs. Distt. Judge, Dehradun, (1997) 7 SCC 7** are as under:-

“8.No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.....”

19. Accordingly, if the husband's income is assessed @Rs. 30,000/- per month and divide it into two shares for him and one share for the wife, that is to say by making three shares, each is entitled to Rs.10,000/- p.m. Meaning thereby, the wife is entitled to maintenance @Rs.10,000/- p.m. and thus, the impugned order is modified accordingly.

20. The above captioned petitions and pending applications are accordingly disposed of.

21. The judgment be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 22, 2021

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