



* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 64/2022, CRL.M.A. 1881/2022 (Delay) and
CRL.M.A. 1882/2022 (Stay)

Date of Decision: 31.01.2022

IN THE MATTER OF:

RAKESH KUMAR

..... Petitioner

Through: Mr. Sunil Kumar Sharma, Advocate.

versus

TANUJA DEVI AND ANOTHER

..... Respondents

Through: Ms. Priyanka Sethia, Advocate with
respondent No. 1 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed under Section 397 read with Section 401 Cr.P.C. assailing the judgment dated 16.07.2021 passed by the Family Court, South, Saket Courts, New Delhi in M. No. 14/219, whereby the petitioner (husband) has been directed to pay maintenance of Rs.14,000/- per month to the respondents from the date of filing of the petition till the date they are legally entitled to receive the same.

2. Brief facts, as noted by the Trial Court, are as under:-

“2. The case of the petitioner, in brief, is that petitioner No. 1 (hereinafter referred as the ‘petitioner’) married the respondent on 29.4.2007 at Koderma, Jharkhand according to Hindu rites and customs. Out of the said wedlock. one male child namely



Master Reyansh (Petitioner No.2) was born on 12.2.2009. Petitioner was subjected to humiliation and cruel treatment at the hands of her in-laws and the respondent right from the beginning of married life. The attitude of the respondent became indifferent towards petitioner immediately after the marriage. He taunted the petitioner that he had obliged her by marrying her. The parents of the petitioner spent beyond their capacity in the marriage. The petitioner handed over all her jewellery articles to respondent and her mother-in-law. The mother-in-law of the petitioner constantly interfered in their life. She abused the petitioner in front of family members and guests. On 15.6.2008 petitioner was beaten by the respondent as the petitioner wanted to pursue further studies. Petitioner did not visit her parental house after November, 2007. In May, 2009 brother of the petitioner came and sought permission to let petitioner stay with her parents for few days. However, petitioner was not permitted to go to her parental house and she was mercilessly beaten by her mother-in-law and respondent. A day before Diwali in 2010, the petitioner woke up late as she was not well. Petitioner was abused for not getting up early by her mother-in-law. In March, 2011 the mother-in-law of the petitioner abused her for not preparing the food properly. In May, 2011 mother and maternal uncle of the petitioner visited the matrimonial home after receiving a call from the respondent. Respondent insulted them and made both of them stand outside the house. In June, 2011 petitioner decided to go with her father. The respondent and his mother started checking her bags and did not let her leave the house whereupon the father of the petitioner called the Police. It was with the help of the Police that the petitioner left the matrimonial house on 2.6.2011. On 30.7.2012 the petitioner was brought back to her matrimonial home by the respondent assuring her relatives that she would be well taken care of. However, on 31.7.2012 itself, the respondent got the mobile connection of the petitioner disconnected and again started harassing her. On 18.11.2012 the petitioner was thrown out of the matrimonial house with petitioner No.2. She was threatened of dire consequences. It is averred that in December, 2012 the petitioner was threatened by the respondent that he would



forcibly take petitioner No.2 with him. Petitioner was forced to leave her parents. She came to Delhi to stay with her brother. Since then she is living with her brother in Delhi and is meeting her expenses with the help of her parents and relatives. Petitioner is presently unemployed and since 18.11.2012 she is surviving with the support of her parents, relatives and friends. The respondent is employed and is getting a salary of Rs.1 lakh per month. He has no other liability to maintain except the petitioners. Petitioner has no immovable property in her name. The petitioners have prayed that the respondent be directed to pay a sum of Rs. 50,000/- per month to the petitioners towards maintenance.”

3. Initially, on an application filed by respondent No. 1 (wife) on 07.11.2014 seeking interim maintenance for self and her minor son/*Master Reyansh*, the Family Court, South, Saket had directed payment of interim maintenance @ Rs.4,000/- per month to respondent No.1 and @ Rs.2,500/- per month for respondent No.2/*Master Reyansh*, from the date of application, i.e. 07.11.2014, till further orders as well as one-time litigation expenses of Rs.11,000/-. Vide the impugned judgment, the petitioner has been directed to pay maintenance to the respondents @ Rs.14,000/- per month, i.e. Rs.10,000/- per month for respondent No.1 and Rs.4,000/- per month for respondent No.2, from the date of the filing of the petition till the date they are legally entitled to receive the same. The petitioner (husband) has further been directed to clear the arrears of maintenance within six months from the date of the judgment in the prescribed manner.

4. While assailing the impugned judgment before this Court, learned counsel for the petitioner has contended that the Family Court failed to take into account the fact that respondent No.1 had voluntarily left the matrimonial house and thus, she was not entitled to receive any



maintenance. It is averred that even otherwise, maintenance ought to have been awarded to the respondents from the date of the judgment and the Family Court committed an error by awarding maintenance from the date of filing of the petition.

5. Learned counsel for the respondents, on the other hand, has supported the impugned judgment. It is submitted that the position of law is settled to the effect that maintenance under Section 125 Cr.P.C. has to be awarded from the date of filing of the petition and not from the date of passing of the order/judgment.

6. I have heard learned counsels for the parties and have also gone through the material placed on record.

7. At the outset, it is noted that the issue regarding the date from which maintenance under Section 125 Cr.P.C. shall be awarded came up before the Supreme Court in Rajnish v. Neha and Another reported as **(2021) 2 SCC 324**, where after referring to the decision in Badshah v. Urmila Badshah Godse and Another reported as **(2014) 1 SCC 188**, the Court held as follows:-

“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.



110. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuwan Mohan Singh v. Meena*, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In *Badshah v. Urmila Badshah Godse*, the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held : (SCC p. 196, para 13)

“13.3. ...purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes



the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.”

(emphasis supplied)

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.

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127. In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

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(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.”

8. This Court, in Asha Karki v. Rajesh Karki reported as **2020 SCC OnLine Del 444**, was also in seisin of similar issue, when it was held as follows:-

“15. In Jaiminiben Hirenghai Vyas v. Hirenghai Rameshchandra Vyas reported as (2015) 2 SCC 385, it was held as under:—

“5. Section 125 Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the



order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the court must apply its mind to the options having regard to the facts of the particular case.

6. In Shail Kumari Devi v. Krishan Bhagwan Pathak this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumari Devi this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such order. Thus, such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.

7. In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the circumstances eminently justified grant of maintenance with effect from the date of the application in view of the finding that the appellant had worked before marriage and had not done so during her marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the order of the High Court in this regard and direct that the respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as maintenance granted under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered. Accordingly, the appeal is allowed.”



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17. Once the court comes to a conclusion that the wife is entitled to an award of maintenance, the assessment relates back to the date of the application and as such there have to be compelling reasons for the family court to restrict the award of maintenance from the date of the order and not from the date of the application. (Refer : Nisha Saifi v. Mohd Shahid reported as 2019 SCC OnLine Del 7902).

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19. In view of the aforementioned discussion, the final order passed by the Family Court is modified to the extent that the respondent will pay the maintenance to the petitioner @ Rs. 20,000/- from the date of the filing of the application, i.e., 05.03.2011..."

9. Once again, in Sapna & Anr v. The State (Govt.of NCT of Delhi) & Anr, **CRL.REV.P. 805/2018**, like view was taken by this Court and it was directed that the maintenance shall be payable to petitioner No. 1 (wife) from the date of filing of the maintenance petition.

10. Adverting to the present case, it is noted that the factum of marriage between the parties and birth of their child is not in dispute. It is also not disputed that the parties started residing separately since 18.11.2012.

11. During the trial, respondent No.1 was examined as PW-1. She deposed that she had wanted to pursue higher studies, but when she brought up the issue on 15.06.2008, she was beaten by the petitioner. It was further deposed that she did not visit her parental house after November, 2007 and when in May, 2009, her brother sought permission to take her with him, the same was denied. Respondent No.1 stated that in the year 2010 and thereafter in March, 2011, she was abused and on account of the ill-



treatment by the petitioner, she left the matrimonial house on 02.06.2011. Be that as it may, on assurance given by the petitioner to treat her well, she joined back his company. On 18.11.2012, she alongwith respondent No.2 was thrown out of the matrimonial house, without being allowed to take her belongings. As per her testimony, respondent No. 2 has remained unemployed since 18.11.2012.

During her cross-examination, respondent No. 1 denied the suggestion that she is/was doing any job. She deposed that at the time of marriage, the petitioner was working in Videocon company as hardware engineer and after 2009, he had switched to Royal Infra company. It was further deposed that her father-in-law was drawing his pension. It was also stated that although it was mentioned in the petition that she was working as a teacher, but the same was not correct as she had never worked as a teacher. She had clarified that the error in the petition occurred due to cut and paste of the document in the computer. Respondent No. 1 also deposed that she was awarded B.Ed. degree in the year 2016, i.e. after filing of the petition, and thus she was not employed as a teacher at the time of filing of the petition. She further stated that she was living on rented accommodation.

12. *Sh. Akash Sharma*, Branch Operation Manager, Yes Bank, New Delhi was examined as PW-3 to prove the statement of bank account of the petitioner from 07.10.2015 to 28.03.2019, which was exhibited as PW3/A. As per the same, the petitioner was getting salary of Rs. 25,540/- in October, 2015; salary of Rs.28,624/- in October, 2016; salary of Rs.36,616/- in October, 2017 & October, 2018 and Rs. 39,392/- in February, 2019. The said exhibit also showed that the petitioner had received a tax refund of Rs.3080/- for the assessment year 2018-19.



13. In support of her contentions, respondent No. 2 had placed on record rent agreements, which were exhibited as PW1/1 and PW1/2. The petitioner had placed on record a salary certificate, showing his earnings to be Rs.7,500/- per month, however, the Family Court disbelieved the same. The Court noted that although the petitioner was an income tax assessee, he had neither placed on record his income tax returns nor examined himself. It was further noted that prior to filing of the petition, the petitioner was having a bank account in ICICI Bank, but it appeared that after filing of the petition he opened a fresh account in Yes Bank to conceal his true income. It was also noted that the petitioner was having mutual fund transactions as found reflected in Ex. PW2/B.

14. Upon a perusal of the impugned judgment and the material placed on record, this Court is of the opinion that the contention raised on behalf of the petitioner that respondent No. 1 had voluntarily left the company of the petitioner and therefore was not entitled to maintenance, has no merit. During the trial, respondent No. 1 had appeared in the witness box and deposed in detail about the ill-treatment she was subjected to, on account of which she was initially forced to leave the matrimonial house. She had subsequently re-joined the company of the petitioner, but ultimately she was thrown out of the matrimonial house alongwith respondent No.2. Keeping in view the above, it cannot be said that respondent No. 1 left the matrimonial house and/or deserted the petitioner without sufficient cause. Thus, the first contention raised on behalf of the petitioner is rejected.

15. Insofar as the second contention raised on behalf of the petitioner is concerned, that the maintenance ought to have been granted from the date of the passing of the judgment, suffice it to note that it is no longer *res integra*



that an award of maintenance shall be from the date of the application and not from the date of the order. In light of the decision in Rajnesh (Supra) and the fact that the Family Court was in seisin of a 7-year-old case at the time of passing of the impugned judgment, the second contention raised on behalf of the petitioner is also rejected.

16. Based on the foregoing, and the lack of merit in the contentions raised on behalf of the petitioner (husband), this Court concurs with the view taken by the Family Court. Accordingly, the present petition is dismissed. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 31, 2022
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Click here to check corrigendum, if any