
Sudhir Gupta Vs Manisha Kumari @ Manisha Gupta

**Criminal Miscellaneous Case No. 1117 Of 2021, Criminal Miscellaneous Application
No. 5684 Of 2021**

Court: Delhi High Court

Date of Decision: June 14, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 397, 401, 482#Protection Of Women From Domestic Violence Act, 2005 " Section 12, 23#Hindu Marriage Act, 1955 " Section 9

Hon'ble Judges: Subramonium Prasad, J

Bench: Single Bench

Advocate: Gaurav Gupta

Final Decision: Dismissed

Judgement

Subramonium Prasad, J

1. The present petition under Section 482 Cr.P.C is directed against the order dated 28.02.2020, passed by the Additional Sessions Judge-03, West

District, Tis Hazari Courts, Delhi in Criminal Appeal No. 55/2/19, affirming the order dated 31.08.2019 passed by the Metropolitan Magistrate, Mahila

Court in an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV

Act") directing the petitioner herein to pay a sum of Rs.16,500/- as interim maintenance to the respondent herein/wife.

2. The facts, in brief, leading to the instant petition are as under:

a) The petitioner and the respondent got married on 01.12.2014 according to Hindu rites and ceremonies. A child was born out of the wedlock but

unfortunately the child expired. Differences arose between the petitioner and the respondent. It is stated that the respondent herein left the

matrimonial home on 22.02.2016. It is stated that the respondent filed a petition under Section 12 of the DV Act praying for direction to the petitioner

herein to let the respondent herein reside in the shared household, granting injunction against the family members of the petitioner herein including his

father, mother, sisters and their husbands, from repeating any acts of violence mentioned in the complaint and for grant of compensation of

Rs.50,000/-. The respondent herein also filed an application under Section 23 of the DV Act for grant of maintenance of Rs.60,000/- per month.

b) Affidavits of income were filed by the petitioner and the respondent. In her affidavit, the respondent herein stated that she is a graduate and has

done diploma course in fashion designing but after marriage she left her job. She also stated that the petitioner herein is working in a private firm and

he is also running business and he is earning Rs.1,00,000/- per month. It is also stated that the petitioner herein is having credit cards and also has a

car. It was contended by the respondent herein that the petitioner herein has concealed his income. The petitioner herein filed a reply denying all the

allegations against him.

c) The learned Metropolitan Magistrate vide order dated 16.01.2018 declined to grant interim maintenance to the respondent herein on the ground that

the respondent herein was working and that she, being a well qualified spouse, is not entitled to interim maintenance.

d) Against the order of the learned Metropolitan Magistrate, an appeal, being Criminal Appeal No. 56/2018, was filed by the respondent herein before

the learned Additional Session Judge. The learned Additional Session Judge after relying on the judgment of the Supreme Court in Sunita Kachwaha

v. Anil Kachwaha, (2014) 16 SCC 715, held that merely because the wife is qualified and has a potential for earning, cannot be a ground to reject her

claim of maintenance. The order of the learned Metropolitan Magistrate was set aside and the matter was remanded back. On remand, the learned

Metropolitan Magistrate analysed the bank statements of the petitioner herein. The learned Metropolitan Magistrate held that the statement of bank

account of the petitioner herein shows that various transactions are being made in his account on a regular basis which he has failed to explain

satisfactorily. The learned Metropolitan Magistrate also held that the income affidavit of the petitioner herein shows that he earns Rs.7,500/- per

month, however, he is living in his own house and having FDRs to the tune of Rs.4 lakhs, he owns a motorcycle and a car. The learned Metropolitan

Magistrate refused to accept the Income Tax Returns of the petitioner as his true income on the ground that normally businessmen conceal their

actual income in order to evade tax. After perusing the material on record the learned Metropolitan Magistrate directed the petitioner herein to pay a

sum of Rs.16,500/- per month, from the date of the petition till the disposal of the case, to the respondent herein as interim maintenance.

e) The said order was challenged by the petitioner herein by filing an appeal being Criminal Appeal No. 55/2/19, before the Additional Sessions Judge.

The learned Additional Sessions Judge vide order dated 28.02.2020, once again after analysing the facts, upheld the order dated 31.08.2019, passed by

the learned Metropolitan Magistrate.

f) It is this order which has been challenged in the instant petition.

3. Heard Mr. Gaurav Gupta, learned counsel for the petitioner and perused the material on record.

4. The learned counsel for the petitioner vehemently contends that the respondent has given contradictory statements in various forums and litigations

between the same parties. He further states that the petitioner has passed only 12th standard and was earning a meagre amount of Rs.22,500/-per

month whereas the respondent herein, who was pursuing post-graduate from IGNOU, has got a Diploma in Apparel Manufacturing Technology from

ATDC Gurgaon and she is much more educated and capable of earning substantial amount of money. The learned counsel for the petitioner contends

that the respondent herein is not working only to harass the petitioner. He contends that the Courts below erred in not going through the Income Tax

Returns of the petitioner herein. He states that the observation of the learned Metropolitan Magistrate, that the petitioner herein is earning at least

Rs.50,000/- per month, is only on the basis of conjectures and surmises.

5. Having gone through the records of the case, the conclusion drawn by the Courts below that the petitioner has not been able to explain the

transactions in his bank accounts cannot be found fault with. It has not been denied that the petitioner has got fixed deposit, he owns a motorcycle, car

and has also got credit cards. The fact that the respondent herein is more qualified than the petitioner and the fact that she was working as a

Merchandiser with Richa Group and was getting salary is no ground to deny maintenance to her as at present she is not earning any income.

6. The Supreme Court in Manish Jain v. Akanksha Jain, (2017) 15 SCC 801, has observed as under:

16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a

claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to

a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial.....

(emphasis supplied)

7. The reasoning of the learned Metropolitan Magistrate, as affirmed by the learned Additional Session Judge, does not call for any interference. The

reliance placed by the petitioner on the deposition of the respondent herein in proceedings initiated by her under Section 9 of the Hindu Marriage Act

for Restitution of Conjugal Rights vide HMA No. 1459/2018 does not help the petitioner in rejecting the claim of the respondent herein for

maintenance. It cannot be said that the findings of the Courts below are so perverse that it requires any interference by the High Court under Section

482 Cr.P.C.

8. The scope of revision under Section 397/401 Cr.P.C read with Section 482 Cr.P.C is narrow. Courts do not go into excruciating details on facts and

unless the judgments of the courts below are so perverse High Court does not interfere with concurrent findings.

9. The Supreme Court in *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* reported as (1999) 2 SCC 452 has observed as under:-

5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we

have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional

jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or

propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting

miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second

appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion

on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is

brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.....

10. In *State v. Manimaran* reported as (2019) 13 SCC 670 the Supreme Court has observed as under:-

16. As held in *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* [*State of Kerala v. Puttumana Illath Jathavedan Namboodiri*,

(1999) 2 SCC 452 : 1999 SCC (Cri) 275], ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come

to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in

appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the

concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained"" (emphasis supplied)

11. The learned Metropolitan Magistrate and the learned Additional Sessions Judge have analysed the facts and the law in the correct perspective.

The judgements are well reasoned. It cannot be said that the conclusions drawn by the Courts below are perverse or are based on nil evidence. The

judgments of the Courts below do not warrant any interference.

12. Needless to state that the learned Metropolitan Magistrate has granted only interim maintenance to the respondent herein and the final

maintenance is subject to the outcome of the proceedings.

13. Accordingly, the petition is dismissed along with the pending application.