



2024: DHC: 4363



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.05.2024

+ **CRL.REV.P. 522/2023**

PREETI SINGH AND ANR

..... Petitioners

versus

GOPAL SINGH

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sanjoy Kr. Ghosh, Adv. through V.C.

For the Respondent : Mr. Mukesh Kumar, Adv. through V.C.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 20.02.2023, passed by the learned Additional Principal Judge, Family Court, Shahdara, Karkardooma Courts, Delhi, in Mt. Case No. 847/2019 titled as *Preeti & Anr. v. Gopal Singh* (hereafter 'the impugned order')

2. The learned Family Court, by order dated 07.03.2022, in CC No. 521/2019, awarded a sum of ₹9,000/- per month as *ad-interim*

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maintenance to Petitioner No.2 (minor child of Petitioner No.1 and the respondent).

3. Thereafter, the learned Family Court, by order dated 06.08.2022, while considering the needs of Petitioner No.1 and the needs of the growing child/Petitioner No.2 and taking into account the salary of the respondent enhanced the *ad-interim maintenance* to ₹30,000/- for the petitioners.

4. The order dated 06.08.2022, passed by the learned Family Court was thereafter challenged by the respondent before this Court in Crl Rev. P. No.807/2022. This Court, by order dated 29.11.2022, directed the learned Family Court to pass an order on *interim maintenance*, which led to passing of the impugned order.

5. Thereafter, the learned Family Court, reduced the interim maintenance *vide* the impugned order dated 20.02.2023 and directed the respondent to pay interim maintenance as follows:

- a. ₹10,000/- per month towards the maintenance for Petitioner No.2; and
- b. ₹10,000/- per month as contribution towards a PPF account in favour of Petitioner No.2.

6. Being aggrieved by the inadequate interim maintenance, awarded by the learned Family Court, by the impugned order, the petitioners/revisionists have preferred the instant revision petition for the enhancement of the interim maintenance amount.

7. The learned counsel for the petitioners submitted that a perusal of the aforesaid two orders will show that with no change in



circumstances and without even an application by the respondent/husband, the learned Family Court has reduced the interim maintenance from ₹30,000/- to ₹20,000/- on no justifiable ground.

8. He submitted that the only purported reasoning given by the learned Family Court is that petitioner No.1 is not entitled to interim maintenance since she is able to maintain herself from her own salary/income and therefore only petitioner No.2 has been awarded maintenance of ₹10,000/- per month.

9. He submitted that that Petitioner No.1 is an *ad-hoc* teacher in an MCD school and does not have enough income to sustain herself and her minor child; and the said sum of ₹10,000/- is in any case insufficient for meeting the monthly needs and requirements of Petitioner No.2.

10. *Per Contra*, the learned counsel for the respondent vehemently opposed the instant revision petition and submitted that the same is based on false, vague, concocted, frivolous and fictitious facts.

11. It is further submitted that the learned Family Court has passed a well-reasoned order after considering the facts of the case as well as the evidence, documents and other materials available on record related to the income of the respondent.

12. He submitted that in the instant case there are no errors apparent on the facts or record and there is no illegality committed by the learned Family Court. Therefore, the instant petition is devoid of merits and is therefore liable to be dismissed.



13. The matter was referred for mediation by this Court by order dated 21.09.2023 to explore the possibilities of settling the disputes, however, no settlement could be arrived at.

14. At the outset, this Court seeks to deliberate upon the scope of a revision petition under Sections 397/401 of the CrPC which has been succinctly explained in the case of **Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460**. The relevant portion of the said judgement is reproduced 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.

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."

15. It is evident that the scope of interference in a revision petition is extremely narrow. The statutory provisions under CrPC bestows upon the High Court, jurisdiction to consider the correctness, legality or propriety of any finding *inter se* an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, the revisional court does not dwell upon the facts and evidence in a case at length. It solely considers the material for the purpose of satisfying itself that the impugned decision is legal and proper with respect to the findings. It refrains from substituting its own conclusion on an elaborate consideration of evidence [Ref : ***Taron Mohan v. State : 2021 SCC OnLine Del 312***].

16. The learned Family Court in the impugned order has noted that Petitioner No.1 is working as a guest teacher in a government school



and from her own affidavit and from the documents filed, it is clear that she is earning more than ₹25,000/- per month. The relevant part of the impugned order, is reproduced below:

“20. From the pleadings of the petitioner it is clear that she is working as guest teacher in the government school. From her won affidavit and from the documents filed by her it is further clear that she is earning more than Rs.25,000/- per month on an average.

21. It is rightly submitted by learned Sh. Mukesh that there is no medical issue of petitioner no.1 which require special care and attention.

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26. It is further rightly submitted that the purpose of enactment of section 125 Cr.PC is not to equalize financial status or any or both the parties. Furthermore case is only at the stage of grant of interim maintenance. Detailed scrutiny of documents may be done at appropriate stage. Though respondent while working in the bank, may be entitled to several allowances, however at this stage it cannot be presumed that all such allowances are actually received by the respondent. Moreover, some of the allowances may be dependent upon the actual expenditure incurred by the respondent in that account

27. Taking guidance from the judgments relied upon by learned counsel for respondent, it is held that at this stage, petitioner no.1 is not entitled to interim maintenance as she is able to maintain herself from her own salary/income.

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33. Application for interim maintenance is accordingly disposed off with following directions:-

1) Petitioner no.1 is not entitled for interim maintenance at this stage.

2) Respondent shall make payment of Rs.10,000/- per month to the petitioner no.1 towards current maintenance of petitioner no.2 from the date of filing of petition.

3) Respondent shall make contribution of Rs.10,000/- per month in the PPF account of minor child from February 2023.”

17. The intent behind granting interim/permanent maintenance is to ensure that the dependent spouse is not reduced to destitution or



vagrancy on account of the failure of the marriage and is not for enrichment. The financial capacity of the husband, his actual income with 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 interim maintenance to be paid. It is settled law that balance and equity must carefully be drawn between all relevant factors. It is also settled law that other factors like age and employment of the parties, and the factum of the wife earning income, must also be considered.

18. In the instant case, a bare perusal of the record does not indicate that Petitioner No.1 is not able to maintain herself, which is the basic requirement for seeking interim maintenance under Section 125 of the CrPC.

19. The salary of the respondent/ husband, at this stage, is assessed at ₹60,000/- to ₹65,000/- per month.

20. The respondent is directed to pay a sum of ₹10,000/- per month towards the maintenance of the minor child and is also directed to contribute a sum of ₹10,000/- per month towards the PPF account in favour of Petitioner No. 2.

21. Looking at the financial condition of the parties, a monthly maintenance of ₹10,000/- at the interim stage cannot be *prima facie* held to be low. The same is a reasonable amount for an interim maintenance. Whether the husband was earning more amount and whether the wife being only an *ad hoc* teacher, does not earn



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sufficient salary and all other defences and allegations raised by the parties would be a subject matter of trial and would be decided after the parties have led their evidence.

22. It is not disputed that the impugned order is only an order of interim maintenance. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence led by the parties.

23. The learned Trial Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

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

25. The petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 28, 2024

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