



2024:DHC:6269



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

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Reserved on: 19th July, 2024

Pronounced on: 20th August, 2024

+ **CRL.REV.P. 619/2016 & CRL.M.A. 14435/2016**

SATISH KUMAR DAHIYA

.....Petitioner

Through: Mr. Shailender Dahiya and Mr.
Gaurav Vats, Advs. With petitioner in
person.

versus

SMT SHIVANI DAHIYA & ANR

.....Respondents

Through: Mr. Arun Yadav, Adv. for respondent
with respondent no.1 in person.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed under Section 19(4) of the Family Courts Act, 1984 r/w Section 397 Cr.P.C. assailing the impugned order dated 30th July, 2016 passed by the Family Court, North-West, Rohini in MT No.56344/16 titled as '*Shivani Dahiya & Anr. v. Satish Kumar Dahiya*'. The impugned judgment disposed of the application for interim maintenance under Section 125 Cr.P.C. filed by the respondent No.1/wife where she

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sought maintenance of Rs.50,000/- per month and Rs.55,000/- towards litigation expenses.

Factual Background

2. Respondent No.1/wife was married to the petitioner/husband on 20th August, 2001 at Arya Samaj Mandir, Delhi. One male child was born out of the said wedlock on 20th June, 2002 who is in the care and custody of respondent No.1/wife. It was stated *inter alia* in the petition under Section 125 Cr.P.C. that the father of the wife purchased the entire third floor portion of the property bearing No. WZ-324E, Rani Bagh, Delhi and a registered sale deed was executed in favour of the wife and, therefore, was treated as a significant article of dowry. Aside from this, various articles were presented by the wife's parents to the husband. A complaint was filed by the wife before CAW Cell and the list of articles were appended therein. Allegations of cruelty by the husband and various other incidents of marital discord and misbehavior against the husband's family were alleged in the said complaint. She stated that she left her matrimonial home and is residing with her parents along with the minor son. In these circumstances, maintenance was claimed.

3. The husband filed a written statement stating that the complaint was false and frivolous and the wife had herself deserted the petitioner and no incidents, as alleged, had taken place. Besides, there was a denial that the father of the wife had purchased the premises in question at Rani Bagh; instead it was the husband who had purchased the said floor in favour of the wife. Allegations of cruelty and quarrelling were denied by the husband. As regards his financial position, the husband stated that he was not a financier

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earning Rs.1 Lac per month, as contended by the wife. Instead, he was working with his brother Dalbir Rana on a salary of Rs.10,000/- per month as a field boy. Affidavit of income and assets were filed by both the husband and wife.

Impugned Order

4. The impugned order deals with the various allegations as under:

- (i) As regards the allegation of the husband that the wife was doing the job of a beautician in a local area and earning handsomely, it was noted that no documents had been placed on record, neither was there any proof to substantiate the same nor was there any proof that the wife was gainfully employed and was earning sufficiently to maintain herself and the child.
- (ii) Husband's affidavit of income and assets was analyzed. It was noted that while he stated he was earning Rs.10,000/- per month as salary, the monthly expenditure as stated by him on various accounts would total to at least Rs.12,900/-. The Family Court, therefore, speculated as to how he was managing in the salary he had disclosed.
- (iii) Husband's statement that he was paying rent of Rs.1,200/- per month was not proven by any document. Neither the name of the landlord nor any rent receipt had been placed on record.



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- (iv) Husband's statement that he was paying Rs.5,000/- per month towards education of the child was also not substantiated by any detail and the written statement also happened to be silent in this regard.
- (v) Husband's submission that he was earning salary of Rs.10,000/- per month as a field boy with his brother Dalbir Rana, was not substantiated by any document.
- (vi) Husband's statement that he had purchased the Rani Bagh property in favour of the wife was also not believed by the Family Court, since by earning Rs.10,000/- per month, there was no question of having afforded such property.

5. In these circumstances, the Family Court held that the husband had clearly suppressed his true income and not disclosed the same. Therefore, an assessment was made that the husband would be earning not less than Rs.60,000/- per month and has no other liability. Further, it was noted that there was no denial in the written statement that the wife had been living with him in his matrimonial home with reasonable lifestyle and, therefore, she would be entitled for maintenance. Interim maintenance, therefore, was granted at Rs.12,000/- per month to the wife and Rs.8,000/- per month to the son from the date of the filing of the application i.e. 29th October, 2014 till the pendency of the main petition. Further, direction of Rs.11,000/- towards litigation expenses was also given.



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Proceedings before this Court

6. In the petition filed before this Court, the challenge was essentially to the estimation of the income by the Family Court at Rs.60,000/-, despite the husband stating that he was earning only Rs.10,000/- per month and was only educated up to 10th Class. It was further reiterated that the wife was earning through a job in a beauty parlour in her locality and the same had been overlooked. It was further contended that there was no way that he could have proved the income of Rs.10,000/-, since he was doing a very small job with his cousin and it was not possible to get a statement of account/income tax return from his employer in that regard. Counsel for the petitioner stated that the expenditure of Rs.50,000/- per month as claimed by the wife was not stipulated by any documentation.

7. This Court noted that the petition had been pending since 2016 and the proceedings before the Family Court had not culminated in any decision on the final maintenance amount to be granted. The issue was merely restricted to the interim maintenance awarded in 2016 at Rs.12,000/- per month to the wife and Rs.8,000/- per month to the son, who was minor at that time. The son was born on 20th June 2002 and, therefore, is now major at 22 years of age. It was contended by the counsel for respondent, as well as respondent who is present in-person in Court, that no amount had been paid by the husband despite orders of this Court and she has brought up the child out of her own resources, which she managed somehow. She further reiterated that the property at Rani Bagh was actually bought by her father.



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Analysis

8. A perusal of the income and assets affidavit of the husband would show that there is indeed a discrepancy and he seems to have suppressed his income, which could be potentially from various sources. On a stated salary of Rs.10,000/- per month as a '*field boy*', his expenses of Rs.1,200/- per month on electricity charges, Rs.5,000/- on education of the child, kitchen expenses of Rs.3,000/-, mobile and internet expenses at about of Rs.700/- per month, total up to Rs.9,900/- per month and in addition there were other expenses relatable to litigation, medicines and conveyance which take up the total to Rs.12,900/- per month. The Family Court has not been amiss in observing that on a stated income of Rs.10,000/- and with these expenses which overshoot the income, the petitioner/husband has obviously not disclosed his income properly. Even if it is considered otherwise and a benefit of doubt is given to the husband, there is absolutely no proof given of the income of the salary at Rs.10,000/-, as also of the expenses of Rs.5,000/- for education of the child, or any other expenses as well. The challenge is to the extent of assessment of the income of the husband @ Rs.60,000/-.

9. In this regard, the Courts have held that at the stage of interim maintenance, the Family Court is duty bound to do a broad estimation of the earnings of the husband, in order to reach a rough and fair calculation for granting interim maintenance. The grant of interim maintenance is also an ameliorative measure to be considered at that stage, in order to provide some support for the wife and the child who have to otherwise manage on their own. The only offset, usually is the income, the wife is earning by herself.

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10. However, in this case, there is no evidence furnished by the husband to prove that the wife was earning in any manner possible, except for bald averments which have been made. The contention of the husband that he had purchased the Rani Bagh property is also not supported by any documentation filed on record of the Family Court, or of this Court, despite the matter being pending since 2016. Even if considering there was a dispute in the ownership of the property, that aspect can be segregated out from the assessment and interim maintenance would be assessed on a broad estimation of a reasonable income that can be attributed to the husband. The Family Court has made an assessment based on a holistic view of the facts and circumstances, in that all assertions made by the husband were unsustainable and not backed by proof or rationale.

11. In this regard, the calculation of Rs.12,000/- per month to the wife and Rs.8,000/- towards the child is an utterly and highly reasonable assessment made by the Family Court and there is no reason to interfere with the same. It is also noted that on a query put to the parties in Court, it was apparent that large amounts of arrears are still to be cleared by the husband, thereby causing tremendous distress to the wife, who has brought up the child on her own, till the age of majority.

12. The trial still has to conclude in the matter where parties will have an opportunity to confront each other with whatever evidence and documentation that they have, in order for the Family Court to reach a fair conclusion.



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13. In the meantime, the assessment of interim maintenance does not need any modification or interference.

14. As regards the fact that the son has attained the age of majority, there is no plea to modify the interim maintenance amount by the husband, neither before the Family Court nor otherwise before this Court. Therefore, that issue need not be considered.

15. In any event, the Coordinate Bench of this Court in ***Zahir Abdullah & Anr. v. Omar Abdullah*** 2023 SCC OnLine Del 5341 has noted that on aspect of maintenance being paid to a major son, the Supreme Court as well as the High Courts have concurred on the observation that attainment of majority by a son should not absolve the father of his responsibility of maintaining his children and ensuring that they secure proper education. The relevant paragraph has been extracted as under:

“28. On the aspect of maintenance being paid to a major son, the Supreme Court as well as the High Courts have concurred on the observation that attainment of majority by a son should not absolve a father of his responsibilities of maintaining his children and ensuring that they secure proper education. The Supreme Court in Kirti Malhotra v. M.K. Malhotra, 1995 Supp (3) SCC 522, had in fact noted that Rs. 1000/- per month of maintenance to an 18-year-old boy was on the lower side and directed it to be increased to Rs. 3,000/-. This direction was given despite the fact that the son had reached the age of 18. Though this Court cannot delve deep into the minute and excruciating details of the matter, it can arrive at the well comprehended conclusion that a father has an equal duty to provide for his children and there cannot be a situation wherein it is only



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the mother who has to bear the burden of expenses for raising and educating the children [Refer to *Urvashi Aggarwal v. Inderpaul Aggarwal*, 2021 SCC OnLine Del 3242].”

(emphasis supplied)

16. The Apex Court in ***Zahir Abdullah*** (*supra*) also held that an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and further that applicants in maintenance proceedings are entitled to the same standard of living as they would have enjoyed, if the dispute had not occurred. The relevant paragraphs are extracted as under:

“22. *The receipt of maintenance is not, however, exclusive to woman and children who are on the edge of destitution and potential vagrancy. In fact, there is no straitjacket formula for fixing the quantum of maintenance to be awarded. The Supreme Court in Rajnesh v. Neha, (2021) 2 SCC 324, had comprehensively listed all the factors that must be taken into consideration and how a careful and just balance must be drawn between. Therein, the Apex Court had observed that an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is in position to earn sufficient to maintain his family. Further, the Court is required to have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high cost of living...*”

...



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“24. Thus, in addition to the fact that if a wife is earning some income, it does not operate as a bar from being awarded maintenance by the husband, it is further settled law that applicants in a maintenance proceeding are entitled to the same standard of living as they would have enjoyed if the dispute had not occurred. In Jayant Bhargava v. Priya Bhargava, 2011 SCC OnLine Del 1651, this Hon'ble Court had stated that it was the duty of the Courts to ensure that it should not be that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation and poverty. Further, this Court also noticed that there was a tendency of spouses in proceedings for maintenance to not truthfully disclose their income, and that in such cases, some guesswork on the part of the Court would be permissible...”

(emphasis supplied)

17. In **Anju Garg & Anr. v. Deepak Kumar Garg** 2022 SCC OnLine SC 1314, the Supreme Court held that it is the duty of an able-bodied man to earn by legitimate means and maintain his wife and children. The relevant portion is extracted as under:

“10 ...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. In Chaturbhuj v. Sita Bai (2008) 2 SCC 316, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect



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women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

(emphasis supplied)

18. This Court's opinion is also affirmed by various decisions of the Coordinate Benches of this Court *inter alia* in **Abhishat Chaudhary v. Shilpa Chaudhary** 2019 SCC OnLine Del 8970 where the husband was directed to pay maintenance at Rs.25,000/- per month despite having averred that he was earning only Rs.10,000/-. The Court observed as under:

“22. Taking a prima facie view on the material that has been produced, it can safely be inferred that the petitioner is not truthful with regard to disclosing his source of income or his earning. Even, despite several opportunities given by this court, the petitioner could not produce any material to suggest that his income was only Rs. 10,000/- per month and not substantially more as has been found by the Trial Court. Despite several opportunities no material has been placed by the petitioner on record to prima facie show that his version was believable”.

(emphasis supplied)

19. The petition invokes revisional jurisdiction of this Court. It is reiterated that Courts need not reassess or re-appreciate material and evidence available on record. In revision, a court is to limit its jurisdiction for adjudication of illegalities and irregularities apparent. Reference in this regard may be made to the decision of the Supreme Court in **Pyla Mutyalamma v. Pyla Suri Demudu & Anr.** (2011) 12 SCC 189 where it has been observed as under:



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*“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.”*

(emphasis supplied)

20. In yet another decision by Supreme Court in ***Amit Kapoor v. Ramesh Chander & Anr.*** (2012) 9 SCC 460, while assessing the scope of revisional jurisdiction, it has been observed 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.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

...

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



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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.”

(emphasis supplied)

21. The Supreme Court and various other Courts have consistently opined that proceedings under Section 125 Cr.P.C. are premised for ensuring amelioration of financial suffering of the wife, who had left her matrimonial home along with minor children and to enable her to make arrangements and sustain herself. The husband cannot shirk his obligation in this regard. In **Anju Garg** (*supra*), the Supreme Court observed as under:

“9. At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in Bhuwan Mohan Singh v. Meena (2015) 6 SCC 353. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court...”

(emphasis supplied)

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22. In light of the above discussion and analysis, this Court finds no infirmity in the order passed by the Court. The petition is unmerited, and, therefore, accordingly, dismissed.

23. Trial be expedited and to conclude within a period of three months.

24. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

AUGUST 20, 2024/MK/na