

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 507/2018 & CRL.M.A.10699/2018(stay)**

Date of decision: 23rd March, 2021

IN THE MATTER OF:

AMIT KUMAR SINDHI

..... Petitioner

Through Mr. Gurbaksh Singh and Mr. Jarneet
Singh, Advocates

versus

MONIKA @ KASHISH & ANR

..... Respondents

Through Ms. Manika Tripathy Pandey, and
Ms. Bitisha Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition under Section 397/482 Cr.P.C is directed against the order dated 05.04.2018, passed by the learned Family Court, Saket, New Delhi, in Maintenance Petition bearing No.59/16, wherein the learned Family Court has fixed the maintenance at the rate of Rs.12,500/- per month for the respondents herein (Rs.7,500/- per month for the respondent No.1 herein/wife and Rs.5,000/- per month for the respondent No.2 herein/son) from the date of filing of the petition i.e. 01.03.2016. The revisionist is the husband.

2. Material on record shows that the marriage of the petitioner and the respondent No.1 was solemnized on 14.04.2012. Respondent No.2 is the son of the petitioner and the respondent No.1. Disputes arose between the petitioner and the respondent No.1. A petition under Section 9 of the Hindu

Marriage Act, 1955 has been filed by the petitioner against the respondent in November, 2012 before the Family Court at Lucknow. The respondent No.1 herein filed an application under Section 125 Cr.P.C for grant of maintenance before the Family Court, Saket. An application for interim maintenance has also been pressed. In the application for grant of maintenance it is stated that when the talks of marriage were going on between the petitioner and the respondent No.1 it was informed that the respondent is well educated and working at a shop by the name *York Redymade* at Lucknow drawing a salary of Rs.20,000/- per month. It is stated in the application of maintenance that the respondent No.1 was also informed that the petitioner had stated that he is also having a business of manufacturing Sesame Oil under the name of *Ekta Udyog*, a business which he was conducting with his father and earning further Rs.15,000/- to Rs.20,000/- per month. In the application it is stated that the family of the respondent No.1 had spent about Rs.2,00,000/- at the time of *Rokka* and a Motorcycle had been given to the petitioner herein. It is further stated that the mother of the petitioner had informed the father of the respondent No.1 that they should purchase gold ornaments at least worth Rs.4,00,000/- and that the ornaments should be prepared as per the choice and design of the mother of the petitioner. It is stated that Rs.4,00,000/- cash was given to the mother of the petitioner for purchase of jewellery. It is stated that other than a sum of Rs.4,00,000/- there was a demand for dowry articles like TV, refrigerator, washing machine, geyser, DVD player, etc., which was given. The application states that the respondent herein was treated with cruelty. The application mentions several acts of cruelty which are not being reproduced or discussed here for the reasons that they are not germane for

deciding the disputes which is the subject matter of the instant revision petition.

3. Claiming that the petitioner is earning about Rs.35,000/- per month (Rs.20,000/- per month from the salary and Rs.15,000/- per month as his share from the business) the respondent No.1 claimed that she should be awarded Rs.10,000/- per month for herself and another sum of Rs.8,000/- per month was claimed for their son.

4. A reply was filed by the petitioner herein in the said application stating that the respondent had left the matrimonial home on her own will. It is stated in the affidavit that the petitioner is working as a salesman at a shop in Ameenabad, Lucknow and is drawing a salary of Rs.8,000/- per month and all other allegations against him have been denied by the petitioner herein in the reply.

5. The income affidavit of the petitioner and the respondent were filed by the parties as required by law. The petitioner also filed appointment letter of *Kee Lok Security Services* which describes the petitioner as an Assistant Supervisor and indicates that he is getting a salary of Rs.8,000/- per month.

6. The Trial Court after considering the evidence and the material on record disbelieved the letter of appointment given by the *Kee Lok Security Services*. The Trial Court also drew adverse inference of the fact that the petitioner herein has not placed on record the correct salary slip and the correct bank statement. The Trial Court held that during the arguments the respondent did not disputed that his father was carrying out the business of Sesame Oil under the name of *Rakesh & Company*. The Trial Court refused to accept the contention of the petitioner herein that upon the death of the father of the petitioner the business was closed/completely shut down. The

Trial Court held that at best it can be presumed that profit might have reduced. The Trial Court estimated the salary of the petitioner as Rs.20,000/- per month and profit from business at Rs.10,000/- per month and calculated his net disposable income to be Rs.30,000/- per month and fixed the maintenance at Rs.12,500/- per month to be paid to the respondent No.1 and the respondent No.2 herein. It is this order which has been assailed in the instant petition.

7. Notice was issued on 29.05.2018. The parties were called in Court to explore a possibility of an amicable settlement but there was no possibility of any settlement. In the meantime, since the petitioner was not able to pay the amount awarded by the Family Court, in an Execution Petition filed by the respondent No.1, the petitioner was arrested and sent to judicial custody.

8. Mr. Gurbaksh Singh, learned counsel for the petitioner states that the entire judgment of the learned Family Court is completely based on surmise and conjecture. He would contend that there is no reasoning given whatsoever for the Trial Court to come to a conclusion that the income of the petitioner herein would be Rs.20,000/- per month and that the petitioner would be getting Rs.10,000/- per month as profit from some business. He would therefore contend that in the absence of any material on record the learned Family Court ought not to have come to the conclusion that the petitioner was earning about Rs.20,000/- per month in view of the fact that the petitioner had produced the appointment letter which clearly stipulate that the petitioner was earning Rs.8,000/- per month from his employer.

9. *Per contra*, Ms. Manika Tripathy Pandey, learned counsel for the respondents would seriously contend that the petitioner has concealed his Income-Tax Returns and that he was assisting his father in the manufacture

of Sesame Oil in *Rakesh & Company*. It is further contended that the petitioner is in another business namely, *Ekta Udyog*.

10. The petitioner has filed an affidavit on 02.03.2021, stating that the he does not have any balance-sheet or any documents concerning Income-Tax Returns of *Rakesh & Company*. It is further stated that as far as *Ekta Udyog* is concerned, the father of the petitioner used to purchase tins, re-pack them in small bottles and sell them to retail customers earning about Rs.7,000 to Rs.8,000/- per month. It is stated in the affidavit that the father of the petitioner herein did not maintain any record, balance-sheet and has not filed any Income-Tax Returns. It is stated in the affidavit that after the death of the father of the petitioner on 10.12.2016, the said business was closed. It is also stated by the petitioner that he has got an ailing mother to look after.

11. The petitioner has also filed an affidavit dated 10.03.2021, of one Yogesh Thakwani, stating that he is the Manager of *Yorks Redymade*, Shop No.52, Ameenabad, Lucknow, and that the petitioner is working in his shop as a Salesman and is earning a daily wage of Rs.350/- and his salary comes to around Rs.9,000/- per month. It is further stated in the Affidavit that due to COVID-19 the shop was closed and the petitioner was given Rs.2,500/- as sustenance amount.

12. Heard Mr. Gurbaksh Singh, learned counsel appearing for the petitioner and Ms. Manika Tripathy Pandey, learned counsel appearing for the respondent and perused the documents.

13. A perusal of the judgments of the learned Family Court shows that the entire judgment is only based on guess work. The relevant portions of the said judgment reads as under:

“5. *The bank account statement of the respondent,*

relied upon by the respondent does not inspire confidence. The account seems to have been opened and maintained only to avoid payment of maintenance. There is hardly any transactions in the account for any amount higher than Rs. 2,000/-. Salary of the respondent for any period from any employer is not credited in the aforesaid bank account statement. Even the bank account statement of the current year has been withheld. The court is, therefore, of the opinion that respondent has deliberately avoided to place on record his actual and current bank account statement. Similarly, the appointment letter of Kee Lok Security Services is also not worthy of credence. The appointment letter describes the respondent as an "Assistant Supervisor" and indicates a salary of only Rs. 8,000/- per month, which is less than minimum wages of an unskilled worker.

6.1. A person performing supervisory roles can not excepted to be drawing salary less than the minimum wages. The salary slip of the previous employer namely YORK has also been withheld. The court, therefore, can not escape from recording finding that respondent has not placed on record his correct salary slip and correct bank account statement. The wages shown to be less than minimum wages for a supervisory job, further compounds the opinion of the court. Therefore, the court has no hesitation in holding that the income pleaded by the petitioner @Rs. 20,000/- per month is the correct salary of the respondent.

6.2. As regards the income from the business, there of-course, is no documentary evidence placed on record by the applicant/petitioner. However, it may be noticed that in her complaint to CAW Cell dated 03.12.2015, also she had stated that respondent is carrying on the business and also doing private job.

During the arguments, Ld. counsel for the respondent did not dispute that respondent's father was carrying out the business of Sesame oil, under the name and style of Rakesh & Company. The court shall not accept that with the death of the respondent's father the business, which was running, would be closed or completely shut down. Though of-course, it can be presumed that profit there from, might have reduced.

7. The respondent's income, thus can be estimated roughly to be around Rs. 30,000/- per month. If salary of the respondent is assessed @ Rs. 20,000/- per month and income from business can be estimated at Rs. 10,000/- per month. His disposable income can be estimated @Rs. 25,000/- per month. Applying the principles of law laid down in Annurita Vohra Vs. Sandeep reported as (2004) IDMC 568, DEL, the petitioners are entitled to 2/4th of the family resource cake. Accordingly, maintenance for the petitioners are assessed at Rs. 12,500/- per month. Respondent is directed to pay a sum of Rs.12,500/- per month for petitioners (i.e. Rs. 7,500/- per month to petitioner no. 1 and Rs. 5,000/- per month to the petitioner no. 2) w.e.f. the date of filing of the petition i.e. 21.03.2016, till they are legally entitled. Arrears be cleared within one year, in 12 equal monthly instalments. The amount of maintenance be deposited in the bank account of petitioner no.1 by respondent by 10th day of each calendar month." (emphasis supplied)

14. A perusal of the above said judgment shows that there is no material whatsoever for the Trial Court to come to the conclusion that the petitioner herein was earning a sum of Rs.30,000/- per month. No reason is forthcoming from the Trial Court as to why it is disbelieving or discarding the appointment letter given by the *Kee Lok Security Services*, the employer of the petitioner herein. It is trite law that it is for the wife to establish that

the petitioner was earning some amount from the business of his father and that even after the death of the petitioner's father the business was continued by the family members. Some material ought to have been produced by the respondent to substantiate the contention that the petitioner was also running some business in the name of *Rakesh & Company*. In the absence of any material on record the judgment of the learned Family Court fixing the salary of the petitioner at Rs.30,000/- per month and awarding Rs.12,500/- for the wife and children cannot be sustained.

15. During the pendency of the revision petition, the petitioner has filed an affidavit dated 10.03.2021, of one Yogesh Thakwani, who is the Manager of *Yorks Readymade Shop No.52, Ameenabad, and Lucknow* stating that the petitioner is working as a Salesman on daily basis and earning Rs.350 /- per day. This Court cannot ignore the fact that the petitioner is now in jail because of his inability to pay maintenance to his wife and child. Had the petitioner been capable of paying the maintenance, the petitioner would have made the payment rather than going to jail. In view of the above and in view of the absence of any material to the contrary and the only material being the Affidavit filed by the petitioner that he is earning Rs.9,000/- per month, the petitioner is directed to pay a sum of Rs.4,500/- as interim maintenance to the respondent No.1 and respondent No.2 from the date of filing of the petition i.e. 01.03.2016. It is made clear that all the observations made above are only restricted for the purpose of calculating the interim maintenance and the amount of maintenance to be paid under Section 125 Cr.P.C. would be arrived at by the Family Court after taking into account the entire evidence adduced by the parties before it. Needless to say that it is open to the respondents to produce any material to substantiate that the petitioner is

earning over and above the amount of Rs.9,000/- which he is earning as a Salesman from *Yorks Readymade Shop*.

16. The petition is allowed in part, the judgment dated 05.04.2018, passed by the learned Family Court, Saket, New Delhi, in Maintenance Petition bearing No.59/16, is set aside and the maintenance is fixed at Rs.4,500/- per month. The petitioner is directed to clear the arrears of maintenance within two months from today i.e. on or before 22.05.2021.

17. Needless to state that the observations made by this Court are only for deciding the interim maintenance. The Trial Court is directed to proceed with the determination of the maintenance to be paid under Section 125 Cr.P.C uninfluenced by the observations made in this order.

18. The petition is accordingly disposed of along with the pending application.

MARCH 23, 2021
Rahul

SUBRAMONIUM PRASAD, J