



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

Reserved on : 06.10.2023

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Pronounced on : 29.02.2024

+ **CRL.REV.P. 80/2020, CRL.M.As. 2699/2023 & 2700/2023**

VISHAL

..... Revisionist

Through: Mr. Rajesh Aggarwal, Ms. Anita Verma, Mr. Sultan and Ms. Jacklin, Advocates.

Versus

SONIA

..... Respondent

Through: Ms. Ashu Arora, Adv. (through VC) with respondent in person.
Ms. Gayatri Nandwani and Ms. Mudita Sharda, Advocates.

+ **CRL.REV.P. 180/2020**

SONIA

..... Revisionist

Through: Ms. Ashu Arora, Adv. (through VC) with petitioner in person.
Ms. Gayatri Nandwani and Ms. Mudita Sharda, Advocates.

Versus

VISHAL

..... Respondent

Through: Mr. Rajesh Aggarwal, Ms. Anita Verma, Mr. Sultan and Ms. Jacklin, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By way of present revision petitions under Sections 397/401 of the



Code of Criminal Procedure, 1973 and Section 19 of Family Court Act, 1984, the revisionist/husband, namely, Vishal in CRL.REV.P. 80/2020 seeks setting aside of the Judgment dated 10.01.2020 passed by the Court of Sh. Sanjay Kumar, Learned Principal Judge, Karkardooma Courts, Delhi in M.T. No. 80/18 (2014); and the respondent/wife, namely, Sonia in cross petition filed by her, bearing no. CRL.REV.P. 180/2020 seeks amendment of the Judgment dated 10.01.2020 by enhancement of the award of monthly maintenance amount from Rs. 75,000/- to Rs. 1,50,000/- per month.

2. The revision petitions are directed against the Judgment dated 10.01.2020 passed by the learned Family Court, Karkardooma Courts, Delhi, in Maintenance Petition bearing No. 80/18, wherein the learned Family Court had fixed the maintenance at the rate of Rs. 75,000/- per month to the respondent/wife along with 5% increase every year, inclusive of school fee of children, stationary, books etc from January 2020.

3. In brief the facts of the case are that the marriage of the revisionist and the respondent was solemnized as per Hindu rites on 28.11.2005. On 27.08.2006, a male child was born and on 25.05.2009, a girl child was born to the parties. In 2012, the revisionist had filed a divorce petition and the respondent filed a maintenance application under Section 24 of the Hindu Marriage Act, 1955 seeking interim maintenance of Rs. 1,00,000/- per month. The Ld. Trial Court vide order dated 07.11.2014, awarded monthly interim maintenance of Rs. 40,000/- per month. Subsequently, the aforesaid order was confirmed by this Hon'ble Court vide order dated 06.12.2016 and the revisionist kept complying with the maintenance order of Rs. 40,000/- per month till 17.03.2017 as on the said day the respondent-wife agreed to



re-join the company of the revisionist. Since 21.01.2018, the respondent wife again started living separately from the revisionist alongwith her two minor children and pressed her application for interim maintenance. Subsequently, on 03.05.2018, the revisionist had withdrawn the divorce petition.

4. The Ld. Trial court had passed an interim maintenance order dated 26.03.2019 of Rs. 40,000/- per month to the respondent-wife, and additionally, a sum of Rs. 10,000/- per month to be paid to the children with the further direction to the revisionist to deposit school fee, stationary expenses etc for the children. The aforesaid interim order dated 26.03.2019 was assailed by the revisionist before this Hon'ble Court in Criminal Revision Petition No. 504/19, which was contested by the respondent-wife. After hearing both the parties, this Hon'ble Court vide its order dated 04.12.2019 granted relief to the revisionist by reducing the amount by Rs. 20,000/-.

5. Finally, vide impugned Judgment dated 10.01.2020, the Ld. Trial Court disposed of the petition under Section 125 Cr.P.C. filed by the respondent-wife for maintenance against the revisionist and a sum of Rs.75,000/- was awarded to the respondent as monthly maintenance.

6. Both the parties feeling aggrieved by the impugned Judgment, filed the present revision petitions against the Judgment dated 10.01.2020 passed by the Learned Principal Judge, Karkardooma Courts, Delhi in M.T. No. 80/18 (2014).

7. I have heard the Ld. Counsels for the parties and also perused the records of this case.



8. Since both the revision petitions i.e., CRL.REV.P. 80/2020 and CRL.REV.P. 180/2020 are arising out of the same impugned Judgment dated 10.01.2020 passed by Learned Principal Judge, Karkardooma Courts, Delhi in M.T. No. 80/18 (2014), both the petitions are being decided together as they are interconnected and arising out of the same impugned Judgment dated 10.01.2020.

9. Ld. Counsel for the revisionist-husband submitted that the impugned judgement has been passed by the Ld. Trial Court by completely ignoring the income ITR's of the revisionist-husband, thereby causing a grave prejudice to him and an exorbitant liability has been fastened on the husband without there being any means for him to pay. He further submitted that the impugned judgment provides for an increase of the maintenance by 5% per annum and such an automatic arrangement is against the scheme of the Cr.P.C, the provisions of section 127 Cr.P.C clearly provides the procedure for either party to apply for the appropriate enhancement or reduction on the facts of each case. He further submitted that the Trial Court has committed a grave error by assuming the same income of the revisionist as was decided earlier in the application under Section 24 HMA, when the financial condition of the revisionist was different. The earlier maintenance order dated 07.11.2014 was passed in HMA No. 666/2014, divorce case filed by the revisionist- husband, the order of which was sustained by this Hon'ble court vide order dated 06.12.2016. He further submitted that eventually the proceedings culminated into a compromise as the parties started living together along with their children w.e.f., 17.03.2017 and the divorce suit was dismissed as withdrawn. He submitted that it was later on that the



respondent-wife deliberately left the company of the revisionist without any reasonable cause on 20.01.2018, and pressed her pending maintenance petition under Section 125 Cr.P.C and thus, any reliance on the previous maintenance orders operates as res judicata or otherwise is a serious legal error committed by the trial court. He further submitted that it was wrongfully believed by the Ld. Trial Court that the earlier bank transactions in the revisionist's account were related to his father's land acquisition compensation. He further submitted that the respondent-wife is not permitting the revisionist or his parents to rent out the first and second floor of property no. 56-A, Chilla village, Mayur Vihar, Delhi, which is measuring around 300 sq yard by which some fair amount of maintenance can be fetched for her. The trial court vide its order dated 25.05.2019 had permitted the revisionist-husband to let out a portion of the property but the respondent did not cooperate in the same and consequently, the revisionist was constrained to move an application before the trial court for seeking compliance of the order dated 25.05.2019, however, the trial court refused to execute its own order and dismissed the application vide its order dated 19.08.2019.

10. He further contended that the trial court has assumed higher income of the revisionist on flimsical grounds that he is involved in social activities like organizing Chhath Puja, distributing material, organizing Janmashtami festival, organizing Bhandara on Shivaratri, organising cricket tournament etc but such reasoning is ex facie arbitrary and unreasonable, more particularly, also in view of the fact that the trial court has ignored the explanation given by the revisionist-husband as reflected in para 54 of the



impugned judgement, wherein the husband has put up his case that these Bhandara were not organised in his personal capacity but through NGO Janpraksh Organisation and money arrangement was also through locality donations. Ld. Counsel for the revisionist has further submitted that the maintenance petition under Section 125 of Cr.P.C was filed only by the wife and thus, no maintenance can be awarded to her in relation to the children. He further contended that the directions for automatic enhancement after every year is against the scheme of Cr.P.C as the provision of section 127 Cr.P.C clearly provides the procedure for alteration of allowance on proof of change in circumstances and the trial court cannot assume an increase in the future income of the husband by directing for automatic enhancements. He submitted that the Trial Court has also failed to appreciate the fact that the maintenance for the children would stop on their attaining the age of majority.

11. He further submitted that the trial court failed to appreciate that there is absolutely no prima facie document on record by which it could have been deduced that any of the properties are owned by the revisionist and in fact, the properties belong to the father of the revisionist. He further submitted that there is no document produced or evidence led by the wife that the gym, vehicles, properties or any rental income etc. belongs to the revisionist or that he is lawfully entitled for any share therein and thus, prays that the impugned judgment be set aside.

12. On the other hand, Ld. Counsel for the respondent-wife has vehemently urged that the petition under section 125 Cr.P.C was initially filed by the wife only as the two minor children were in care and custody of



the revisionist-husband, however, after January 2018 both the children moved in with the respondent. She further submitted that with the permission of the Ld. Trial Court, the respondent had filed an additional affidavit to bring this subsequent event on record and showed that the minor children are her dependents. She further submitted that the RC of vehicles purchased by the revisionist such as Fortuner, Gypsy and Santro is sufficient to prove the status and lifestyle of the revisionist. She further contended that the electricity bills of nine electricity connections installed in the name of the revisionist on different properties in village Chilla prove that all the properties were given on rent by the revisionist and the monthly rental income of the revisionist from these properties is not less than Rs. 2,00,000/- per month. She further submitted that the revisionist has himself claimed that the first floor of the property in village Chilla can fetch a monthly rent of Rs. 50,000/- per month, in this scenario, the other properties in village Chilla must be fetching the same rentals and accordingly, the monthly rental income of the revisionist from those nine properties must not be less than Rs. 4,50,000/- approximately. She further submitted that the revisionist is an active politician and is also involved in social activities like organizing Chhath Puja, distributing material, organizing Janmashtami festival, organizing Bhandara on Shivaratri, organising cricket tournament etc. in which he had incurred huge expenses.

13. Ld. Counsel for the respondent-wife submitted that it can be easily inferred from the order dated 06.12.2016 as well as impugned Judgment dated 10.01.2020 that the current monthly income of the revisionist is not less than Rs. 2,00,000/- to 2,50,000/- and thus, as per the principles and rules



established in various judgements of this Hon'ble Court, the optimum monthly maintenance amount that the respondent and the two children should be awarded should be somewhere in the range of Rs. 1,20,000/- to Rs. 1,50,000/- per month. She further submitted that the actual monthly expenses of the respondent have not been considered and the maintenance amount requirements of the respondent are much higher than the amount awarded to her by the Ld. Trial Court.

14. On the contrary, the contention of the revisionist-husband herein is that the respondent had left the matrimonial home on her own will. The revisionist has also stated in his income affidavit filed before the Ld. Family Courts that the revisionist is working as a Cable TV Contractor which is his source of income. All the other allegations against him have been specifically denied by the revisionist. The revisionist has contended that the respondent has let out the ground floor for storage of wooden articles and is drawing a rent of Rs.25,000/-.

15. The parties were called in Court on numerous occasions to explore the possibility of an amicable settlement but there was no possibility of any settlement and the matter was heard on merits.

16. In the instant case, there is nothing on record to prove that the nine properties in Chilla Village are owned by the revisionist-husband and he is drawing a monthly rental income of Rs. 4,50,000/- from those properties. The only contention raised by the Counsel for respondent while claiming that the revisionist is the owner of the abovesaid properties is that there are electricity connections of property no. 56-A, Khasra No. 108, Chilla Village, installed in the name of the revisionist, however, perusal of the records of



the case shows that the revisionist in his cross examination has categorically submitted time and again that he is not the owner of the properties situated in Chilla Village or B-295, New Ashok Nagar, and that the income from the gym as well as the shops in question is also not received by him. Furthermore, the revisionist has clarified that the said properties belong to his father and he only looked after 56-A, Chilla village where the respondent is residing, and B-295, New Ashok Nagar. Nothing has come up in the cross-examination of the revisionist from which it can be deduced that the revisionist was earning any rental income at all. Moreover, the claim of the respondent regarding the said shops being on rent is completely bereft of any details and she has not even disclosed the name and style in which the shops are running.

17. There is no dispute with regard to the fact that there are electricity bills of property no. 56-A, Khasra No. 108, Chilla Village in the name of the revisionist, however, in my considered opinion, electricity bills do not confer ownership in the name of the revisionist and in the absence of any other relevant material on record, by no stretch of imagination can it be reasonably presumed that the revisionist is earning a monthly rental income to the tune of Rs. 4,50,000/-.

18. A careful perusal of the records of this case shows that while assessing the income of the revisionist, the Family Court has taken into consideration certain bank transactions as well which are old, ranging between the years 2010-2011. Thereafter, there is no proof of consistent income of the revisionist apart from the relatively recent ITRs filed by him of the years from 2014 till 2018, which clearly show that there is no rental or



interest income of the revisionist.

19. Moreover, it is an admitted position that the respondent-wife is in possession of a 300 sq yard property in 56-A, Chilla village, Mayur Vihar, Delhi which is comprising of three floors and the Trial court vide its order dated 25.05.2019 had also permitted the revisionist-husband to let out the first floor of the property which belongs to the father of the revisionist.

20. As far as the contention of Counsel for the respondent that the revisionist has claimed that the first floor of the property in Chilla village can fetch a monthly rent of Rs. 50,000/- per month and thus, in that scenario, the revisionist must be earning a handsome rental income from the other properties in Chilla village, in my opinion, the same does not cut much ice as the respondent herein is in possession of the 300 sq yard property in 56-A, Chilla village, Mayur Vihar which consists of three floors whereas the revisionist, as stated hereinabove is neither in possession of the shops or the gym nor is the owner of the said properties and thus, the balance seems to be tilted in favour of the respondent-wife.

21. Counsel for the respondent has further contended that the revisionist is involved in social activities like organizing Chhath Puja, distributing material, organizing Janmashtami festival, organizing Bhandara on Shivaratri, organising cricket tournament etc., the same also has no force in it as the mere involvement of a person in such social events does not mean that the entire funding of that particular event must have been done by that person. Moreover, the revisionist had already explained that these events were not organised in his personal capacity but through an NGO, namely, Janpraksh Organisation and the money arrangements for the same were also



done through locality donations.

22. A perusal of the impugned judgment dated 10.01.2020 passed by the learned Family Court shows that the judgment is based on guess work. It is trite law that it is for the wife to establish that the revisionist was earning approximately Rs. 2,50,000/- per month, as claimed by the respondent-wife. In the absence of any material on record suggesting that the total income of the revisionist is around Rs. 2,50,000/- per month, the impugned judgment fixing the maintenance at the rate of Rs. 75,000/- per month to the respondent-wife along with 5% increase every year cannot be sustained.

23. Section 127 of the Cr.P.C which provides for alteration in allowance in case of change in the circumstances reads as follows:

“127. Alteration in allowance:-

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance or interim maintenance, to his wife, child, father or mother, as case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance , as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;



(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on Which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.”

24. In ***Bhagwan Dutt vs. Kamala Devi [(1975) 2 SCC 386]***, the Hon’ble Supreme Court has observed and held as follows:

“20. There is nothing in these provisions to show that in determining the maintenance and its rate, the Magistrate has to inquire into the means of the husband, alone, and exclude the means of the wife altogether from consideration. Rather, there is a definite indication in the language of the associate Section 489(1), that the financial resources of the wife are also a relevant consideration in making such a determination. Section 489(1) provides inter alia, that:

“on proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, the



Magistrate, may make such alteration in the allowance as he thinks fit.”

The “circumstances” contemplated by Section 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife.”

25. In **Narayan Chandra Das v. Gita Rani Das [(2005) SCC OnLine Cal 617]**, the Calcutta High Court has observed and held as follows:

“7. The word “maintenance” which should not be narrowly interpreted, means the most reasonable requirement for the existence of a person to live separate, and accordingly the expenditure, broadly speaking, not only includes on food, clothing and residence but also medical expenses. The concept of providing a wife merely with food, clothing and lodging as if he is only a chattel and has to depend on the sweet-will and mercy of the husband has now become completely outdated and absolutely archaic, as was observed in the case of Sirajmohamed Khan v. H. Yasinkhan, reported in 1981 Cr. LJ 1430 (SC). “Change in the circumstances” is the sine qua non for application of the provision of section 127 Cr. PC. Rise in the cost of living, increase of earning of the husband etc. fall under the purview of change in the circumstances. While determining the amount of maintenance, not only the earning but also paying capacity of the husband should be considered.”

26. In **Krishnendu Das Thakur vs. The State of West of Bengal and Ors. [(2019) SCC OnLine Cal 969]**, the Calcutta High Court has observed and held as follows:

“24. The words change in circumstances are used in the Code of Criminal Procedure. The expression 'change in circumstances' in Section 489 Cr.P.C. (now Section 127) of the Code of Criminal Procedure is wide enough to cover the cost of living, income of the parties, etc. In both the Code of Criminal Procedure and the



Protection of Women from Domestic Violence Act, 2005, the words change in circumstances are used in connection with alteration of an order of maintenance.”

27. The provision of Section 127 Cr.P.C deals with an increase or decrease of the monthly allowance for the maintenance consequent on a change in the circumstances of the parties at the time of the application for alteration of the original order of maintenance. It is pertinent to note that while seeking any kind of modification whether for enhancement or reduction of the maintenance, it must be shown that there has been a change in the circumstances of either the husband or of the wife.

28. Accordingly, the respondent-wife is at liberty to approach the appropriate Court for modification in the maintenance in case of any change of circumstances and the direction passed by the Family Court for automatic enhancement of maintenance after every year at the rate of 5% or any other rate on the assumption that the income of the revisionist will increase every year cannot be sustained and deserves to be set aside.

29. In view of the above, taking into consideration the facts and circumstances of this case, and the evidence adduced by the parties before this Court, the monthly income of the revisionist can be assessed between Rs. 1,00,000/- to Rs. 1,20,000/- per month. Accordingly, the revisionist-husband is directed to pay a sum of Rs. 60,000/- to the respondent-wife as monthly maintenance from the date of filing of the petition i.e., 23.01.2020. The revisionist is directed to clear the arrears of maintenance, if any, within six weeks from today.



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30. Therefore, CRL.REV.P. 80/2020 seeking setting aside of the Judgment dated 10.01.2020 passed by Learned Principal Judge, Karkardooma Courts, Delhi in M.T. No. 80/18 (2014) stands allowed. Consequently, CRL.REV.P. 180/2020 seeking enhancement of the monthly maintenance amount from Rs. 75,000/- to Rs. 1,50,000/- per month stands dismissed.

31. The petitions are accordingly disposed of along with the pending applications, if any.

RAJNISH BHATNAGAR, J

FEBRUARY 29, 2024