



2024:DHC:8691



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.11.2024

+ **CRL.REV.P. 195/2024, CRL.M.A. 4392/2024, CRL.M.A. 4393/2024 & CRL.M.A. 4394/2024**

NARESH

..... Petitioner

versus

SEEMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vaibhav Vats (DHCLSC), Adv.

For the Respondent : None

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed impugning the judgment dated 22.07.2023 (hereafter the '**impugned judgment**'), passed by the learned Family Court, West District, Tis Hazari Court, Delhi in MT No. 387/2018.

2. The learned Family Court, by the impugned judgment, decided the petition filed by the respondent under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), and awarded a maintenance of



₹6,000/- per month to the respondent from the date of filing the petition till she is legally entitled to receive the same.

3. The learned counsel for the petitioner submitted that the learned Family Court has erroneously granted an exuberant amount of maintenance to the respondent without appreciating that even as per the respondent's income affidavit, her expenses are ₹7,500/- and she is already receiving ₹2,500/- as disability pension from the Government. He submitted that the respondent also owns 2 ½ bigha of agricultural land in Gurugram.

4. He submitted that the pleadings filed by the respondent are factually incorrect and the petitioner was unable to plead his case properly due to challenging circumstances. He submitted that the respondent could thus not be examined either. He submitted that the petitioner was staying with the respondent at her house in Delhi and the relationship between the parties went sour as the respondent's mother convinced her to terminate her pregnancy.

5. He submitted that the learned Family Court erroneously decided the case without appreciating that the petitioner was yet to file his income affidavit in accordance with the guidelines as laid down by the Hon'ble Apex Court in the case of ***Rajnesh v. Neha & Anr. : 2020 INSC 631***.

6. He submitted that the learned Family Court ignored that the petitioner has to spend ₹5,000/- on maintenance of a minor girl whom he has adopted and ₹6,000/- towards rent, whereafter he is incapable of paying the awarded maintenance amount as he is earning merely



₹18,000/- per month.

ANALYSIS

7. At the outset, 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 Hon'ble 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].*

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*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. However, Section 125 of the CrPC elucidates conditions under which a wife may be deemed ineligible for maintenance. These conditions include instances where the wife is engaged in adulterous activities, where she, without any justifiable cause, refuse to cohabit with her husband, or where both parties have agreed to live apart through mutual consent. These provisions delineate clear legal parameters that govern the entitlement or disentitlement of maintenance to ensure that the support is granted only under circumstances that warrant such financial assistance.

9. The learned Family Court has noted the allegations levelled by the respondent in regard to the cruel attitude of the respondent from the inception of the marriage between the parties on account of dowry. It was noted that various instances of harassment by the petitioner and his family members have been mentioned and it is also alleged that the petitioner had illicit relations with other women and was a heavy drunkard. It was noted that it is alleged that the petitioner left the respondent due to a quarrel with the respondent's mother over dowry demands and refused to take her to the matrimonial home despite repeated efforts.



10. It is the petitioner's case that the allegations are false and it was the petitioner who had stayed at the respondent's parental house in Delhi whereby any allegation of harassment by his family is false. It is argued that the relationship between the parties went sour due to the intervention of the respondent's family members and since her mother convinced her to terminate her pregnancy.

11. It is pointed out that the petitioner had also instituted a petition for restitution under Section 9 of the Hindu Marriage Act, 1955 ('HMA'). The learned Family Court has noted that the respondent had filed an application under Section 24 of the HMA in the said petition and the petitioner had been directed to pay a sum of ₹11,000/- towards litigation expenses to the respondent, however, despite directions, the petitioner failed to pay the said amount and a cost of ₹2,000/- was imposed on the petitioner. The petition was thereafter dismissed in default due to the petitioner's non-appearance.

12. The learned Family Court observed that the respondent's Bhabhi (PW1) who had represented her before the learned Trial Court as the respondent is deaf and dumb had categorically deposed about the cruelties and atrocities faced by the respondent while she was staying with the petitioner. It was observed that the assertions of cruelty remained unrebutted and, *prima facie*, the respondent had sufficient reason to live separately from the petitioner.

13. It has been argued and pleaded that the petitioner could not plead his case properly due to challenging circumstances. No specific averment has been made as to what circumstances prevented the



petitioner from pleading his case before the learned Family Court.

14. It has been observed by the learned Family Court that the petitioner did not cross-examine PW1 despite repeated opportunities. Furthermore, it was noted that the petitioner did not lead his affidavit and only filed a one page affidavit stating that he wishes to reunite with the respondent despite being granted an opportunity to lead his evidence. It is noted that the petitioner was also granted an opportunity to take legal aid assistance on 29.03.2023 when his evidence was closed, however, he insisted that he had no faith in the legal aid advocates and insisted on contesting his case himself.

15. In such circumstances, this Court finds no infirmity with the finding of the learned Family Court that the testimony of PW1 remained unimpeached and the same suggests that the respondent had a sufficient reason to live separately from the petitioner.

16. Insofar as the quantum of maintenance is concerned, it is stated that the respondent gets a disability pension of about ₹2,500/- from the government. Although it had been argued before the learned Family Court that the respondent is also earning, however, no material was adduced to substantiate the said averment.

17. The income of the petitioner was rounded up to ₹18,000/- on the basis of his own admitted income. It was noted that although the petitioner had stated that he was paying a rent of ₹6,000/-, however, the same was also unsubstantiated. It was also noted that as per the petitioner, he was taking care of a minor girl. It is relevant to note that no documents have been adduced by the petitioner to show that he has



adopted the minor girl or to show the expenses incurred by him on her behalf.

18. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. The Hon'ble Apex Court, in the case of ***Shamima Farooqui v. Shahid Khan : (2015) 5 SCC 705***, observed as under:

*“14. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. **The principle of sustenance gets more heightened when the children are with her.** Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. **Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law.** If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.”*

(emphasis supplied)

19. The Hon'ble Apex Court, in the case of ***Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314***, observed as



under:

*“10.... The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. **The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute....***

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*13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. **The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child....**”*

(emphasis supplied)

20. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. In such circumstances, in my opinion, the monthly maintenance of ₹6,000/- per month to the respondent is reasonable. The respondent is a woman of special needs and maintenance cannot be denied to her in absence of any material to show that she has sufficient income to maintain herself.

21. It is also relevant to note that it is argued that the affidavit of the petitioner was not filed in accordance with the guidelines in ***Rajnesh v. Neha & Anr.*** (*supra*). As noted by the learned Family Court, the affidavit of the petitioner in accordance with ***Kusum Sharma v. Mahinder Kumar Sharma*** : FAO 396/1996 was on record. While the guidelines in ***Rajnesh v. Neha & Anr.*** (*supra*) ought to be followed by the Courts to ensure fair proceedings, however, it cannot be ignored that the affidavit in compliance had been filed by the respondent's guardian (*bhabhi*). It is the petitioner who had failed to file the



affidavit in this regard. The judgment in *Rajnesh v. Neha & Anr.* (*supra*) was passed way back in the year 2020. It is also relevant to consider that the Hon'ble Apex Court in *Rajnesh v. Neha & Anr.* (*supra*) had taken note that this Court in the case of *Kusum Sharma v. Mahinder Kumar Sharma* (*supra*) had consolidated the format of affidavits of income, expenditure and assets and directed that the same be filed in maintenance proceedings. It is not the petitioner's case that he was not granted an opportunity to file the affidavit. Moreover, it is not averred as to what assertions have not been made by the petitioner before the learned Family Court. His income has also been adjudged as per his own affidavit only. The maintenance to the respondent cannot be denied merely due to irregularity.

22. In view of the above, this Court finds no reason to interfere with the impugned judgment.

23. The present petition is dismissed in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 11, 2024