

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

+ **CRL.REV.P. 516/2018**

Date of decision: 8th March, 2021

IN THE MATTER OF:

NEELAM

..... Petitioner

Through Ms. Anu Narula, Advocate
versus

YASHPAL

..... Respondent

Through Ms. Mallika Parmar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. This revision petition is directed against the order dated 15.01.2018, passed by the learned Family Court, Karkardooma Court, Shahdara District in C.C.No.92/2017, wherein the learned Family Court has enhanced the maintenance from Rs.2,000/- per month to Rs.5,000/- per month from the date of the order i.e. 15.01.2018. The revisionist is the wife challenging the increase of Rs.3,000/- contending that sum of Rs.5,000/- awarded to her is meagre to maintain herself.

2. Material on record shows that the marriage of the petitioner and the respondent was solemnized on 29.04.2004. Out of the wedlock a female child was born in April, 2005. The petitioner filed a petition under Section 125 Cr.P.C claiming maintenance contending that the family members of the respondent are harassing her and torturing her for bringing less dowry and that they have thrown her out of the house. It is alleged that the respondent had deserted the petitioner without any reasonable cause. The petitioner in her petition under Section 125 Cr.P.C stated that the total monthly income of

the respondent is Rs.25,000/-. The petitioner claimed a maintenance of Rs.10,000/- per month from the respondent.

3. The learned Metropolitan Magistrate, Mahila Court, Karkardooma Courts, Shahdara, by an order dated 24.06.2013, in C.C.No.230/2013 found that the allegation that the respondent has deserted the petitioner and that the respondent has neglected to maintain her is correct. The Metropolitan Magistrate also held that the petitioner herein has no source of income, a fact which has not been challenged by the respondent. The learned Metropolitan Magistrate while deciding the issue regarding the financial status of the respondent herein came to a conclusion that neither is there any documentary evidence on record nor any witness has been examined to prove that the respondent was earning more than Rs.25,000/- per month. The Metropolitan Magistrate fixed the income of the respondent at Rs.8,000/- per month, which was the wage for a skilled labourer as per the Minimum Wages Act at that time and directed the respondent herein to pay a sum of Rs.2,000/- as maintenance from the date of the order i.e. 24.06.2013.

4. The petitioner filed an application under Section 127 Cr.P.C in November, 2015, claiming enhancement of maintenance. In the application under Section 127 Cr.P.C it is stated that the petitioner is completely bedridden and is only able to move around on a wheelchair and that too only with the support of her family members. It is stated in the application that the respondent is earning about Rs.25,000/- per month from his hotel. It is alleged that the respondent is also running hundred rickshaws and has income from agricultural land. It is stated in the application that the respondent is earning about Rs.2,50,000/- per month. The respondent herein in his reply to the petition under Section 127 Cr.P.C had stated that he had

suffered an accident for which he had borrowed a loan of Rs.1,50,000/- from his employer and that he was working as a driver and getting a net salary of Rs.5,000/- per month. The learned Family Court had directed the respondent to produce the documents of the charge-sheet to show how much injuries he had suffered in the alleged accident that he had to take a loan of Rs.1,50,000/- for medical treatment. The learned Family Court found that it is very hard to survive on a meagre income of Rs.2,000/- per month with increasing prices of essential goods and therefore there is a need to increase the maintenance amount. Since the respondent did not produce any document the learned Family Court drew adverse inference against the respondent herein. However, since the petitioner could not produce any material to substantiate the contention that the petitioner was earning any amount from the hotel or has hundred rickshaws or has income from agricultural land, the learned Family Court fixed the salary of the respondent at Rs.13,350/- per month which was the wage of an unskilled worker under the Minimum Wages Act at that time. The learned Family Court after taking into consideration the notional income of the respondent, his liability to maintain his minor daughter who is living with the respondent, present day of cost of living etc., enhanced the maintenance of the petitioner from Rs.2,000/- per month to Rs.5,000/- per month from 15.01.2018. It is this order which is under challenge in the instant revision petition.

5. This Court by an order dated 31.10.2018, referred the parties to arrive at a mutual settlement before the Delhi High Court Mediation and Conciliation Centre. The Mediation Report shows that despite several sessions that were conducted by the Mediator, no compromise could be arrived at and the Mediation failed.

6. Heard Ms. Anu Narula, learned counsel appearing for the petitioner and Ms. Mallika Parmar, learned counsel appearing for the respondent and perused the documents.

7. Ms. Anu Narula, learned counsel for the petitioner very vehemently contends that the petitioner is bed ridden and can move only on a wheelchair and that too with the help of other family members. She states that the learned Family Judge ought to have taken into account the fact that the respondent runs a hotel and earns several lakhs of income. She would state that after drawing adverse inference against the respondent in not producing the medical certificate the learned Family Court ought not to have fixed the income of the respondent at Rs.13,350/- per month as he is earning much more than Rs.13,350/- per month.

8. A perusal of the record shows that other than making an allegation that the respondent is having a hotel and that he owns hundred rickshaws and has earnings from agricultural land also, nothing has been produced by the petitioner to substantiate the same. The petitioner has not even cared to file interrogatories calling upon the respondent to produce materials. In the absence of any material, the findings of the learned Family Court in the impugned judgement, fixing the income of the respondent on the basis of wages payable to an unskilled worker cannot be found fault with.

9. Ms. Anu Narula, learned counsel for the petitioner, has taken this Court to the Bank Statement filed by the petitioner before the Family Court and relies on a transaction dated 25.05.2015, showing deposit of Rs.35,000/-. She would state that a person earning an income of Rs.5,000/- could not deposit Rs.35,000/- in his account. She therefore states that the order of the Family Court must be set aside. This Court is not in a position to accept the

contentions of Ms. Narula, learned counsel for the petitioner. These entries alone do not make out a case warranting interference by this court while exercising its jurisdiction under Section 397/401 Cr.P.C. Nothing has been brought on record to substantiate as to why the judgement dated 15.01.2018, ought to be interfered with.

10. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, the Supreme Court observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. **Though the section***

does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

11. However this Court finds that while awarding maintenance under Section 125 Cr.P.C the Family Court has directed the payment of maintenance only from the date of order i.e. 15.10.2018 and not from the date of the petition under Section 127 Cr.P.C. The Apex Court in Rajnesh v. Neha, (2021) 2 SCC 324, has categorically laid down that an order of maintenance has to become payable from the date of filing of the petition. The Supreme Court in Rajnesh v. Neha (supra), observed as under:

“109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases,

including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

(emphasis supplied)

12. Even though the order dated 24.06.2013 has not been challenged in this petition yet in the interest of justice this Court while exercising its jurisdiction under Section 397/401 Cr.P.C is inclined to direct that the order dated 24.06.2013, fixing maintenance at Rs.2,000/- is payable from the date of filing of the petition under Section 125 Cr.P.C and not from the date of the order as directed in the order dated 24.06.2013. Petition under Section 125 Cr.P.C was filed on 18.10.2008, the order was passed on 24.06.2013, fixing maintenance at Rs.2,000/- per month. The petitioner is therefore entitled to maintenance at the rate of Rs.2,000/- from 18.10.2008 till 24.06.2013. The respondent is entitled for adjustment at the rate of Rs.1,000/- per month which was paid as interim maintenance from 09.06.2009 to 24.06.2013. The petitioner is also entitled for enhancement of maintenance at the rate of Rs.5,000/- per month from the date of filing of the

petition under Section 127 Cr.P.C till the date of the order i.e. 15.01.2018. The respondent is liable to pay Rs.5,000/- per month from November, 2015 to February, 2018. The respondent is entitled for an adjustment of Rs.3,000/- from November, 2015 to February, 2018. The total amount therefore comes to Rs.1,16,000/-. The respondent is therefore directed to clear the arrears of maintenance in three monthly instalments commencing from 01.04.2021, in the following instalments:

- a) First instalment of Rs.40,000/- on 01.04.2021
- b) Second instalment of Rs.40,000/- on 01.05.2021
- c) Third and last instalment of Rs.36,000/- on 01.06.2021.

13. The respondent has to continue to pay a sum of Rs.5,000/- per month to the petitioner on or before the fifth day of every month. Ms. Mallika Parmar, learned counsel appearing for the respondent would state that the amount would be deposited in the account of the mother of the petitioner. Ms. Anu Narula, learned counsel for the petitioner is directed to give the Account Number of the petitioner's mother to Ms. Mallika Parmar within a week's time so that the arrears of maintenance and the future maintenance can be deposited to that account.

14. The revision petition is dismissed in the above mentioned terms along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 8, 2021

Rahul