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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.01.2021

Pronounced on: 27.01.2021

+ CRL.M.C.2085/2020

SHINY VERMA BAKSHI

..... Petitioner

Through: Mr. V.K. Garg, Sr. Adv. with Ms.
Meena Jha, Mr. Parv Garg, Mr.
Pawas Kulshrestha and Ms. Aarushi
Singh, Advs.

versus

DR. GURNEET SINGH BAKSHI & ORS.

..... Respondents

Through: Mr. Kamal Saxena, Adv. for R-1
Mr. Vaibhav Sinha, Adv. for R-2 to 4

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C. for setting aside order dated 24.09.2020 passed by learned MM (South-West)-4, in M.C. bearing No.140/2020 and seeking enhancement of maintenance granted to the petitioner.

2. Learned Senior Counsel for petitioner submits that petitioner/wife got married to respondent No.1/husband on 26.12.2018 in a five-star hotel,

organized by the family of petitioner due to persistent demands by respondents because it was within knowledge of the respondents that petitioner is a divorced lady, but they did not have any objection to it. Petitioner is a housewife with no independent income whereas respondent No.1 is a Doctor at Sir Ganga Ram Hospital with an admitted salary of Rs.92,000/-. Respondent No.1 also earns additional income through consultancy and interest from various FDRs which has not been disclosed by him. The mother of petitioner is also a housewife whereas father of petitioner was 100% paralyzed and disabled for last about 20 years and during pendency of the present lis, father of petitioner succumbed to COVID-19 and passed away. The brother of petitioner is married and living separately in Australia.. Respondent No.3 (father-in-law) is a retired Engineer with sufficient sources of income and respondent No.4 (mother-in-law) is a Senior Professor in Delhi University with a handsome salary. Family of respondent No.1 leads a luxurious lifestyle and admittedly, he is not required to maintain his parents or any other relative.

3. Learned Senior Counsel appearing on behalf of the petitioner has submitted that after the marriage, respondents started ill-treating the petitioner, complaining of inadequate dowry brought by her, especially

since respondent No.1 is a doctor and thus, could have easily fetched more dowry. So much so, respondent No.1 physically assaulted the petitioner and also sent abusive messages to the mother of petitioner while demanding Rs.70 lacs or Audi Q7 car out of the compensation received by the father of petitioner in his Motor Accident Claim, failing which, she would be thrown out of her matrimonial home. Accordingly, on said account, petitioner filed her complaint before National Commission for Women (NCW) on 03.06.2020 against the physical and mental abuse by respondents. Since the mental and physical torture of petitioner by respondents continued, the petitioner was constrained to file a complaint under Section 12 r/w Sections 17/18/19/20/22 of Protection of Women from Domestic Violence Act, 2005 against the respondents herein. On 24.09.2020, the learned Mahila Court was pleased to pass the impugned order wherein an interim maintenance of Rs.8,000/- per month was awarded in favour of petitioner herein. Learned Court also restrained the respondents from dispossessing the petitioner from her matrimonial home.

4. It is further submitted that without following due process of law and owing to their malafide intentions, respondents sought eviction of petitioner from her matrimonial home under the Delhi Maintenance and Welfare of

Parents and Senior Citizens Rules, 2009. Despite the order dated 24.09.2020 staring at their face, wherein the respondents had been specifically restrained by the learned Court from dispossessing the petitioner from her matrimonial home, Ld. District Magistrate, Delhi passed an illegal order of eviction of petitioner from her matrimonial home under the said rules. Therefore, since 28.09.2020, petitioner has been residing with her mother at her parental house.

5. Learned Senior Counsel has further submitted that Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha & Anr.: 2020 SCC OnLine SC 903*** [para 56(III)(i)] has laid down factors to be considered by the Court while assessing the quantum of maintenance to be awarded to the wife. In the present case, neither the petitioner has any source of income nor her family whereas respondents are working and enjoying handsome salaries. Petitioner is getting a meagre maintenance of Rs. 8000/- per month which is not sufficient to sustain herself.

6. It is further submitted that this Court in case of ***Babita Bisht vs. Dharmender Singh Bisht: 2019 SCC OnLine Del 8775*** in para 12 laid down that the formula of apportionment warrants that in case of no dependants, husband shall retain two parts of his income whereas one part

shall be given to the wife. It is the respondent's case that respondent Nos.3 & 4 have disowned their son i.e. respondent No.1. Respondent No.1 has also never claimed that he has any dependants and thus, petitioner is entitled to at least 1/3rd of his admitted salary of Rs. 92,000/- per month.

7. Learned Senior Counsel has argued that in the case of ***Annurita Vohra vs. Sandeep Vohra: 2004 SCC OnLine Del 192***, this Court observed that since Articles 14 & 16 of the Constitution do not permit discrimination between men and women, therefore, wife is also entitled to live according to the status of her husband and apportionment formula must be applied to calculate her maintenance. In addition, in the case of ***Meenu Chopra vs. Deepak Chopra: 2001 SCC OnLine Del 563***, this Court was of the view that after the marriage, the wife adopts her matrimonial home and gets attuned to the lifestyle of her husband. Therefore, Courts must be sensitive towards the deserted wife and follow the principles of equity, evenness, fairness and justice while assessing her maintenance.

8. It is further submitted that in the present case, respondent No.1 had deserted the petitioner on 26.05.2020, without any maintenance and to the mercy of her parents-in-law. Merely because wife is capable of earning does not mean that her maintenance should be reduced. In the case of ***Shailja &***

Anr. vs. Khobbanna: (2018) 12 SCC 199, Hon'ble Supreme Court has held that capability of earning and actually earning are distinct. Therefore, merely because wife is capable of earning does not become a ground to reduce her maintenance. Moreover, financial position of family of wife is immaterial while assessing quantum of maintenance as held by the Hon'ble Supreme Court in **Manish Jain v. Akanksha Jain: (2017) 15 SCC 801**.

9. On the other hand, learned counsel for respondents has submitted that the respondent No.1 is getting a gross salary of Rs.92,000/- p.m. He is making following mandatory expenses per month on him as he is living alone in a rented accommodation:-

- (i) Monthly house rent of Rs.16,000/- (after marriage the respondent No.1 and petitioner lived in a rented house)
- (ii) Income Tax Rs.5,500/-
- (iii) Groceries and personal care Rs.15,000/-
- (iv) Electricity Rs.1,000/-
- (v) Gas Rs.1,000/-
- (vi) Telephone Rs.1,000/- (has to manage landline due to network issues and calls from hospital)
- (vii) TV/ Internet Rs.1,000/-
- (viii) Car cleaning, garbage and security Rs.700/-
- (ix) Fuel Rs. 2500/-
- (x) Car repair and maintenance Rs.1,500/- (as car is 7 years old and is of Parents)
- (xi) Taxi Rs.1000/-

- (xii) Metro Rs.500/-
- (xiii) Domestic help Rs.1,200/-
- (xiv) Medical membership fee Rs.1,250/-
- (xv) Policies premium Rs.20,833/- (the policies are of more than 5-6 years old from the date of marriage and will continue for 8-9 years)
- (xvi) Medical journal Rs.1,000/-
- (xvii) Religious contribution Rs.500/-
- (xviii) Maintenance paid to petitioner Rs.8,000/-
- (xix) Miscellaneous, uncertain and self about Rs.3,000/-
- (xx) Legal charges about Rs.7,000/- (as about 7 litigations have been initiated in this marriage in which 6 litigations are initiated by the petitioner and in 5 cases initiated by the petitioner, the respondent No.1 is a party, so more than two dates are falling every month)

Total Expenditure Per Month:- Rs. 89,483/-

10. It is further submitted that neither respondent No.1 has FD nor property or had inherited any property by any law of succession. Thus, the respondent No.1 is not in a position to pay even Rs.8,000/- as directed by the Court. Thus, the present petition deserves to be dismissed.

11. I have heard learned counsel for the parties at length and perused the material available on record.

12. Petitioner is undisputedly highly qualified and her qualifications are as under:-

- (i) BBA from ITM College Gurgaon
- (ii) MBA from IILM College Lodhi Road, New Delhi
- (iii) Core Franchisee Certificate, Sydney, Australia

13. Working proof of petitioner as stated by respondents are as under:-

- (i) worked in Thomas Pink in India (not disputed)
- (ii) worked at her brother's Franchise Muffin Break regularly in Perth, Australia till 2018 (Pics of working and Chat already on record)
- (iii) Presently working as a Free Lancer Barista, also used to
- (iv) work as Barista when petitioner and respondent No.1 were at Mohali

14. The petitioner has assets, however, disputed, which are as under:

- (i) FD of Rs.15 Lacs as mentioned in FIR dt. 21/12/2015 of previous marriage on page 4 of FIR in last four lines (FIR on record)
- (ii) Receiving of Rs. 9,50,000/- (9.5 Lacs) by demand draft mentioned in Order dated 01/11/2018 in CrI. MC No. 5580/2018, by Justice A. K. Pathak, Delhi High Court (Order on Record and Second Marriage took Place on 26/12/2018). No account statement was ever filed where this amount was deposited.
- (iii) Concealed South Indian Bank, (document already on record filed by respondent No.1). Later stated just before filing maintenance petition that it was closed, without assigning any reason and avoided to file any document of the same despite demand.

15. It was claimed that petitioner's deceased father was handicapped,

however, never disclosed that they had received Rs.32,93,224/- (thirty two lacs ninty three thousand two hundred twenty four) + 7.5% p.a. interest as compensation from the date of accident awarded by this Court, beside this he has also received lumpsum amount from its employer along with regular benefits, i.e. DA.

16. In addition, inherited properties of petitioner as stated by respondents are as under:-

- (i) A-37, Ground Floor, Chander Nagar, New Delhi a 250 Sq Yds Property
- (ii) Plot bearing No.CB – 391, Naraina Ring Road, Subzi Mandi, New Delhi
- (iii) Petitioner also has Honda CAR bearing No. DL 4C AV 2508 at her disposal.

17. Moreover, petitioner has claimed that her parents spent Rs.1 crore on her previous marriage as mentioned on page 2 of FIR and also spent good amount on her second marriage. It is not properly explained that how come her parents spent Rs 1 crore and more when none of them are working as said by the petitioner to the Court (Previous FIR on record).

18. It is submitted by learned counsel for respondent No.1 that the petitioner and her family are involved in about more than 14 – 15 cases under various heads as per the record of the internet. Whereas, the respondent No.1 and his family have initiated only one case in their life time

and that too for their security. After marriage, it has come to the knowledge of the respondent No.1 that Income Tax Department had also raided the house of the petitioner for malicious activities in the year 2016-17.

19. In view of above and the fact that petitioner has failed to establish that respondent No.2 is having more income then admitted or assets in his name. On the contrary, the petitioner is more wealthier than respondent No.1 and maintaining better standard of life. Thus, the judgments relied upon by the petitioner are of no help in the facts and circumstances of this case.

20. Accordingly, I find no ground to interfere with the impugned order passed by the learned Metropolitan Magistrate.

21. The petition is, accordingly, dismissed with no order as to costs.

22. The Judgment be uploaded on the internet forthwith.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 27, 2021
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