

Neutral Citation No. - 2024: AHC: 193479

Judgment reserved on 23.10.2024

Judgment delivered on 10.12.2024

Court No. - 86

Case :- CRIMINAL REVISION No. - 3839 of 2016

Revisionist :- Shilpy Sharma

Opposite Party :- Rahul Sharma

Counsel for Revisionist :- In Person

Counsel for Opposite Party :- ,Rajendra Rai,Ram Shiromani Shukla

Hon'ble Ram Manohar Narayan Mishra,J.

1. Submissions of the revisionist as well as respondent in person are already heard. The parties have also filed their written arguments, which is part of record. Pleadings have already been exchanged between the parties.

2. Instant criminal revision has been preferred by the revisionist against the order dated 07.09.2016 passed by learned Additional Family Court/FTC in Maintenance Case No.3016 of 2014 (Shilpy Sharma Vs. Rahul Sharma) under Section 125 Cr.P.C., whereby an interim maintenance of Rs.2,500/- per month has been awarded to the revisionist.

3. The revisionist is aggrieved by the quantum of maintenance awarded to her and payable by the respondent. The revisionist has submitted that she resides in district Chandauli (UP), whereas her husband Rahul Sharma is resident of district Ghaziabad. She has filed present revision with prayer for enhancement of maintenance from Rs.2,500/- per month as has been awarded by the learned court below to substantial extent on the basis of prima facie facts produced by the revisionist, and the amount to be awarded to the

revisionist should be effective from the date of filing of application i.e. 01.09.2014, so that she may be able to live in the same status, as she was accustomed to live when she was residing with her husband. Her marriage with respondent was solemnized on 23.01.2007 at Baradhar Kaka Nagar, New Delhi and she was ousted from her matrimonial on 18.09.2007 from 808-A, Jivan Apartment Sector-6 Vasundhara, Ghaziabad. She further submitted that she has no independent source of income, hence she has filed an application for interim maintenance on 01.09.2014 in maintenance Case No.316 of 2014, wherein she prayed for grant of maintenance from the date of application. However, the court below awarded a meagre sum of maintenance to the tune of Rs.2,500/- per month that too from the date of order i.e. 07.09.2016. Inasmuch as the Court below has not awarded any amount as cost of litigation and prevailing expenditure incurred by the revisionist to attend the court proceedings. She is entitled to get maintenance as per requirements and equal to the financial status of the husband, but the learned court below has failed to consider this aspect of the matter.

4. Learned counsel for the revisionist next submitted that respondent in paragraph No.8 of his objection dated 29.01.2016 an application for interim maintenance stated that he received salary from December 2014 to September 2015 at half rate at the rate of Rs.17,890/- per month due to strike in the company. But in the judgment it is fairly mentioned that opposite party did not received any salary from the year 2015 to October 2015 and December 2015, this finding is against the record. The respondent has given different statements regarding his salary before the court below. The respondent has been drawing an handsome salary, and also he is having other sources of income, his monthly income exceeds Rs.4 Lakh per month. The court below has not considered the calculation sheet /statement of income of the respondent Rahul Sharma and papers submitted by him

in Divorce Suit No.61 of 2008 as *prima facie* fact of income of the respondent. She also submitted that respondent Rahul Sharma despite having been married used to give advertisements on matrimonial sites showing himself as divorcee. He has been interested in having relationship with other women, as manifest from his facebook account, wherein he has offered “in an open relationship” and “interested in women and current place New Delhi”. He has been leading a luxurious life, he has himself shown his expenses in various heads, which is not possible to be incurred by a person who is drawing a salary less than Rs.12,000/- per month as claimed by him. He had engaged four lawyers in First Appeal No.278 of 2014 against dismissal of his divorce petition and comes with his father to High Court to pursue his appeal in AC coach of train. He has been given varying statements in different courts at different level regarding his address and financial status.

5. She further submitted that this Court vide order dated 27.02.2017 passed in instant criminal revision passed an interim order, whereby amount of interim maintenance awarded by learned trial court was enhanced to Rs.5,000/- per month which will be payable by opposite party No.2 before the court below by 7<sup>th</sup> of each calender month and the amount so deposited by the opposite party No.2 shall be paid to the revisionist after due verification. The respondent fought tooth and nail this interim enhancement order by filing recall before this Court and had got the proceedings of this criminal revision delayed thereby.

6. She lastly submitted that she has filed expenses incurred by the respondent through Annexure A4 from period 24.01.2007 to 18.09.2007, July 2011 to December 2012, and year 2013-2014 which reveals that his monthly expenditure was around Rs.2,00053/- in the year 2013-2014 as per his own statement, which is more than six time

of his stated salary as Rs.33,000/- per month, but the respondent failed to explain as to how this is possible.

7. She further submitted that the respondent has filed a divorce petition against her seeking divorce on the ground of cruelty, but the family court has not found allegations of cruelty levelled against the revisionist to be proved and dismissed the divorce petition No.61 of 2008, under Section 13(1)(1a) of Hindu Marriage Act. The respondent resides in an air conditioned house, he has employed a driver and domestic servant also. These luxuries cannot be afforded by a person of meagre income. He always concealed his actual income to mislead the revisionist as well as the court. She was compelled to live separately from her husband due to his highhandedness and cruel treatment meted out to her at her matrimonial home. The revisionist and his family members had levelled wild allegations against her without any basis to shirk their responsibilities towards her and avoid payment of any maintenance to her. She needs at least Rs.50,000/- per month to meet out her reasonable expenses, as the respondent has alleged that she works as a fashion designer and also gave tuition and earns Rs.50,000/- per month. She is entitled to receive at least one third of monthly income of her husband as maintenance to lead a dignified life. The father of the respondent retired as SDM and he also served as a Deputy Director in Delhi and his brother Manish Sharma is a doctor. The respondent comes from an affluent family, he was initially working in Sahara India in a higher position and he resigned there from in the year 2016 and joined some other establishment. This is wrong to say that now he has become jobless.

8. The revisionist placed reliance on a judgment of Hon'ble Supreme Court in **Rajnish Vs. Neha and another (2021) (2) SCC 324**, in support of his contention.

9. Per contra, the respondent contended that revisionist has shown his monthly income exorbitantly which finds no basis. He resigned his job in Sahara India in the year 2016 and thereafter his financial condition deteriorated substantially. The revisionist left her matrimonial home without any sufficient reason and she never came back, she never made any attempt to restore her matrimonial relationship with the respondent, she used to harass him and his family members by making wild and false allegations against them by instituting a frivolous litigation, not only against him but against his family members and even driver. She has roped in the respondent and his family in various litigation to harass and defame them. The revisionist is a highly qualified lady who had been earning Rs.15,000/- per month from her own sources of income in the year 2017, and said amount must have increased at present due to gap of seven years. In fact she refused to live with the respondent without any sufficient reason, therefore, she is not entitled to any maintenance in accordance with the proviso (4) to Section 125 Cr.P.C. The respondent is now a jobless man and therefore no question of grant of maintenance to the revisionist to status of the parties arises in which they were living at the time of marriage, maintenance is always dependent on the factual situation of the case.

10. According to pronounce of Hon'ble Supreme Court in **Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy in Civil Appeal No.5369 of 2017**. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

11. With the above contention, respondent prayed for rejecting the prayer for enhancement of maintenance as claimed by the revisionist.

12. On perusal of record it appears that conduct of the respondent was objectionable from inception of the impugned order and he always

avoided to pay even a paltry sum of interim maintenance awarded in the impugned order on regular basis. This Court vide order dated 27.02.2017 passed an interim order to the effect that perusal of the earlier order dated 01.12.2016 shows that present revision has been filed for enhancement of the interim maintenance from Rs.2,500/- to Rs.5,000/- awarded by the learned court below on the ground that income of the husband-respondent is Rs.5 lakh per month, and notice has been issued to the opposite party-husband returnable within a period of four weeks. This court passed following interim order, which is reproduced as under:-

*"After hearing the revisionist in person and after perusing the averments made in the present revision, this Court is of the opinion that the amount of interim maintenance to the tune of Rs. 2500/- per month is not adequate and therefore, the same is enhanced to the tune of Rs. 5000/- per month which amount shall be paid over by the opposite party no.2 before the concerned Court below by 7th of each calendar month. The amount so deposited by the opposite party no.2 shall be paid over to the opposite party no.2 after due verification."*

13. However, the respondent did not comply the interim order dated 27.02.2017 passed by this court in present revision and used to pay interim maintenance to the revisionist at the rate of Rs.2,500/- per month which is impugned in present revision. Feeling aggrieved by the conduct of the respondent for non-compliance of the interim order passed by this Court, the revisionist filed Contempt Application (Civil) No.2578 of 2019 and was granted one more opportunity to comply with the order dated 27.02.2017, on the condition that the opposite party shall deposit the difference of dues of the amount of Rs. 2,500/- up till 30.06.2019 in the court below. The said amount shall remain deposited and shall not be released and shall be subject to any further order that may be passed by this Court or by the Revisional Court.

14. On 03.02.2019 the respondent counsel filed a copy of the order of Family Court/ FTC1, Varanasi in Case No.316 of 2014, wherein it is acknowledged that the demand draft of Rs.70,000/- has been deposited by the opposite party. This Court directed the court below to release the said amount infavour of the applicant/ revisionist with due verification at the earliest.

15. Hon'ble Supreme Court in **Rajnish Vs. Neha and another (supra)** directed that to overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. Where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceedings, while determining whether any further amount is to be awarded in the subsequent proceeding; it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding. The Hon'ble Court also held "that if during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination. ***We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.***"

16. In **Rajnish Vs. Neha and another (supra)** Hon'ble Supreme Court directed the parties to file an affidavit of assets and liabilities of proforma given in closure there and the interest given therein will be

taken into consideration while determining the quantum of maintenance/interim maintenance as the case may be.

17. Hon'ble Court placed reliance on previous judgment in **Badshah vs Sou. Urmila Badshah Godse & Anr (2014) 1 SCC 188**, wherein Apex Court consider the interpretation of Section 165 Cr.P.C. and held that purposive interpretation needs to be given to the provisions of Section 125,Cr.P.C. or while dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. "The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India....."

18. The court placing reliance on some judgments of Supreme Court and Bombay High Court held that an able-bodied husband has to be presumed to be capable of earning sufficient money to maintain his wife and child and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held in Delhi High Court in **Chander Parkash Bodh Raj vs Shila Rani Chander Prakash AIR 1968 Delhi, 174 .**

19. In the impugned order dated 30.02.2016 learned Additional Family Judge has allowed application 5-B filed by the revisionist/applicant for an interim maintenance in Maintenance Case No.316 of 2014. When the application was filed, the revisionist was working in Sahara India TV Network and in his objection 21-B he has pleaded financial constraint, deteriorating health and non payment of salary and non-performance of matrimonial obligations by the revisionist towards him.

20. Learned trial court observed in the impugned order that applicant has stated that the monthly income of opposite party (husband) is



around Rs.4 lakh per month. The father of the applicant retired as JCO from Indian Army and did not able to maintain the applicant on his meager resources. Whereas the opposite party has claimed that he had reduced to the stage of starvation due to non-payment of salary, and the applicant is earning around Rs.50,000/- per month from different sources. The evidence of the parties is liable to be come on issue of maintenance and the case will be disposed of after tendering of evidence by both the sides. Therefore in the opinion of the court, and in the facts and circumstances of the case, it would be proper to pay Rs.25,00/- per month to the applicant as interim maintenance to the applicant which will be payable by the opposite parties.

21. From the perusal of the written arguments filed by the revisionist and other material on record it appears that the claim of the respondents that he has to maintain his family members, is not substantiated with record. His father is a retired Government Officer. His brother Manish Sharma has shown himself as to have belonged to upper middle class family in his facebook account and has shown himself as a professional, and his said annual income is Rs.4 to Rs. 5 lakh. The respondent had shown himself in his facebook status as Engineer in Sahara Samay, interested in women, current location in home town New Delhi. He has added advertisement on matrimonial site as divorcee. During the pendency of divorce petition which was dismissed by the family court and appeal of the respondent is pending before this Court. This divorce petition was dismissed on 25.03.2014 and according to the respondent he had paid entire dues towards cost of litigation fixed by the court Rs.6,000/- per month upto 01.08.2008 to 25.03.2014 which came to Rs.3,78,000/-. The case of respondent No.2 does not prima facie come within the purview of proviso (4) to Section 125 Cr.P.C., as claimed by him.

22. On the basis of material on record it cannot be held at present that she refused to live with her husband on her own sweet will they are living separately by mutual consent, or she left her husband without any sufficient reason. He has stated in his written argument dated 06.07.2017 that he is jobless. The calculation sheet of the expenditure of the respondent given by the revisionist is based on certain documents filed by the respondent in divorce case No.61 of 2008 and on that basis she had calculated his approximate monthly income as Rs.4,09,118/- She has also filed his bank statements and income tax returns, but all these documents relates to the period when he was employed in Sahara India. The respondent claims himself as jobless at present, it appears that he is concealing his present source of employment to avoid any enhancement in interim maintenance awarded to the revisionist which is payable by the respondent. However, taking into consideration totality of the facts and circumstances of the case, the huge expenditure incurred by the respondent in past to lead a decent life, his family backgrounds, his professional qualification as Engineer in Sahara India prior to his resignation therefrom, I am of the considered opinion that the amount of maintenance awarded to the revisionist in the impugned order is far less to meet out her financial requirements to lead even a simple life in today's market conditions. It is almost impossible for a women who belongs to a middle class family, to have even a square meal from the paltry amount of Rs.2500/-

23. This Court in the impugned order dated 27.02.2017 enhanced the amount of interim maintenance to Rs.5,000/- per month during pendency of revision which is also not sufficient for the revisionist to maintain herself, even if the claim of revisionist is taken on its face value that he has now become jobless is responsible to pay a sum for maintenance of his wife being a skilled, qualified and able bodied

person. Therefore, I direct that the amount of interim maintenance awarded to the revisionist in the impugned order 07.09.2016 be enhanced from Rs.2500/- to Rs.5,000/- per month from the date of filing of application of interim maintenance dated 01.09.2014 to date of impugned order dated 07.09.2016 and thereafter up to the month of November, 2024. Thereafter, respondent No.2 will pay the revisionist an interim maintenance at the rate of Rs.10,000/- per month from December 2024 during the pendency of the maintenance case before the family court, subject to any order passed by trial court under Section 127 Cr.P.C. The interim maintenance will be payable on the tenth of each calendar month.

24. Nothing observed in this order shall have bearing on final outcome of maintenance case pending before family court concerned. The arrears of interim maintenance will be calculated at the rate of Rs.5,000/- from the date of filing of application dated 01.09.2014 to November 2024 and will be payable in five equal and consecutive monthly installments and first installment will be payable on 10<sup>th</sup> January, 2025. Any amount paid by the revisionist towards maintenance pursuant to impugned order as well as interim order passed in present revision shall be liable to be adjustment towards arrears of maintenance. It is also directed that any infraction in compliance of this order will result in issuance of coercive by the court below to realize the amount of maintenance payable to the revisionist.

25. The revision is partly **allowed**, with above direction.

**Order Date :- 10.12.2024**

Ashish/-