

THE HONOURABLE Dr.JUSTICE G.RADHA RANI

CRIMINAL REVISION CASE No.2886 OF 2018

ORDER:

This Criminal Revision Case is filed by the petitioner-respondent aggrieved by the order dated 06.10.2018 in CrI.M.P.No.95 of 2015 in MC No.55 of 2015 passed by the XV Additional District Judge, Ranga Reddy District at Kukatpally, in awarding interim maintenance of Rs.40,000/- per month to respondent No.1-petitioner No.1 and Rs.20,000/- to respondent No.2-petitioner No.2 from the date of petition i.e. 08.04.2015.

2. The parties are hereinafter referred as per their array before the trial court.

3. The petitioners filed a petition under Section 125(1) Cr.P.C. to grant interim maintenance of Rs.1,00,000/- per month to the petitioner No.1 and Rs.50,000/- to the petitioner No.2 during the pendency of the maintenance case.

4. The case of the petitioner No.1 was that she was married with the respondent on 06.06.2006 as per the Hindu Rites and Customs at Arya Samaj Center, Noida. The marriage was consummated and out of wedlock, petitioner No.2 was born to them on 18.08.2009. It was the second marriage to both the petitioner No.1 and the respondent. They lived happily for two years. After the birth of the petitioner No.2, disputes arose between them and the respondent filed divorce O.P. No.613 of 2013 seeking dissolution of marriage on the ground of cruelty. While they both were living under one roof, prior to filing of the case, the respondent proposed for mutual divorce for which the petitioner No.1 refused. Later, the petitioner No.1 came to know that the respondent was having an affair with a lady, by name, Rimpdy Dhanjal. After knowing the respondent's extra marital affair, petitioner No.1 filed D.V.C. No.52 of 2013 against the respondent and his mother. The respondent and his mother necked the petitioner No.1 out of the matrimonial home, after her filing the Domestic Violence Case against them in 2013. As she had no shelter in Hyderabad, the petitioner No.1 moved to her native place Allahabad in Uttar Pradesh. As she could not appear in the D.V. case, due to her moving to Allahabad, the said case was dismissed for

default. To sustain herself and her minor son, she started working and joined in M/s.Tech Mahindra Limited in March, 2014. Her net take home salary was around Rs.70,000/-. It was inadequate to meet her monthly expenses as per their standard of living. Her house rent was Rs.34,000/-. She was paying Rs.25,000/- towards salaries to driver and a full time maid, Rs.6,000/- towards fuel expenses, Rs.4,00,000/- for school fees of her minor son and Rs.35,000/- for groceries and other miscellaneous expenses. Thus, she had to depend on her parents to meet her monthly expenses. The respondent totally neglected and failed to honour his moral obligations to maintain the petitioners.

4.1 She further submitted that the respondent was working as Vice President with HSBC Bank and was drawing handsome salary around Rs.4,00,000/- per month and was also having immovable properties worth crores of rupees in Lucknow, Bangalore and Hyderabad and prayed for grant of interim maintenance.

5. The respondent filed counter denying the petition averments. He contended that the petitioner No.1 was not entitled for maintenance as she was a qualified woman working in a Multi National Company and was drawing a handsome salary. He contended that the petitioner

No.1 was adamant from the beginning of the marriage. She used to pick up quarrel and fight on small matters and was disinterested in running the matrimonial home, despite his full support to her in pursuing her career and professional interest. Her quarrelsome behaviour was the cause of friction between them. In fact it was the petitioner No.1 who proposed to get the marriage dissolved by mutual consent and demanded a sum of Rs.50,00,000/- and a flat situated at Bangalore which was purchased by the respondent with his own funds in their joint names. As he refused to pay the said amount and the flat as demanded by the petitioner No.1, she started harassing the respondent emotionally and mentally and not even taking care of the child properly. Due to the constant abuse of the petitioner No.1, the respondent was forced to file O.P. seeking decree of divorce on 01.4.2013. After receiving the summons in the said O.P. only, the petitioner No.1 left the matrimonial home in the 2nd week of April voluntarily without any intimation along with the petitioner No.2 and she herself came to the matrimonial home in the month of June, 2013 and voluntarily left in the month of September, 2013 along with the petitioner No.2. In November, 2013, the petitioner No.1 filed D.V.C. No.52 of 2013 on the file of the IX Metropolitan Magistrate, Miyapur

against the respondent and his mother as a counterblast to the divorce O.P. filed by him. She also filed an application for interim maintenance and the court granted an *ex parte* interim maintenance for a sum of Rs.30,000/-. The petitioner No.1 preferred Crl.A. No.13 of 2014 seeking enhancement of the interim maintenance, but for the reasons best known to her, she filed Memo dated 25.02.2014 in the said appeal, as a result of which the said appeal was dismissed. The petitioner No.1 admittedly, was drawing a salary of Rs.70,000/- per month. Being capable of earning such a huge salary, she was not entitled for the relief claimed. In fact, she seemed to have been earning much more than she averred, otherwise, she would not have been capable of spending around Rs.1,50,000/- per month towards her maintenance. Having capable of spending such a luxurious and high profile life, she was not entitled for any maintenance as prayed for.

5.1. He further contended that the petitioner No.1 was a highly qualified professional with impeccable educational qualifications like MBA equivalent PGDBM from Amity Business School, Noida, U.P. She also obtained Diploma in French and Certificate of Proficiency in German from Allahabad University, besides a certificate course in

professional selling from National Institute of Sales. She had over 9 years of professional work experience having worked as Zonal and National Sales Trainer in MNC like Tupperware India Pvt. Limited. She also worked in organisations like M/s.ICICI Prudential Life Insurance Company Limited, Ibilt Technologies Limited amongst others. She travelled to several foreign countries in the process of her work. He was ready and willing to take responsibility of all the expenses of the petitioner No.2 pending final adjudication of the O.P. He agreed to bear all the expenses pertaining to petitioner No.2 by giving cheques directly to the concerned educational institutions, school, tutors etc., in favour of the said institutions and prayed to dismiss the petition.

6. On considering the contentions of both the parties and the written arguments filed by them, the XV Additional District Judge, Ranga Reddy District at Kukatpally allowed the petition in part by order dated 06.10.2018 directing the respondent to pay interim maintenance of Rs.40,000/- per month to petitioner No.1 and Rs.20,000/- per month to petitioner No.2 from the date of filing the petition i.e. 08.04.2015.

7. Aggrieved by the said order, the respondent preferred this revision contending that the petitioner No.1 failed to establish that she had no sufficient means to maintain herself. The learned Judge erred in arriving at the amount of maintenance in the absence of any supporting material. There was no evidence of any kind placed on record in support of the claim of maintenance by the petitioner No.1. Section 125 (1) Cr.P.C. would mandate that a claim for maintenance could be made only by such a wife or minor child who were unable to maintain themselves. The petitioner No.1 herself stated in the interim application that she was drawing a salary of Rs.70,000/- per month which was positive proof of the fact that she was an employee and capable of maintaining herself. The petitioner No.1 was working as Deputy General Manager, Global Leadership Development in Tech Mahendra Group, Hyderabad and was drawing a fat salary and was not entitled for the benefit of interim maintenance. The petitioner No.1 failed to file evidence of even a single receipt to substantiate the alleged payments made by her to the respective institutions for the petitioner No.2. In the absence of evidence to support the claim, the court below ought to have rejected the claim for maintenance and

prayed to set aside the order dated 06.10.2018 passed by the XV Additional District Judge, Ranga Reddy District at Kukatpally in Crl.M.P. No.95 of 2015 in MC No.55 of 2015.

8. Heard the learned counsel for the revision petitioner-respondent and the learned counsel for the respondent Nos.1 and 2 – petitioners No.1 and 2.

9. The learned counsel for the revision petitioner-respondent submitted that the petitioner No.1 stated herself as house wife in the cause title of the Criminal M.P. as well as in the Maintenance Case, but stated in the contents that she was an employee which would go to prove the fact that she mis-lead the court below to believe that she was entitled for maintenance though she was not entitled for the same. The trial court committed error in awarding interim maintenance to the petitioners and prayed to set aside the said order of the trial court.

10. The learned counsel for the respondent Nos.1 and 2- petitioner Nos.1 and 2, on the other hand, strongly took objection of the same and submitted that the petitioner No.1 in the Maintenance Case itself mentioned her employment with M/s.Tech Mahindra and

also her monthly salary and sought maintenance in addition to her earnings. She joined in the M/s.Tech Mahindra in March, 2014 and worked for two and half years. She quit her job in March, 2016 as her health was not supporting. Since October, 2016, the petitioner No.1 was jobless and was not having any source of income. The revision petitioner admitted before the court below that he was working in a senior position in HSBC Data Services Private Limited and his annual income was about Rs.62,00,000/-. He was paying a meagre amount of Rs.10,000/- per month to the petitioner No.2 and Rs.20,000/- per month to petitioner No.1 as per the orders in I.A. No.1 of 2018 dated 15.11.2018. The petitioner No.2 was studying in Sancta Maria International School, Lingampally. His school fee was about Rs.4,00,000/- per annum and filed the relieving letter of the petitioner No.1 issued by M/s.Tech Mahendra and the school fee receipts of the petitioner No.2. Learned counsel further submitted that due to typographical mistake, the occupation of the petitioner No.1 was shown as Housewife in the cause title, but in the same petition, the petitioner No.1 admitted about her employment and disclosed her employment particulars. At no point of time, she had mis-represented her occupation in the said petition. But, the respondent filed a petition

to prosecute the petitioner No.1 for the act of perjury before the trial court which would show his conduct. The respondent had gone hammer and tongs about such innocuous error, which apparently could be seen on the face of record, only to portray that the petitioner No.1 approached the court with unclean hands and it would reflect his desperateness to create controversy from issues which did not exist, to mislead and to escape from his liabilities. The respondent was abusing the legal procedure by preferring the present revision only to harass the petitioner No.1. He had no bonafide intention to honour his obligation. The respondent claimed that he would take full responsibility of the minor child, but when he was forwarded with the school fee payment link, he only paid for the one semester and all of a sudden stopped paying for the rest of the semesters. He wilfully picked up quarrel, unnecessarily created visitation issues and tried to shun away from his responsibility of maintaining his minor son and prayed to vacate the interim order passed by this Court on 15.11.2018 in I.A. No.1 of 2018 in the revision.

11. Perused the record. On a perusal of the record, both the parties appeared to have filed disclosure affidavits about their assets

and liabilities before the trial court, as per the judgment of the Hon'ble Apex Court in **Rajnesh v. Neha and another**¹. The petitioner No.1 stated that she worked with M/s.Tech Mahindra Limited from March, 2014 to October, 2016 and thereafter she was unemployed and her monthly income during the period of her work was Rs.1,00,000/-. The respondent filed an affidavit stating that he was working as Bus Admin and Operational Management in HSBC Electronic Data India Private Limited and his monthly income after deductions was around Rs.4,25,000/- per month. He stated his mother, aged 77 years, only was his dependent and that he was getting Rs.2.4 lakhs from house property income and Rs.1.8 lakhs of interest from dividend income. He also stated that he was having a plot at Bangalore and fixed deposit at Bank of Baroda for Rs.6,00,345/-. He stated that he obtained a personal loan of Rs.1,38,75,000/- by mortgaging his mother's property and was having a Hyundai Elantra car and a two wheeler. He stated that he was paying EMIs of Rs.2,00,000/- per month.

12. The contention of the respondent was that, as the petitioner No.1 was earning, she was not entitled for any maintenance/interim maintenance. But, as per the affidavit filed by the petitioner No.1

¹ AIR 2021 SC 569

before the court on oath, she worked only for a period from March, 2014 to October, 2016 and was currently unemployed. Even in her petition for interim maintenance, she disclosed her employment particulars and claimed maintenance in addition to her earnings. The Hon'ble Apex Court in **Rajnish v. Neha** (supra) held the criteria for determining the quantum of maintenance as:

“III Criteria for determining quantum of maintenance

(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.³³

In *Manish Jain v Akanksha Jain* [(2017) 15 SCC 801] this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent

upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

13. Considering the above guidelines given by the Hon’ble Apex Court in awarding maintenance/interim maintenance to the wife and children and considering the employment, income and other assets of the revision petitioner-respondent and his income from out of them and the dependants he has to maintain, and the standard of living to which the petitioners were accustomed to and the petitioner No.1 has no independent income at present to support herself and even

considering her earnings by the time of filing the petition, the amount of Rs.40,000/- per month awarded by the trial court to the petitioner No.1 and Rs.20,000/- per month to the petitioner No.2, is considered as not excess or exorbitant. The trial court, on considering all the facts and circumstances of the case only, awarded the said amount towards interim maintenance of the petitioner Nos.1 and 2. Hence, this Court does not find any reason to interfere with the same.

14. Though the learned counsel for the petitioner Nos.1 and 2 contended that the petitioner No.1 required Rs.2,50,000/- per month in the present circumstances to the petitioners towards their maintenance, the changed circumstances can be brought to the notice of the trial court by filing necessary application and the same cannot be considered in this revision case filed by the respondent – husband.

15. In the result, the Criminal Revision Case is dismissed confirming the order dated 06.10.2018 in Crl.M.P.No.95 of 2015 in MC No.55 of 2015 passed by the XV Additional District Judge, Ranga Reddy District at Kukatpally. The revision petitioner-respondent-husband is directed to pay the arrears, if any, within a period of one month from the date of this order and also continue to

pay the monthly maintenance amount to the petitioner Nos.1 and 2-
respondet Nos.1 and 2 as directed by the trial court.

Miscellaneous Applications, if any pending, shall stand closed.

Dr. G.RADHA RANI, J

January 11, 2023
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