

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 646/2018**

Date of decision: 25th January, 2021

IN THE MATTER OF:

TARON MOHAN Petitioner

Through Mr. Vishesh Wadhwa, Advocate

versus

STATE & ANR Respondents

Through Mr. Hirein Sharma, APP for State
Mr. Joel, Advocate for the respondent No.2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition filed under Section 397/401 Cr.P.C is directed against the order dated 28.04.2018, passed by learned Additional Sessions Judge, South-East, Saket District Courts, Delhi in Criminal Appeal No.204157/2016. The petitioner has also challenged the order dated 14.05.2011 passed by the learned Metropolitan Magistrate, Mahila Courts, South East, Saket, Delhi in an application titled as Gyatri Mohan v. Taron Mohan & Ors. for claiming interim maintenance under Section 23 of the Domestic Violence Act.

2. Shorn of details, the facts leading to this revision petition are:-

a) The marriage of the petitioner and the respondent was

solemnised on 15.12.2002 according to Hindu rites and ceremonies.

b) After marriage, the respondent/wife was inducted as a whole time Director in the company run by the petitioner/husband, namely, *Mobisoft Telesolutions Pvt. Ltd.*

c) The respondent/wife started living separately claiming that she was deserted by the petitioner on 20.01.2009 after which she filed an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as “The Domestic Violence Act”) for seeking interim maintenance.

d) It is stated in the petition that as a Director of *Mobisoft Telesolutions Pvt. Ltd.* she was getting a salary of Rs.2,00,000 and after differences arose between the parties, no salary was being paid to the respondent.

e) It is stated in the petition for interim maintenance that the respondent was unable to take any job as she was continuing as a Director in the said company. It is claimed by the petitioner that since she does not have any job and is also not getting any salary from the company she is unable to maintain herself.

f) The learned Metropolitan Magistrate by an order dated 14.05.2011 granted a maintenance of Rs.1,00,000/- per month to the respondent from the date of filing of the complaint till the disposal of the case on merits. The said order was challenged in Criminal Appeal 75/11 filed by the petitioner before ASJ-05 South-east Saket Courts, New Delhi, and the same has been rejected by order dated 04.11.2011.

g) The respondent had approached the Company Law Board for a

direction that she should be paid salary during the period she served as a Director of the company. The Company Law Board allowed the petition and directed the company i.e. *Mobisoft Telesolutions Pvt. Ltd* to pay the salary to the respondent from 30.09.2009 to 30.12.2011.

h) The petitioner thereafter moved an application under Section 25 of the Domestic Violence Act seeking for a modification of the order dated 14.05.2011 claiming that the respondent is not entitled to any maintenance from 30.09.2009 to 30.12.2011 for the reason that the respondent is now getting Rs.2,00,000/- per month as salary from 30.09.2009 to 30.12.2011 as directed by the Company Law Board.

i) The learned Metropolitan Magistrate by an order dated 29.07.2013 in CC No.426/3 rejected the application for modification on the ground that the quantum of maintenance to an estranged wife is decided keeping in mind the standard of life she was used to while living with her husband since marriage. The learned Metropolitan Magistrate observed that in the present case what was assessed was as to whether her earnings alone are sufficient to provide her the same level of comfort which she was enjoying earlier it was found that despite her earnings, her lifestyle was substantially supported by her husband while the couple was residing together. The learned Metropolitan Magistrate has observed that merely because the respondent has received her salary for the period in question (i.e. from 30.09.2009 to 30.12.2011), it does not automatically disentitle her to the maintenance from the husband. The learned Metropolitan Magistrate was of the opinion that while considering an application for modification under Section 25 of the Domestic Violence Act, the

two factors here to be kept in mind are; firstly, there must be a change in circumstance and, secondly, the change must be such so as to require a change in the order. The learned Metropolitan Magistrate held that though there was a change in circumstance inasmuch as the respondent was paid her salary from 30.09.2009 to 30.12.2011 but the order does not require any modification as the salary stated by the respondent would not be sufficient to maintain herself.

j) The learned Metropolitan Magistrate found that the Income Tax Returns of the petitioner revealed that his gross income was Rs.64,96,910/- for assessment year 2010-2011 and Rs.52,74,052/- for assessment year 2011-2012 and Rs.45,07,331/- for assessment year 2012-2013. After making deductions for the tax paid his earnings were Rs.45,16,908/-, Rs.37,25,650 and Rs.31,97,912 for the year 2010, 2011,2012 respectively. The learned Metropolitan Magistrate also noted that after proceedings were initiated between the parties, the income of the petitioner started decreasing and probably it was an attempt made by petitioner to hide his real income. The learned Metropolitan Magistrate therefore rejected the argument of the petitioner that Rs.2,00,000/- per month being given as salary to the respondent from 30.09.2009 to 30.12.2011 would allow her to maintain the same lifestyle that she was earlier enjoying while living with her husband.

3. The order of learned Metropolitan Magistrate dated 29.07.2013 was challenged in Criminal Appeal No.204157/2016. The learned Additional Sessions Judge dismissed the appeal holding that on a reading of the order dated 14.05.2011 it cannot be said that the learned Trial Court had passed

the order of interim maintenance of Rs.1,00,000/- per month only because the petitioner was not paying salary of Rs.2,00,000/- per month to her.

4. By this petition, the petitioner seeks to challenge the order dated 28.04.2018 passed by the learned Additional Sessions Judge and also the order dated 14.05.2011 passed by learned Metropolitan Magistrate for interim maintenance.

5. Heard Mr.Vishesh Wadhwa, learned counsel for the petitioner, Mr.Hirein Sharma, learned APP for the State and Mr. Joel, learned counsel for the respondent No.2.

6. Mr. Vishesh Wadhwa, learned counsel for the petitioner would contend that the order dated 14.05.2011 had been obtained by the respondent concealing material facts. The statement of the respondent that she is not able to get any work because she has continued as a Director in the *Mobisoft Telesolutions Pvt. Ltd.* is factually incorrect inasmuch as she was a Director in a company registered under the Companies Act under the name *Mira Explorations Pvt Ltd.* He would therefore contend that since the order dated 14.05.2011 has been obtained by concealing material facts, the order dated 14.05.2011 deserves to be set aside. He further states that once the learned Metropolitan Magistrate had come to the conclusion that the order of the Company Law Board directing *Mobisoft Telesolutions Pvt. Ltd* to pay the salary of the respondent from 30.09.2009 to 30.12.2011 amounts to change in circumstance then the logical conclusion would be to modify the order of maintenance to hold that the petitioner is not liable to pay maintenance of Rs.1,00,000/- per month to the respondent from 30.09.2009 to 30.12.2011.

7. On the other hand Mr. Joel, learned counsel for the respondent would state that four courts have upheld the order awarding maintenance of

Rs.1,00,000/-. The order dated 14.05.2011 of the learned Metropolitan Magistrate awarding maintenance of Rs.1,00,000/- per month has been upheld by the learned Appellate Court by an order dated 04.11.2011. The learned Metropolitan Magistrate has refused to modify the order which has also been upheld by the learned Additional Sessions Judge by the order impugned herein. He would state that in view of this, the High Court while exercising its jurisdiction under Section 397/401 CrPC ought not to interfere with the four orders passed by the courts below. He would state that there is no perversity in the orders passed by the courts below warranting interference of this court while exercising its revisionary jurisdiction. He would contend that the contention of the petitioner in the revision petition that the respondent was a Director in *Mira Explorations Pvt. Ltd* and therefore the order dated 14.05.2011 needs to be set aside has been taken for the first time in the present revision petition and therefore the same cannot be taken into account.

8. The prayer to set aside order dated 14.05.2011 cannot be entertained by this court in the pending proceedings for the reason that the said order was challenged in an appeal filed by the petitioner before the learned Sessions Court and the said appeal has been dismissed. The order dated 04.11.2011 passed by the Sessions Court in Criminal Appeal No.75/11 upholding the order dated 14.05.2011 has not been challenged. After the appeal having been dismissed, it is now not open to the petitioner to challenge the very same order in revision.

9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety

of any finding *inter se* an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

10. The order dated 14.05.2011 has been upheld in the Appellate Court. The application for modification had been rejected by the learned Metropolitan Magistrate by order dated 29.07.2013 and the same has been upheld by an order dated 28.04.2018, which is under challenge in the present revision petition. It cannot be said that all these orders are perverse which warrants interference. The object of Section 397 CrPC is to settle a patent defect or an error in exercising jurisdiction or if the order is perverse and no court would come to such a conclusion. The orders have been passed in an application for interim maintenance under the Domestic Violence Act. Matrimonial proceedings are still pending between the parties. The findings of the learned Metropolitan Magistrate as upheld by the learned Sessions Court is that the petitioner was not providing adequate maintenance to the respondent and since the adequate maintenance was not being paid, the petitioner was directed to pay a sum of Rs.1,00,000/- towards maintenance.

11. The Company which was being run by the petitioner did not release her salary. The respondent had to move the court and fight for getting her legitimate salary. It is not in dispute that *Mobisoft Telesolutions Pvt. Ltd.* company was being run by the petitioner. After denying the respondent her salary, the petitioner is now trying to take advantage of his own wrong by

stating that now since the respondent has got her salary and therefore, the order of maintenance should be modified. Even though the company is distinct from the petitioner but the company is being run by the petitioner and it can be assumed that the salary was not being paid to the respondent only at the instance of the petitioner.

12. This court does not want to substitute its own conclusion to the one arrived at by the court below. It is open to the petitioner to raise all these contentions in the matrimonial proceedings pending between the husband and wife while deciding the issue of grant of alimony under Section 25 of the Hindu Marriage Act.

13. Accordingly, the petition is dismissed.

SUBRAMONIUM PRASAD, J.

JANUARY 25, 2021

hsk/rs