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

% *Reserved on: 25.04.2023*
Pronounced on: 08.05.2023

+ CRL.REV.P. 804/2018 & CRL.M.A. 4857/2020

SHAHANA & ANR. Petitioners

Through: Mr. S.L. Sagar, Advocate.

versus

MOHD. ASLAM Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present criminal revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by petitioner impugning judgment dated 28.08.2018 passed by learned Principal Judge, Family Court, North East District, Karkardooma Courts, Delhi, *vide* which maintenance @ Rs. 1300/- per month was granted for each of the petitioners.

2. Brief facts of the case are that on 21.09.2013, learned Trial Court had granted interim maintenance @ Rs. 1300/- per month each to the petitioners i.e. wife of the respondent and their minor son. Despite execution petition filed by the petitioner herein, the respondent did not pay any amount to the petitioners and on the date of filing of the present petition as well as on the date of arguments, the same were still

pending before the learned Trial Court. The respondent did not appear before this Court despite service on 13.08.2019 and therefore, this Court had no option but to proceed with the case in accordance with law as respondent herein did not appear despite adequate service. The respondent also did not make payment of the maintenance amount to the petitioners before the learned Trial Court.

3. The grounds raised for impugning the order, as argued by the learned counsel for petitioners are that learned Trial Court failed to exercise its jurisdiction judicially and did not consider that once the defence of the husband has been struck off, his written statement is taken out of consideration and the averments of the wife in the petition are considered as correct and uncontroverted. It is, therefore, prayed that the allegations or the grounds taken by the respondent husband could not have been taken into consideration when the said case was decided. It is also stated that though learned Trial Court gave a finding that in absence of any rebuttal of the statement and evidence of the petitioner's wife, there was no reason to disbelieve the case of petitioner. However, learned Trial Court did not believe the income of respondent averred by the petitioner that he was earning Rs. 25,000/- per month and that she was entitled to at least 25% of the amount for herself and 25% for the minor child. It is, therefore, submitted that the learned Trial Court has committed grave error by simply deciding the case at the final stage by observing that the amount of interim maintenance granted to the petitioners is regularized as maintenance.

4. It is further argued by learned counsel for the petitioners that since respondent had not disclosed his real income, a presumption had

to be drawn against him at the time of deciding the case. It is also submitted that learned Trial Court has erroneously held that since petitioner no.1 i.e. the wife, could not produce any material in support of her claim regarding income of respondent i.e. Rs. 25,000/- and therefore, she be awarded only Rs. 1300/- per month as maintenance. It is vehemently stated that it is a self-contradictory judgment which is against the law and is not supported by any reasons and therefore the same be set aside.

5. I have heard arguments on behalf of petitioner and have gone through the Trial Court Record.

6. Perusal of the Trial Court Record reveals that the petition for grant of maintenance was filed by petitioner on 03.04.2012. The written statement in this case was filed by respondent. Replication was filed and thereafter matter was fixed for arguments on interim maintenance. Respondent was regularly appearing along with his counsel before the learned Trial Court. The respondent was also present when the order on interim maintenance was passed on 21.09.2013. Matter was thereafter listed for recording evidence. However, in the meantime on 11.09.2014, matter was referred to mediation. The matter could not be settled as per order dated 29.09.2014. Matter was then adjourned for evidence to 04.02.2015. The petitioner was partly examined on 02.03.2015. On 04.09.2015, the respondent's statement was recorded on oath before the learned Trial Court that he is ready to maintain his wife and son and will deposit a sum of Rs. 5,000/- per month in the bank account of his wife. Ultimately, despite best efforts, matter would not be settled and the parties could not join each other's company and

the case was again adjourned for cross examination of petitioner to 04.03.2016. On 02.02.2018, the right of respondent to cross examine petitioner stood closed. Respondent examination (RE) was closed on 17.02.2018 as he did not lead any evidence and was absent. Since respondent also did not pay any amount of maintenance, he was remanded to custody and sent to civil imprisonment on 11.05.2018 for non-payment of arrears of maintenance. On 13.07.2018, further examination-in-chief of petitioner was conducted as it came to the notice of learned Trial Court that her examination-in-chief was not complete and the case was adjourned for cross examination on 27.08.2018. PE was closed since respondent was absent on 12.08.2018 and final arguments were heard.

7. On 28.08.2018, the impugned order was passed. The relevant portion of the judgment reads as under:

“11. The allegations in the petition find support from the un rebutted affidavit of evidence of the petitioner no. 1 Ex.PW1/A. The respondent has not cross examined the petitioner no.1/wife and thus statement of the petitioner no.1/wife remains un rebutted and unchallenged. In view of this position, there is no reason to disbelieve the case of the petitioner no.1/wife. The same makes out a sufficient cause for the petitioner no.1/wife to live separately from the respondent.

12. None of the party has filed their income affidavits on record.

13. Petitioner no.1/wife has not produced any material in support of her claim regarding income of the respondent being Rs. 25,000/- p.m. The respondent/husband has also not brought anything on record to show that he is earning Rs. 5000/- per month as claimed by him. At the same time, he has not produced any documentary evidence to show

that petitioner no.1/wife is earning Rs. 35,000/- per month as claimed by him.

14. In view of this position, the interim order dated 21.9.2013 awarding interim maintenance @ Rs. 1300/- per month for each of the two petitioners is regularized as maintenance for the petitioners from the date of filing of the petition and regularly thereafter.

15. The amount already received by the petitioners, if any, either in the present petition or any other legal proceedings as maintenance between the parties shall be adjusted in the order of maintenance awarded in this petition.”

8. A perusal of the impugned judgment thus reveals that the judgment has been passed without any reasons. No reason has been assigned as to on what basis the judgment has been passed. In absence of any reasons given in this judgment, this Court cannot decide as to what was the ground on which the present judgment was passed. The judgment was completely silent regarding the learned Trial Court reaching the decision in this case. Even issues have not been settled by the learned Trial Court though matter was contested. Moreover, when respondent failed to appear before the learned Trial Court and the learned Trial Court proceeded to hear final arguments, no order has been passed for proceeding ex-parte against the present accused applicant.

9. Since the judgment is completely silent as to what has weighed in the mind of learned Judge for the purpose of reaching conclusion it has reached this Court cannot adjudicate regarding the sufficiency or correctness of reasons based upon which the learned Trial Court reached the decision in question. Moreover, this Court also notes that the only reason which has been given in operative part of the judgment

for reaching the decision is as follows:

“14. In view of this position, the interim order dated 21.9.2013 awarding interim maintenance @ Rs. 1300/- per month for each of the two petitioners is regularized as maintenance for the petitioners from the date of filing of the petition and regularly thereafter”.

10. Though it was mandatory for both the parties to file their income and expenditure affidavit as per mandate of law, the income affidavit was not filed by either of the parties on record which is also apparent from the impugned judgment.

11. This judgment cannot be sustained in the eyes of law as it is neither based on law, judicial precedents or reasons. Merely stating that interim maintenance granted is regularized as the final maintenance cannot be sustained in eyes of law. This Court is, therefore, of the opinion that learned Trial Court failed to exercise the jurisdiction vested in it which was to be exercised judiciously and as per law. It is also not mentioned in the entire judgment regarding any provision of law or the reasons for disagreeing with the statement of petitioner and her contention regarding the income of the respondent. Though on the one hand, the learned Trial Court has mentioned that the contentions and the statement of the petitioner has remained unrebutted and uncontroverted on the other hand the learned Trial Court has disagreed with her statement and did not believe her regarding her evidence on oath that the respondent was earning Rs. 25,000/- per month.

12. Considering the same, the present case is remanded back to be decided afresh as per law.

13. It is noted that the petitioner herein and her child have filed the present petition in the year 2013 and it is very disheartening to note that till date they have only been coming to the Court with not a penny paid to her by the respondent/husband.

14. The learned Trial Court, therefore, will ensure that the case is decided expeditiously preferably within three months. Execution petition regarding the grant of interim maintenance will also be decided expeditiously as per law.

15. Accordingly, present petition is disposed of along with all pending applications, if any, in above terms.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 08, 2023/kss

