



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

Date of decision: 08th AUGUST, 2023

IN THE MATTER OF:

+ **CRL.REV.P. 586/2016 & CRL.M.As. 39482-83/2019, 40142/2019, 41217/2019 & 9486/2023**

SMT BHAWANA SHARMA & ORS

..... Petitioners

Through: Petitioner No.1 in person

versus

SHYAM SUNDER SHARMA

..... Respondent

Through: Mr. M M Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. *Vide* the present petition the Petitioner seeks to challenge the order dated 26.07.2016, passed by the Additional Principal Judge, Family Court, District West, Tis Hazari Courts, Delhi (*hereinafter referred to as 'the Trial Court'*) enhancing the interim maintenance of the Petitioners herein to 38% of the gross salary of the Respondent from 2016 onwards. Petitioners' main ground of challenge is that the enhancement must be from the date of application under Section 127 Cr.P.C and not from the date of the Order passed in the said application.

2. Shorn of unnecessary details, the fact, in brief, leading to the present Petition, are as under:

- a) It is stated that the Petitioner No.1 and the Respondent got married on 20.04.1996 and Petitioner No.2 is their only child. It is stated that the relationship between the Petitioner No.1 and the Respondent got strained resulting in initiation of divorce



proceedings. It is stated that on 02.06.2005 Petitioner No.1 filed an application under Section 125 Cr.P.C for grant of maintenance and vide Order dated 21.01.2009 interim maintenance of Rs.8,000/- per month was granted to the Petitioner No.1 and Rs. 5,000/- per month was granted to the Petitioner No.2 who was minor at that time. The interim maintenance was fixed taking into account the salary of Respondent No.1 who was earning Rs.34,742/- at that point of time.

- b) It is stated that after two years of grant of interim maintenance, the Petitioner No.1 filed an application under Section 127 Cr.P.C. for enhancement of maintenance on the ground that there has been an increase in the salary of the Respondent from Rs.34,742/- to Rs.54,000/- per month and the child of the Petitioner No.1 and the Respondent, who was studying in Class 5th at the time of filing the application for maintenance, is now studying in Class 9th in a private school. It was the contention of the Petitioner that with the increase in the cost of living and on account of the fact that the Petitioner has to bear the entire expenses of the child, the amount has to be enhanced.
- c) It is pertinent to mention that the Petitioner No.1 was moving repeated applications for enhancement of maintenance and has also moved this Court and the Apex Court. The Apex Court vide Order dated 07.09.2015 had directed the Trial Court to dispose of the application under Section 127 Cr.P.C as expeditiously as possible.



- d) The Trial Court vide the Order impugned herein has held that the Petitioners are entitled to increase in the maintenance @ 38% of the gross salary of the Respondent from July, 2016, i.e. the date of passing of the Order.
- e) It is this Order which is under challenge in the present petition wherein the Petitioner claims that the enhancement should be from the date of application under Section 127 Cr.P.C with periodical increase with the increase in the salary of the Respondent.

3. The Petitioner, who appears in person, has highlighted the suffering endured by her and has contended that the cost of living is increasing in geometrical progression and she not only has to maintain herself but her daughter as well who is suffering from Asthama and had to nail operation for which entire medical expenses were borne by the Petitioner. It is further stated by the Petitioner that the interim maintenance of Rs.13,000/- which was granted to her and to her daughter in 2009 was not sufficient and she filed an application under Section 127 Cr.P.C in 2011 and more than 12 years have passed in the judicial proceedings. She further states that the impugned order was passed without taking into account the increasing cost of living and more particularly, the fact that the education expense of the child, who is a student of class 9th, has increased manifold. The Petitioner has placed reliance on several judgments of this Court and the Apex Court to contend that it is the settled law that the application for increase of maintenance must be considered from the date of application and not from the date of order in the application.

4. Per contra, learned Counsel for the Respondent contends that the Trial Court has already fixed the final maintenance under Section 125 Cr.P.C *vide*



Order dated 01.07.2019 granting Rs.47,240/- per month to the Petitioners herein. Relevant portion of the said order reads as under:

"In terms of interim order of this court. petitioner and the daughter w getting 38% of respondent's salary as maintenance which appear to be just and reasonable for the purpose of entitlement of the petitioners from the date of filing of the petition till the disposal of the matter. However, in regard to the future maintenance. respondent has placed on record his pay slip for the month of November 2018, as per which petitioner's gross salary was Rs.1.39.839/-per month with statutory deduction of Rs.33,000/- (income tax)+ GPF deduction of about Rs.3,000/-per month (6% of basic pay Grade Pay)+ about Rs.1,500 /-per annum on account of group insurance and other official contributions. His net salary would therefore, be Rs.1,02.339/-per month for the purpose of assessment of future maintenance in favour of the petitioners.

Petitioner/wife is capable and qualified to earn but has chosen not to earn, therefore, it is expected that she should make sincere efforts for securing a job/earn for herself. Further even though respondent's mother is a pensioner but respondent has a pious duty to take care of his mother. As such, respondent's partial liability towards his mother can be quantified by giving unit to his mother. On giving 02 units each to both the parties. 01 unit to daughter and 01 extra unit to respondent as he is running a separate household the maintenance comes to Rs.47,240/- (Rs. 1,02,339/- 365 = Rs.47,233.38 rounded off to Rs.47,240/-) per month w.e.f. passing of this order i.e. 01.07.2019 till legal entitlement of Petitioner No.1 and 2."

5. He further submits that once the final order has been passed the question of considering the application under Section 127 Cr.P.C. for enhancement of maintenance does not arise. He further submits that the



Order dated 26.07.2016 is fair and just and, therefore, does not require any interference.

6. Heard the parties and perused the material on record.

7. It is well settled that the object of granting maintenance is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Apex Court in Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, has observed as under:

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband



are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.” (emphasis supplied)

8. The issue as to whether and order for grant of maintenance must be from the date of filing of application or from the date of passing of the order has now been crystallized by the Apex Court in a number of judgments that it is from the date of filing of the application and not from the date of the



order in the said application. In Rajnesh v. Neha, (2021) 2 SCC 324, The Apex Court has held 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.

110. In Shail Kumari Devi v. Krishan Bhagwan Pathak [Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839] , 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 [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] , 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 dependent 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 [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51] , 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."

9. What is applicable for an application under Section 125 Cr.P.C should *mutatis mutandis* be applicable to an application under Section 127 Cr.P.C as well. No reason has been given by the Trial Court as to why the Trial Court has ordered for enhancement from the date of passing of the Order and not from the date of filing of the application.

10. The scope of the jurisdiction of the High Court 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.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie.

xxxxx

*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. The contention of the learned Counsel for the Respondent that once the Order of maintenance has been finally decided, the present revision petition is not maintainable because it is only for grant of interim maintenance, is unsustainable. Section 127 Cr.P.C. gives the power to the Court to alter the allowance if it is found that there is change in circumstances. The power under Section 127 Cr.P.C can be exercised either during the pendency of the application under Section 125 Cr.P.C or also after the proceedings under Section 125 Cr.P.C attain finality.

12. This Court cannot turn a blind eye to the fact that the matter has been lingering on in various forums for the past 12 years. The Petitioner has to fend for herself and for her daughter with hardly any support from her husband in her formative years. It is the duty of the husband to maintain his wife and children. The basis for fixing maintenance has always been the standard of living of the parties. The Trial Court has accepted the change in circumstances and has enhanced the maintenance then the change in circumstances must reckon from the date of application and not from the date of the order.

13. Accordingly, the petition is allowed. The Respondent is directed to pay the enhanced maintenance from the date of filing of the application under Section 127 Cr.P.C. and not from the date of passing of the order.

14. The petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 08, 2023

hsk/c'sha