



2024:DHC:7257



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:20.09.2024

+ **CRL.REV.P. 498/2023, CRL.M.A. 11777/2023 & CRL.M.A. 34828/2023**

MANISH

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Deepak Mayur, Adv. through V.C

For the Respondents : Mr. Pradeep Gahalot, APP for the State along with Adv. Prashant Malik, Adv. Harish Antil, Adv. Kanupriya Aswal & Adv. Mohit Panghal.

W/SI Sangam Yadav.

Mr. Udit Grover, Adv. through V.C.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the judgment dated 18.11.2022 (hereafter '**impugned Judgment**'), passed by the learned Principal Judge, Family Court, East District, Karkardooma Courts, Delhi, in Mt Case 1217/2018.

2. The learned Family Court, by the impugned judgment, decided



the petition filed by Respondent No. 2 under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC'), and awarded a maintenance of ₹5,500/- per month to Respondent No.2 from the date of filing the application. It was also directed that the maintenance amount will be increased by 10% after every two years in view of inflation. The learned Family Court had also awarded litigation expenses of ₹12,000/- in favour of Respondent No.2.

3. The learned Family Court noted that while the petitioner had argued that Respondent No.2 was not entitled to any maintenance as she had chosen to live separately without any reasonable cause, however, he had placed nothing on record to substantiate the said allegation. It was also noted that even if the WhatsApp chats placed by the petitioner which show him asking Respondent No.2 to not divorce him are believed, the same was not enough to accept that Respondent No.2 was living separately without reasonable cause.

4. The learned Family Court also observed that the testimony of Respondent No.2 regarding her being harassed by the petitioner for dowry appeared more trustworthy than the defence raised by the petitioner.

5. The petitioner had admitted his income as ₹13,000/- per month. The learned Family Court, however, assessed the income of the petitioner as ₹16,000/- per month on the basis of the minimum wage in Delhi. It was also noted that no material was placed on record to show that the parents of the petitioner were dependent on him and therefore the income of the petitioner was divided in line with the



dictum in *Annurita Vohra v. Sandeep Vohra* : 2004 SCC OnLine Del 192.

6. The learned counsel for the petitioner submitted that the learned Family Court erroneously awarded the interim maintenance to Respondent No.2 without noting the lack of substantiating evidence and plethora of inconsistencies in the statements proffered by her.

7. He submitted that Respondent No.2 was not entitled to maintenance under Section 125(4) of the CrPC as she had left the company of the petitioner and refused to live with him without any sufficient reason. He submitted that the actual reason for desertion was the financial hardship of the petitioner.

8. He submitted that while Respondent No.2 had contended that she left her matrimonial home for reasons including harassment on account of dowry, domestic violence and the illicit extra-marital relations of the petitioner, however, none of the said reasons were established by Respondent No.2 through cogent evidence. He relied upon the judgment of the Hon'ble Apex Court in *Deb Narayan Halder v. Anushree Halder* : MANU/SC/0629/2003.

9. He submitted that while Respondent No.2 had contended that the petitioner and his family members had demanded dowry from her and taunted her for insufficient dowry, however, the said averment was also not substantiated by any proof apart from the complaints dated 09.07.2018 and 04.08.2018 that were made by Respondent No.2 after deserting the petitioner.

10. He contended that the allegations of assault and demand of



dowry on 20.01.2018 are rendered dubious as Respondent No.2 was not at her matrimonial home from 24.12.2017 to 04.03.2018.

11. He submitted that Respondent No.2 had alleged that the petitioner had assaulted her on the night of 09.02.2018, however, the petitioner at that time was involved in the festivities of his brother's birthday. He submitted that the same is supported by photographs that were marked as Exhibit RW-1/8.

12. He submitted that the assertion of Respondent No.2 that the petitioner had failed to provide for her was unmerited as was evident from Exhibit RW-1/2 which showed that the petitioner had disbursed funds to Respondent No.2 *via* Paytm.

13. He submitted that the petitioner had also been diligent in securing adequate medical care (Exhibits RW-1/5 and RW-1/9) for Respondent No.2. He submitted that the petitioner also took Respondent No.2 to various restaurants as is evident by the bills (Exhibit RW-1/10) and also provided for Respondent No.2's essential items, including, clothing. He submitted that the petitioner in Exhibit RW 1/7 had listed all the articles and personal belongings provided by him as well.

14. He further submitted that Respondent No.2 had conspicuously not disclosed that the parties had married after being in a relation for over one and a half years. He submitted that the petitioner had placed on record certain pre-marital photographs (Exhibit RW-1/6) which showed the same as well.

15. He submitted that Respondent No.2 had contradicted her own



assertion that the petitioner and his family had not disclosed his 12th grade certificate to her during cross-examination.

16. He also contended that the income of the petitioner was wrongly assessed by the learned Family Court as the petitioner was working in Noida, Uttar Pradesh and the minimum wages there were significantly lower.

17. He submitted that the learned Family Court had wrongly opined that the parents of the petitioner were not dependent on him for day-to-day expenses even though the petitioner had mentioned in his income affidavit that they reside with him in a tenanted premises and are not engaged in any employment.

18. He submitted that Respondent No.2 is well qualified and holds a BA and MA degree. He submitted that the petitioner on the other hand is not even a graduate.

19. The learned counsel for Respondent No.2 submitted that the learned Family Court had rightly assessed the facts and circumstances in the impugned judgment and there is no irregularity in the same to warrant interference. He submitted that the maintenance awarded is reasonable and on the lower end.

20. He submitted that the parties were not in any relationship and they had been acquainted for only a few months before their marriage.

21. He submitted that on 07.07.2018, the petitioner and his family had called the father and the brother of Respondent No.2 to the matrimonial home and forcefully sent her back to her parental home on account of non-fulfillment of the demand for ₹1,00,000/-.



22. He submitted that the learned Family Court rightly found the testimony of Respondent No.2 trustworthy on the aspects of dowry demands, assault and the petitioner not financially maintaining her. He further submitted that the learned Family Court had rightly taken into account the other complaints tendered by Respondent No.2 in regard to harassment for dowry and assault.

23. He submitted that Respondent No.2 had been forcibly ousted from the matrimonial house and she had not joined the company of the petitioner due to sufficient reasons and hence she could not be denied maintenance.

24. He submitted that the petitioner had also taken the ATM card of Respondent No.2 and withdrawn amounts from her account. He submitted that the petitioner used to transfer the money to her account and then withdraw the same thereafter.

25. He submitted that Respondent No.2 is suffering from various diseases as well. He submitted that on one side it is argued by the petitioner that he was adequately maintaining Respondent No.2 and on the other hand he is also pleading incapacity to pay a meagre maintenance of ₹5,500/-. He submitted that it is clear that the petitioner had manipulated his income to pay less maintenance.

ANALYSIS

26. The question before this Court is whether the learned Trial Court correctly concluded that Respondent No.2 had sufficient cause for refusing to live with the petitioner, and if so, whether the quantum



of maintenance was correctly quantified by assessing the petitioner's income on the basis of the minimum wages in Delhi without allocating any share to the parents of the petitioner.

27. At the outset, it is well settled that the object of granting maintenance is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Hon'ble Apex Court in **Chaturbhuj v. Sita Bai : (2008) 2 SCC 316**, has observed as under:

*“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. **The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.** The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].*

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*In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. **Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is***



insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”

(emphasis supplied)

28. However, Section 125 of the CrPC elucidates conditions under which a wife may be deemed ineligible for maintenance. These conditions include instances where the wife is engaged in adulterous activities, where she, without any justifiable cause, refuse to cohabit with her husband, or where both parties have agreed to live apart through mutual consent. These provisions delineate clear legal parameters that govern the entitlement or disentitlement of maintenance to ensure that the support is granted only under circumstances that warrant such financial assistance.

29. It is the case of the Respondent No.2 that the petitioner is a drunkard who used to beat her and that he had illicit extra-marital relationships. It was also argued that the petitioner and his family members harassed and taunted Respondent No.2 for insufficient dowry. Further, it was alleged that the petitioner had neglected to maintain and bear the expenses of Respondent No.2, despite having sufficient means as well. It was also argued that the petitioner had concealed his educational qualifications from Respondent No.2.



30. On the other hand, the petitioner has argued that Respondent No.2 refused to live with him without any sufficient reasons despite his repeated requests to not divorce him. It is argued that there was no demand of any dowry and Respondent No.2 was not present at the matrimonial home on the days when she had alleged assault by petitioner. It is also argued that the marriage between the parties was borne out of love and Respondent No.2 was aware of his educational qualifications from the start. Some bills were also adduced by the petitioner as evidence to show that he was financially maintaining her. Certain arguments regarding the discrepancies in the deposition of Respondent No.2 have also been pointed out.

31. The learned Trial Court found that there was no material on record to support the allegation of illicit relation of the petitioner, however, Respondent No.2 had made police complaints regarding allegations of humiliation, physical beatings and dowry demands. It was rightly appreciated that the WhatsApp chats between the parties does not show that the Respondent No.2 had no sufficient reason to leave the company of the petitioner. A wife cannot be disentitled from claiming any maintenance merely because she seeks divorce after having left the company of her husband due to sufficient reasons.

32. Reliance has been placed by the petitioner on the judgment in the case of *Deb Narayan Halder v. Anushree Halder* (*supra*). The said case is distinguishable on facts. In that case, the mother of the wife had stated in her deposition that there was no demand of dowry. Moreover, it was noted that the parties had lived at different places



during the course of their marriage. There were also witnesses who had evidenced that the parties were living a normal life. In the present case, there is no such sterling contemporaneous evidence that has been brought forth by the petitioner.

33. In the present case, the learned Trial Court has found the testimony of Respondent No.2 to be credible and more trustworthy. This Court finds no reason to interfere with the said observation merely on account of certain minor discrepancies in the testimony of Respondent No.2.

34. Insofar as the medical documents of Respondent No.2 (Exhibit RW 1/9 colly) are concerned, it is argued by Respondent No.2 that her expenses were borne by her father. The documents include bills from a Hospital, however, the same don't clarify as to who made the payments or that the petitioner had been the one to take Respondent No.2 to the hospital.

35. The petitioner had also relied upon alleged photographs of parties at restaurant (Exhibit RW 1/10 colly) to show that he had taken Respondent No. 2 to different restaurants. Further, a list of articles/ personal belongings (Exhibit RW 1/7) of Respondent No.2 has been pointed out to show that her basic necessities were taken care of. The date on which the photos were clicked has not been specified. The said list is one prepared by the petitioner and no bills of the items or proof of payments have been annexed to show that it was him who had paid for the same.



36. It is relevant to note that the petitioner has also sought to rely on the screenshots of online transactions (Exhibit RW 1/2 colly) to contend that he was adequately maintaining Respondent No.2. The learned Trial Court has noted that the said transactions range between transfer of couple of hundred rupees to a few thousands and they don't show that the petitioner was regularly maintaining Respondent No.2. It is peculiar that on one hand the petitioner is claiming financial incapacity to pay a meagre maintenance of ₹5,500/- and on the other, he is also claiming to have paid such amounts on a regular basis to Respondent No.2.

37. It has been argued that the income of the petitioner has been wrongly assessed to be ₹16,000/- even though he is employed in Uttar Pradesh. It is also argued that merely because the minimum wage in Delhi is ₹16,000/-, it does not mean that the petitioner is earning that amount. The petitioner has admitted to an income of ₹13,000/-. It has been noted in a catena of judgments that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute and that even income tax returns do not necessarily provide an accurate reflection of the actual income in such cases (Ref. ***Kiran Tomar v. State of U.P. : 2022 SCC OnLine SC 1539***). The Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning (Ref:***Bharat Hegde v. Saroj Hegde:2007 SCC OnLine Del 622***). In the opinion of this Court, the learned Trial Court has reasonably assessed the income to be ₹16,000/-.



38. It is argued that the parents of the petitioner have erroneously not been considered to be his dependents. The learned Trial Court has noted that there is no evidence on record to show that the parents of the petitioner are dependent on him. There is no material on record to show expenses incurred by the petitioner towards his parents as well. Merely a bald averment of the petitioner that he was living with his parents is insufficient.

39. The petitioner has also placed on record a rent agreement. The same is dated 28.09.2018 and was drawn for a period of eleven months till 27.04.2019. There is no proof that the rent was paid by the petitioner or that the rent agreement was ever renewed. Moreover, it is relevant to note that the address mentioned in the memo of parties differs from the address of the rented premises.

40. On a perusal of the overall facts of the case, in the opinion of this Court, the learned Trial Court has adequately appreciated the facts and awarded the maintenance of ₹5,500/- per month. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. The Hon'ble Apex Court, in the case of **Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314**, observed as under:

*“10... The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. **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....***

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13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no



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*source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. **The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child....***"

(emphasis supplied)

41. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No.2.

42. Insofar as the argument regarding Respondent No.2 being educated is concerned, it is relevant to note that no evidence has been adduced by the petitioner to show that she is capable to maintain herself. Merely because Respondent No.2 is educated, the same alone is not a ground to deny her maintenance.

43. In view of the above, this Court finds no infirmity in the impugned judgment.

44. The present petition is dismissed in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024