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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 912/2019**
SHRI AMIT KATYALPetitioner

Through: Mr. Tara Chand Sharma, Advocate
with petitioner in person.

versus

SMT. SEEP KATYALRespondent
Through: Mr. A.K. Jain and Mr. R.M. Tiwari,
Advocate along with respondent in
person.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
05.11.2024

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1. This petition has been filed challenging the order dated 2nd July 2019 ('impugned order') passed by the ASJ, Central, Tis Hazari Courts in CA No.112/2019.
2. By the impugned order, the ASJ dismissed the appeal filed by the petitioner/husband against the order dated 7th February 2019 passed by the MM granting interim maintenance of Rs.20,000/- per month in favour of the respondent/wife and her two minor children, in proceedings under the PWDV Act, 2005. Final maintenance proceedings are still to conclude before the MM.
3. While the Appellate Court did not give its separate analysis and merely affirmed the order of the MM, the MM's order provides adequate reasoning.
4. While the respondent/wife stated that her gross salary is Rs.33,000/-



per month, the petitioner/husband asserted that he was a B.Com Graduate, assisting in the family business and running a readymade garment shop at Paharganj. He stated that he has no separate earning and his monthly income is only Rs.15,000/- per month, since he is assisting his mother in her business and is residing with his parents. He stated, that he does not file any income tax returns as well.

5. The MM, however, has analyzed the statements of accounts of the petitioner/husband which notes that there were withdrawals of Rs.24,000/-, Rs.26,000/- and a deposition of Rs.1 lac on various dates in 2017. On this basis as well as disbelieving the assertions of the petitioner, the MM assessed the earning of petitioner at Rs.30,000/- to 40,000/- per month and therefore, granted Rs.20,000/- per month as interim maintenance to the respondent/wife and two minor children.

6. It is stated that the two minor children are today 12 years and 7 years of age and both are going to school and being taken care of by the mother /respondent. Counsel for the respondent has filed the school fee slips, drawing attention to the fact that expenses of the children are more than Rs.40,000/- per month. He has further stated, that the petitioner is residing at Rajender Nagar and his father is retired from a government service from the Law and Justice Department and petitioner belongs to a middle-class family.

7. The petitioner is admittedly 43 years of age and in the opinion of this Court, it is quite untenable that he is earning just Rs.15,000/- per month, particularly in the family background that has been asserted.

8. Counsel for petitioner, in this regard, states that since there was no analysis made by the MM and that the petitioner asserted that he was fully dependent on his parents and the family business of his mother, he had no



specific and separate earning.

9. The assertion by the counsel for petitioner that MM did not analyze any evidence, is self-defeating since it is the petitioner who has chosen to take this abstract position, that he is dependent on his family and has no independent income. Even, if the petitioner, at the age of 43 was to be part of a family business, it is his legal obligation to share the expenses for the maintenance of his two minor children which are being taken care of by the respondent/wife. Petitioner states that he is paying 10,000/- per month, which is all he can afford.

10. Considering that these aspects shall be filtered through evidence in the final proceedings, this Court does not find any impropriety, illegality with the finding arrived at by the MM, basis the conspectus of facts.

11. The Hon'ble Supreme Court in **Malkeet Singh Gill v. State of Chhattisgarh**, (2022) 8 SCC 204, while summarizing the scope of a revisionist court's jurisdiction under section 397 of the Criminal Procedure Code, 1973, has held as under:

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court



does not dwell at length upon the facts and evidence of the case to reverse those findings.”

11. This Court in Manju Ram Kalita v. State of Assam [Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330 : (2010) 1 SCC (Cri) 1015] , while dealing with the scope of reappreciation of evidence by higher Court in criminal revision, observed in paras 9, 10 and 11 of the judgment as under : (SCC pp. 333-34)

“9. So far as Issue 1 is concerned i.e. as to whether the appellant got married with Smt Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.

10. This Court would not ordinarily interfere with the concurrent findings on pure questions of fact and review the evidence again unless there are exceptional circumstances justifying the departure from the normal practice.

‘9. ... The position may undoubtedly be different if the inference is one of law from [the] facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure.’ (Vide Srinivas Ram Kumar v. Mahabir Prasad [Srinivas Ram Kumar v. Mahabir Prasad, 1951 SCC 136] , SCC p. 139, para 9)

11. Thus, it is evident from the above that this Court being the fourth court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material. Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the



finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this count is required to be interfered with.”

12. As per the settled legal position and after conviction by the trial court and the appellate court on filing the revision the High Court maintained the conviction upholding the findings of the two courts. The High Court found the finding recorded by the two courts to serve the sentence consecutively by the appellant and the other co-accused were not correct, hence set aside and directed to run such sentence concurrently.”

12. A co-ordinate bench of this Hon’ble court in **Taron Mohan v. State**, 2021 SCC OnLine Del 312, succinctly described the jurisdiction of the court under section 397 of the Code of Criminal Procedure, 1907 as under:

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts 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, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

13. The Supreme Court in **Pyla Mutyalamma v. Pyla Suri Demudu**, (2011) 12 SCC 189, while elucidating the scope of section 397 proceedings in matrimonial cases held as under:

“15. The High Court under its revisional jurisdiction is not required to enter into reappreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including Suresh Mandal v. State of Jharkhand [(2006) 1 AIR Jhar R 153] that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope



of interference by the Revisional Court is very limited. The Revisional Court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.

16. In a revision against the maintenance order passed in proceedings under Section 125 CrPC, the Revisional Court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the Revisional Court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both the child and the woman. This was the view expressed by the Supreme Court in Santosh v. Naresh Pal [(1998) 8 SCC 447], as also in Pravati Rani Sahoo v. Bishnupada Sahoo [(2002) 10 SCC 510 : 2004 SCC (Cri) 1140]. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 CrPC is that it should not be disturbed while exercising revisional jurisdiction.”

14. Thus, the Court is not inclined to interfere with the interim order of the MM in this regard, having perused the documents and heard the submission of the parties.

15. Petition is, therefore, dismissed in the above terms.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 5, 2024/RK/na

[Click here to check corrigendum, if any](#)