



2024:DHC:5963



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

Judgment delivered on: 07.08.2024

+ **CRL.REV.P. 688/2016 & CRL.M.A.s 16563-65/2016**

OM PRAKASH MEHTA

..... Petitioner

Through: Mr. Pawan Kumar Sharma, Advocate.

versus

SMT VEENA MEHTA

..... Respondent

Through: Mr. Nirmal Kumar Agarwal,
Advocate along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The instant criminal revision petition has been filed under sections 397 and 399 of the Criminal Procedure Code 1973 (hereinafter "Cr.P.C.") read with Section 19 of the Family Courts Act, 1984. By the way of present petition the petitioner assails the order dated 07.05.2016 passed by the learned Principal Judge, Family Court, (West), Delhi in M.P. 432/2014, whereby the amount of maintenance was enhanced and the husband/revisionist herein was directed to pay an amount of Rs.15,000/- per month as enhanced maintenance along with the litigation expenses of Rs. 11,000/- to the respondent/wife.

2. The brief facts of the case are as follows:



- (i) The marriage between the revisionist and the respondent was solemnized on 16.11.1978 as per Hindu rites and ceremonies at Delhi. No issue was born out of the said wedlock.
- (ii) After differences having arisen between the parties, the respondent/wife filed a petition for grant of maintenance under Section 125 Cr.P.C and *vide* order dated 28.01.1994, the husband was directed to pay a sum of Rs.350/- per month to the wife, which was subsequently enhanced to Rs.450/- *vide* order dated 25.03.1998 passed by the Ld. ASJ, Delhi in a revision petition preferred by the Respondent/wife.
- (iii) It is also important to note that on 30.01.1985 the wife filed a petition under section 18 of Hindu Adoption & Maintenance Act and in the said petition the Hon'ble Court passed an order directing the husband to pay maintenance to the wife at the rate of Rs. 2000/- per month. The wife had filed the execution petition in that suit also and the same is also stated to be pending.
- (iv) Subsequently, with the passage of time in the year 2007 i.e. on 07.08.2007, the wife preferred a petition under section 127 Cr.P.C before the learned Family Court for enhancement of maintenance on the ground that she is residing with her brother who is trying to evict her from his house and she had to arrange for rental premises to live as she had no other shelter to reside. Further, the wife being unemployed was suffering from various ailments and due to change in circumstances and the inflation rate she was unable to maintain herself. It was also the contention of the wife that the husband has a handful income of Rs.60,000/- as he is running a chemist shop in the name of



MEDAID and apart from the Chemist work the husband is doing business in the name of “Medaid & Mehta Property Dealer” and from there he is earning Rs.35,000/- per month. Further during the subsistence of marriage the husband had also illegally re-married in 1984 by changing his religion from Hindu to Muslim and is maintaining the other wife and children born out from the said wedlock.

(v) It was also the case of the respondent that the revisionist has refused and neglected to maintain her and he himself is leading a luxurious life and is having all the facilities including car, house, servant etc. at his disposal. The respondent had prayed for enhancement of maintenance to Rs.25,000/- per month and Rs.11,000/- as litigation expenses by way of an application under section 127 Cr.P.C. for enhancement of maintenance filed before the learned Family Court.

(vi) In reply to the application filed by the wife, the husband (revisionist herein) in his reply stated that the modification application was filed without any cause of action and against an improper person as the wife had not included his name i.e. Omar Pasha in the array of parties. Further, there was no change in circumstances so the application was not maintainable. In fact, the circumstances have changed in his favour as he was now without any job and was also not running the chemist shop, rather he was intending to move an application with a prayer to reduce the maintenance to be paid by him to the wife.

(vii) In his reply to the application, the husband admitted that he was working as an accountant and was also running a Chemist’s Shop but



had stated that the said Chemist work was a partnership business consisting of four partners and he was getting a share of Rs.600-700/- Per Month. He further stated that he had to leave his Accountant job due to the respondent. He also denied doing any property dealing business under the name and style of Medaid & Mehta Property Dealer with the income of Rs.35,000/- P.M. It was also denied by the respondent that he has remarried illegally. Further, a submission was also made that the complaint case filed by the wife under section 494 IPC also stands dismissed; hence, the allegation made by the wife against him is irrelevant and wrong. The husband in his reply also stated that he is an old and aged and is suffering from BP, Ulcer and other old age diseases and this fact was well within the knowledge of the wife but only to harass him the wife has filed the application.

(viii) It was also averred by the husband that the wife runs a day care centre and tuition centre by employing Ayas and is also having a beauty parlour and is residing separately in a house purchased by her.

3. After considering and examining the case of both the parties, the learned Family Court passed the order dated 07.05.2016 which has been impugned before this Court.

4. The petitioner has impugned the aforesaid order before this court on the ground that the learned Family Court has failed to appreciate that the application for enhancement of maintenance was filed in the year 2007 i.e. after a span of 10 years of the disposal of the main maintenance petition and that the petitioner is not having any source of income. Further, the petitioner is old and infirm and has to look after his family also. It is the case of the petitioner that the learned Principal Judge, Family Court failed to appreciate



the fact that the claim of wife for enhancement of maintenance is without any supporting evidence.

5. It is also the case of the petitioner that another case filed by the respondent under section 494 IPC has been dismissed. It is stated that the learned Family Court did not appreciate that the petitioner has categorically and specifically stated in his evidence that the business of chemist shop under the name of M/s Mediads, 21, Central Market, situated at Naraina, New Delhi was closed way back in the year 1996 and the said shop had already been sold.

6. It is further stated that the Ld. Trial Court adopted a pick and choose formula for appreciation of evidence/material on record while passing the impugned judgment.

7. Learned Counsel for the respondent on the other hand, has argued that there is no infirmity in the order of the learned Family Court as it is a detailed and well reasoned order. It is stated that the enhancement of maintenance is also warranted in the present case since the respondent is living alone and is old and needs money to maintain herself. Further the petition under section 127 Cr.P.C. was filed in the year 2007 i.e., after a lapse of 10 years.

8. He contends that the petitioner has been spending for maintaining his other wife and bringing up two children from his unaccounted income which *ipso facto* suggest that he was earning handsomely to maintain self and three others.

9. I have heard the learned counsel for the petitioner, as well as, learned counsel for the respondent and have gone through material on record.

10. It is not in dispute that an amount of Rs.350/- per month was the



maintenance amount that was awarded by the learned Metropolitan Magistrate under Section 125 Cr.P.C. *vide* order dated 28.01.1994 and subsequently the said amount was enhanced to Rs.450/- *vide* order dated 25.03.1998 passed by the learned ASJ in a revision preferred by the respondent.

11. The petition under Section 127 Cr.P.C. seeking enhancement of maintenance came to be filed by the respondent after about 09 years and 05 months, i.e., on 07.08.2007. *Vide* impugned order dated 07.05.2016 the petition of the respondent under Section 127 Cr.P.C. was allowed and the respondent was granted Rs.15,000/- per month as enhanced maintenance from the date of filing of the petition under Section 127 Cr.P.C.

12. The submission of the learned counsel for the petitioner is that in the year 2007, when the respondent filed the petition under Section 127 Cr.P.C. seeking enhancement of maintenance, the petitioner at that stage was also old and infirm and was not having any income of his own. In fact, none of the parties have brought on record any documentary evidence proving the monthly income of the other party.

13. Incidentally, when the petition for enhancement of maintenance was filed, i.e. in the year 2007, neither there was any judgment of this Court or of the Hon'ble Supreme Court making it obligatory on part of the parties to file their respective income affidavits nor any such procedure was resorted to by the learned Trial Court.

14. It is perhaps in the backdrop of aforesaid legal position which was then prevailing, the learned Trial Court did not ask the parties to file their respective affidavits of assets, income and expenditure. However, after the decision of the Hon'ble Supreme Court in ***Rajnesh vs. Neha: (2021) 2 SCC***



324, it is now mandatory to file affidavit of income and assets.

15. One of the course available to this Court is to set aside the impugned order and remand the matter to the learned Trial Court with a direction to the parties to file their affidavit of assets, income and expenditure as prescribed in the aforesaid judgment and to direct the learned Trial Court to make fresh assessment of the monthly income of the parties and to decide the aspect of maintenance. However, considering the fact that the matter remained pending before the learned Trial Court for 09 long years and thereafter the present petition has been pending before this Court since the year 2016 and further regard being had to the advanced age of the parties, it is not deemed appropriate to remand the matter to the learned Trial Court for *de novo* assessment of income of the parties and to decide the quantum of maintenance.

16. Accordingly, this Court proceeds to decide the present petition on the basis of the material available on record and considered by the Trial Court. At this stage, it is thus, apt to refer to the relevant part of the impugned judgment where the evidence has been discussed by the Trial Court, which reads thus:

“21. The petitioner has sought to prove her case by examining herself only. In her cross-examination the petitioner has admitted that she was teacher prior to marriage and was working for two/three years with Sarawati Vidya Mandir prior to her marriage and left it immediately after marriage but she does not remember as to how much she was earning as salary. She stated that the respondent gave her severe beatings on 03.07.1979 and left her at 2 AM at her parental home and she treated herself at home only. She admitted in her cross-examination that the respondent was working as Accountant with Catholic Hospital Association, Gole Market, New Delhi and his carry home salary was Rs. 1000/- which he used to give to his mother



and therefore this fact was in knowledge of the petitioner. She further stated that the respondent had a wholesale and retail business of medicines at Narayana. She admitted that she had not seen any document that the respondent was the owner of the chemist shop. She stated in her cross-examination that she does not know when the respondent left his Accountant job and added that since the medicine business of the respondent was flourishing and prosperous the respondent might have left the job of accountant. She admitted that she does not have any documentary proof to corroborate her claim that the respondent was earning Rs. 60,000/- per month from the medicine shop. She volunteered that the respondent was earning more than Rs. 60,000/- PM from the said business. On 16-04-2013 during her cross-examination the petitioner admitted that she had been to the shop of the respondent about two years back when she noticed the respondent sitting on his shop and the petitioner had also seen one Pharmacist and one servant working at the shop.

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23. She has added that since the day of passing the order thereby granting Rs. 2000/- as maintenance in case u/s 18 of Adoption and Maintenance Act the income of the respondent has increased many folds as the respondent is running the business of Chemist in the name and style of M/s Medaids and Mehta Property Dealer and the same is going on prior to the decision of the case u/s 18 of A&M Act. She remained firm in her stand that the respondent is the owner of the chemist shop being run by him. She admitted that she has not filed any documentary proof to substantiate her claim that the respondent is the owner of the two businesses. She has also admitted that she has not filed any document to support her claim that the said businesses of the respondent are still going on. However, she voluntarily added that 6/7 months prior to her deposition dated 17-10-2013, she had visited the firm (of the respondent) and found that the M/s Medaid was working and the respondent alongwith a pharmacist and 2-3 helpers were there and many buyers were there. No specific suggestion in rebuttal on this volunteered portion has been given to the petitioner. She has denied the suggestion that the respondent is jobless nowadays due to his ill health, old age and he



is suffering from many old age diseases. She also stated that the respondent owns a Santro Car which she had seen in the year 1997. She denied the suggestion that the respondent is leading a poor life and does not have sufficient means to support himself. She also denied the suggestion that the respondent does not own a house in his own name. She admitted in her cross-examination conducted on 17-10-2013 that she is MA (Sanskrit) and was working as a Teacher before marriage. A considerable part of her cross-examination is solely related to the house of his brother in which she is residing which is not relevant and material to be discussed in the present judgment.

*24. She has further denied that suggestion in her cross-examination that the medical documents filed by her regarding her illness alongwith the affidavit are false and fabricated and the same are procured by her fraudulently. She denied the suggestion that since the income of the respondent has decreased, the respondent is unable to pay the maintenance to her. She denied the suggestion that she is able bodied and is gainfully employed and in a position to maintain herself. **She denied that the business of the firm M/s Medaids stood closed in 1996 and that the respondent had no concern with the firm M/s Mehta Property Dealer.***

*25. In his cross-examination conducted on 24-03-2015 the respondent has admitted that he had filed a divorce petition seeking divorce from his wife and the same has since been dismissed and therefore the petitioner is still his legally wedded wife. He has volunteered to add that the couple was staying separately from each other for the last approximately 35 years. **He has admitted his second marriage in 1984 with Ms Natasha formerly known as Veena Kapoor and birth of two children from the second wedlock. His elder daughter is 29 years and younger son is 25 years on the date of his deposition (viz. 24-03-2015).***

*26. In his cross-examination the respondent was directed to furnish the name, address and particulars of his daughter and son from second wife in closed envelope for the perusal of this court. He has since furnished the same. **The birth of two children from the 2nd wife during the subsistence of his marriage with the petitioner is an admitted fact.***



27. In his further cross-examination conducted on 24-03-2015 the respondent denied the suggestions that he is not disclosing the name of the school of his two children from the second wedlock for the reason that he does not want to disclose the fact that his two children have completed their schooling from a private school. He has volunteered to add that he has not given the particulars for the reason that he has an apprehension that both the children will be traced and humiliated. **He stated that his daughter completed her graduation (Physics Hons.) almost 10 years back from the Hindu College, Delhi University whereas she did her schooling from Govt School and his son did graduation BCA from Venkateshwar College and that his daughter is married and son is staying with his uncle at Faridabad. He stated that after death of his brother, his house on 85 sq yds. devolved upon his legal heirs (the respondent and his three brothers and one sister) but it is he who is residing there. All his brothers are at Faridabad and sister has expired. He has denied the suggestion that he has an illegal second marriage and he has committed an offense by doing so. He has stated in his cross-examination that he is residing with his wife as his daughter is now married and son is staying with his uncle at Faridabad.**

28. He has admitted in his cross-examination that at the time of his marriage with the petitioner he was working as an Accountant and also running a chemist shop wherein he was a partner and that after one and a half year of marriage he left the said job of Accountant but he denied the suggestion that he left the job because his chemist business was giving him huge profits. He stated that he left his accountant's job for the reason that the petitioner alongwith her mother used to come to his office and meet his superiors which caused humiliation to him. **He stated that the shop of chemist was being run by him in partnership with Mrs Suman Mehta (Wife of brother of the respondent Sh JP Mehta), Sh Rajeev Mehta Respondent's nephew) and Mr Jatinder Mehta (respondent's younger brother) and the said shop was closed and sold in the year 1996. He further added that he has no document to show that the shop was sold out or was closed or the license to run the said shop was surrendered.**



29. The respondent has admitted in his cross-examination that he has taken the services of a private advocate and not a Legal Aid Counsel. He has further stated that his average electricity bill for his residence is Rs. 650/- PM and Rs. 200/- PM for water supply. He has denied the suggestion that he is having an income of Rs. 60,000/- PM and is deposing falsely to avoid paying maintenance to the petitioner.

30. In his cross-examination conducted on 6-07-2015 the respondent has placed on record copies of electricity bills in respect of his residence at Old Rajinder Nagar for the months of December, 2014 to April, 2015. the respondent did not bring the electricity bills for the months of May to September, 2014. The respondent denied the suggestion that he has not brought the said bills as due to the use of AC during those months the electricity bills for those months would have been hefty and the respondent is deliberately withholding the same. He denied the suggestion that he is deposing falsely with an intention to avoid the payment of maintenance to the petitioner.

17. The learned Trial Court after considering the evidence on record arrived at a conclusion that the income of the petitioner cannot be less than Rs.50,000/- per month and accordingly the respondent was held entitled to Rs.15,000/- per month as enhanced maintenance. The relevant findings of the learned Trial Court read thus:

31. In the present case, the respondent has remarried which marriage is illegitimate and he has two illegitimate children from the said wedlock. He had been maintaining his second wife and two children but not paying sufficiently on his own for the maintenance of the petitioner who is his legally wedded wife and the respondent is bound to maintain her as per Law. It does not lie in his mouth now to say that he has changed circumstances because of which he is unable to pay maintenance to the petitioner and he sought his right to move appropriately. The respondent was working as an Accountant at the time of marriage and was also running chemist's shop. Because of his past profile and because of his concealment of material facts from the court that he has remarried and has two



children from his illegitimate marriage, he does not deserve any leniency from this court. In para 9 of his written statement, on merits, he has denied that he had remarried illegally in 1984. He denied that he got the name of his wife registered in the Municipal record as Hindus. He dared to declare that the complaint u/s 494 IPC against him was dismissed by the competent court of Law.

32. Under Section 127 CrPC, the change of circumstances is required to be established by the party seeking the relief. The lapse of time itself is one of the changed circumstances. In this case, the petitioner got the relief of maintenance in her 125 CrPC petition by way of paltry sum of Rs. 350/- vide order dated 28-01-1994 of Ld. MM Sh. NK Kaushik which was enhanced in revision to Rs. 450/- PM. In her HAM case vide order dated 21-05-1997, petitioner was awarded Rs. 2000/- PM. The present petition was filed after a lapse of 10 years. All along these years, the respondent had been spending for maintaining his illegal wife and two children from illegal marriage which ipso facto suggests that he was earning handsomely for maintaining self and three others. The portion of maintenance which he was to spend on the petitioner herein, he was spending on three persons supra. The complaint u/s 494 IPC of the petitioner herein, was dismissed for technical reasons whatsoever. However, it gave the courage and strength to the respondent to even come out in judicial proceeding before this court in cross-examination to admit his illegal marriage and birth of two children therefrom whereas in his written statement he has categorically denied his marriage during the subsistence of his marriage with the petitioner. It shows the lack of respect on the part of the respondent in abiding the law. He has disobeyed the law. He appears to have not challenged the dismissal of his divorce petition. He deserves to be not believed on his claim of suffering from ailment or incapacity to earn. He has not adduced any evidence to establish his claim that the petitioner is running a day care centre and tuition centre and beauty parlour and is earning sufficiently.

33. From 2007 we are not in 2016. The order of Rs. 2000/- in HAM was passed in 1997. The inflation has increased manifolds since 1997. Keeping in view the position explained above, in 2007 the daughter of the respondent was about 22 years whereas his son was



about 18 years. The petitioner has testified that she saw the respondent managing and conducting his chemist shop about 6/7 months prior to her deposition in the court on 17-10-2013. The respondent has not adduced any documents to discredit the petitioner to reflect that he had sold the shop or surrendered the license on notional basis. Therefore, the income of the respondent is construed as not less than Rs. 50,000/- PM from the chemist shop. Moreover, the respondent has the capacity and capability to run the business. The petitioner is held entitled to Rs. 15000/- PM as enhanced maintenance from the date of filing the 127 Cr PC petition.

34. In view of the obtaining facts and circumstances the respondent is directed to pay an amount of Rs. 15000/- PM to the petitioner from the date of filing of this petition till her life time as per Law alongwith litigation expenses of Rs. 11,000/-. The maintenance already received / to be received in other case, as well as in this case is liable to be adjusted. The respondent shall clear the arrears in twelve equal monthly installment.”

18. A perusal of the impugned order reveals that the Trial Court has returned findings with regard to the second marriage of the petitioner based on the admission of the petitioner/husband during cross-examination. Further, the petitioner has also admitted in his cross-examination that two children born from the second marriage of the petitioner have already turned major - the daughter has completed her graduation from Hindu College, Delhi University whereas the son has also completed his graduation from Venkateshwar College and the daughter has also been married. This clearly demonstrates that the petitioner must have possessed substantial amount of income and means to accomplish all his obligations as father besides maintaining himself and three other members of his family from the second marriage.

19. Notably the respondent in her evidence had stated that the petitioner



was running a chemist shop, which fact has also not been disputed by the petitioner. However, the stand taken by the petitioner in his evidence is that the shop was sold and the business of chemist was closed long ago but no material was placed on record to support the said contention. It is in this backdrop the learned Trial Court observed that the income of the petitioner is to be construed as Rs.50,000/- PM from the chemist shop.

20. Section 127 of the Cr.P.C. addresses the adjustment of the monthly maintenance allowance in response to change in the circumstances of the parties at the time an application is made to modify the original maintenance order. At this stage apt it would be to refer to the decision of this court in ***Vishal vs Sonia 2024 SCC Online Del 1544***, where it was observed as under:

“27. It is pertinent to note that while seeking any kind of modification whether for enhancement or reduction of maintenance it must be shown that there has been a change in circumstances of either the husband or of the wife.”

21. The term ‘change in circumstances’ as referred to in Section 127(1) not only include a change in the financial circumstances of the husband but may also include other circumstantial changes in the husband or wife's life which may have taken place since the time maintenance was first awarded. The quantum of maintenance fixed by a court does not become unalterable in perpetuity. The same may be altered and is subject to increase or reduction by the courts, pursuant to an alteration in the circumstances of either party.

22. The trial court has acknowledged that lapse of 10 years is itself a change in circumstance since inflation has increased manifolds since 1997 and premised on that ground the maintenance awarded to the respondent has



been enhanced.

23. This court cannot be unmindful of the fact that the respondent is a legally wedded wife of the petitioner and the respondent has not been able to establish that the respondent has any other source of income. It is trite law that the husband is duty bound to maintain his wife and children and he cannot shirk his responsibility to maintain his wife who is unable to maintain herself.¹

24. Insofar as the contention of the learned counsel for the petitioner that the petitioner/husband is not having any income is concerned, suffice it to say such plea *ipso facto* does not absolve the petitioner from his moral and legal duty to maintain his wife if he is able bodied person and has educational qualifications.² The statement that the petitioner is old and infirm having no source of income, is only a self serving statement. Therefore, the contention of the learned counsel for the petitioner deserves to be rejected.

25. In light of the evidence discussed by the Trial Court, I don't find any illegality, infirmity or perversity in findings of the Trial Court. Accordingly, no ground for interference is made out and the present revision petition deserves to be and is dismissed, leaving the parties to bear their own costs.

26. The petition along with pending applications is disposed of.

VIKAS MAHAJAN, J.

AUGUST 07, 2024/N.S. ASWAL

¹Swarn Singh v. Raj Kour 2005 SCC OnLine J&K 28

² Rajnesh vs. Neha, (2021) 2 SCC 324