

(2024) 09 SHI CK 0013

High Court Of Himachal Pradesh

Case No: Criminal Revision No. 323 Of 2021

Rajeev Sindhu

APPELLANT

Vs

Anita Kumar

RESPONDENT

Date of Decision: Sept. 23, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 125, 397

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Suhani Gautam, Lakshay Parihar, K.B. Khajuria

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the order dated 16.09.2021 passed by learned Additional Principal Judge Family Court Ghumarwin, District

Bilaspur, H.P. (learned Trial Court) vide which the learned Trial Court granted monthly maintenance of ₹25,000/- to the respondent (applicant before

learned Trial Court) from the date of filing of the application till its disposal. (The parties shall hereinafter be referred to in the same manner as they

were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the applicant filed an application before the learned Trial Court for granting interim

maintenance asserting that she is the legally wedded wife of the respondent. The marriage between the parties was solemnized on 21.04.2003 as per

Hindu Rites and Customs. The respondent was working at RHPS Bayal, Tehsil Nirmand District Kullu, H.P. and was earning more than ₹1,50,000/-

per month. The respondent started misbehaving with the applicant in a state of intoxication. He also started giving beatings to her. She was compelled to leave her matrimonial home. The applicant's father contacted the respondent telephonically. The respondent agreed that the applicant could go for coaching in Chandigarh. He initially provided maintenance to her but subsequently, he stopped paying maintenance to her. The applicant told the respondent that she wanted to reside in her matrimonial home but the respondent abused her. The applicant has no source of income. Therefore, it was prayed that the present application be allowed and an interim maintenance of ₹15,000/- be awarded to the applicant.

3. The application was opposed by filing a reply denying the contents of the application.

4. Learned Trial Court held that as per the affidavit filed by the applicant, she required ₹ 35,000/- per month. The respondent also filed his affidavit of assets, which shows that he was earning ₹ 2,47,661/- and after the deduction of PF and income tax, he was getting ₹1,38,546/-. He had revealed gross total income ₹42,65,690/- in his income tax return. The interim maintenance is to be awarded as per the status of the parties. Hence, the interim maintenance of ₹25,000/- per month was awarded by the learned Trial Court.

5. Being aggrieved from the order passed by the learned Trial Court the respondent has filed the present petition asserting that the applicant had claimed ₹15,000/- per month in the application and the learned Trial Court had awarded maintenance of ₹25,000/- per month. The applicant admitted that she had deserted the respondent in the proceedings under the Protection of Women from Domestic Violence Act. The petitioner had challenged the marriage and the matter is pending before the Family Court Shimla. The applicant had also sought interim maintenance in the petition under the Protection of Women from Domestic Violence Act but the Court had not granted any maintenance to the applicant. The applicant has left the company of the respondent without any reasonable cause. She has sufficient income to maintain herself. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

6. I have heard Mr Suhani Gautam, Advocate Vice Mr Lakshay Parihar, learned counsel for the petitioner and Mr K.B. Khajuria, learned counsel for

the respondent.

7. Ms Suhani Gautam, learned vice counsel for the petitioner, submitted that the learned Trial Court erred in granting maintenance of ₹25,000/- per month to the applicant. She had claimed maintenance @ 15,000/- per month and maintenance of ₹25000/- could not have been granted to her. She had sufficient income to maintain herself, which was ignored by the learned Trial Court. The respondent has filed a petition seeking the nullity of the marriage which is pending adjudication. The applicant had admitted in the proceedings under the Protection of Women from Domestic Violence Act that she had left her matrimonial home voluntarily and she cannot be held entitled to maintenance under Section 125 of Cr.P.C. Therefore, she prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

8. Mr. K. B. Khajuria, learned counsel for the applicant supported the order passed by the learned Trial Court and submitted that keeping in view the income of the respondent, the maintenance of ₹15,000/- per month is not excessive. The applicant requires money for her sustenance and the learned Trial Court had rightly awarded monthly maintenance of ₹ 25,000/- to the applicant. Therefore, he prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions made at the bar and have carefully reviewed the records.

10. It was laid down by the Hon'ble Supreme Court in *Manju Ram Kalita v. State of Assam*, (2009) 13 SCC 330: (2010) 1 SCC (Cri) 1015: 2009 SCC OnLine SC 1214 that the Court exercising revisional jurisdiction cannot reappreciate the facts unless there is some perversity. It was observed:

â€œ9. So far as Issue 1 is concerned i.e. as to whether the appellant got married to Smt Ranju Sarma, is a pure question of fact. All three courts below have given concurrent findings regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher

court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon the fruitless task of determining the issues by reappreciating the evidence.â€

11. This position was reiterated in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986:

2012 SCC OnLine SC 724 wherein it was observed:

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 bear a token of careful consideration and appear to be in accordance with the 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.

12. It is undisputed that the applicant had claimed interim maintenance of ₹15,000/- . The learned Trial Court held that the applicant required maintenance of ₹35,000/- as per her affidavit of assets and liabilities. Therefore, maintenance of ₹25,000/- was justified, especially keeping in view the salary of the respondent and the Income Tax Return filed by him. It was submitted that the learned Trial Court erred in granting more amount than claimed by the wife. This submission cannot be accepted. It was laid down by this Court in Dhani Ram Bhatia v. Kalawati, 2015 SCC OnLine HP 3156 that the Court can award more maintenance than claimed by a wife. It was observed:

20. Mr. Ashwani Kaundal, learned counsel for the petitioner has vehemently argued that the learned Judicial Magistrate, 1st Class, Ghumarwin, District Bilaspur, H.P. has granted more maintenance than claimed for. There is no merit in his contention. It is open to the Court to grant more maintenance than claimed for due to changed

circumstances.â€

13. A similar view was taken by the Madhya Pradesh High Court in Deepa v. Harish Railwani, 2023 SCC OnLine MP 4112 wherein it was observed:

24. So far as the question that the trial court has awarded more than the claimed maintenance amount, in this respect, the applicants had filed the maintenance application on 25/04/2006, at that time, the pay of the non-applicant was Rs. 8,000/- per month and now (then) Rs. 24,000/- per month. In this situation, the learned trial court has awarded the maintenance amount in the favour of the applicants more than the claimed amount. In this respect, coordinate bench of Punjab and Haryana High Court in the case of Amarjeet Singh v. Pushpa Devi [2015 SCC OnLine P&H 14045] observed in paragraph 10 as under:â€

â€œ10. Now the question which requires determination is whether the Magistrate is competent to award maintenance more than the amount claimed by the petitioner in the application, Section 125 Cr. P.C. provides that a Court may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Court thinks fit and to pay the same to such person as the Court may from time to time direct. Under this provision, it is the duty of the Court to provide just maintenance to the deserted wife or destitute child. The amount of maintenance should

be such that a wife is able to maintain herself decently and with dignity. If after considering the material placed before the Court, the Court thinks that a particular amount is a reasonable amount, he is required to award the said amount as maintenance, and in my opinion, he cannot refuse to grant the said amount merely because

the claimant has not claimed such an amount in her application. Once the legislation has cast a duty on the Court to award a just and reasonable amount of maintenance in the facts and circumstances of a case, the same cannot be denied on mere technicalities i.e. the claimants had not claimed the said amount in their application. Once discretion has been given to the Court to award an amount of maintenance, it will always be just and reasonable, in the facts and circumstances of a

case. There is no specific restriction under Section 125 Cr. P.C. that the Court cannot award more than the amount claimed in the petition. Rather a duty has been

imposed on the Court to award compensation which he thinks fit. In such a situation, the Court is not debarred from awarding compensation exceeding the claimed amount.â€

14. Hence, the submission that the Court cannot award more than the claimed amount cannot be accepted.

15. It was laid down by the Honâ€™ble Supreme Court in *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC

(Cri) 356: 2007 SCC OnLine SC 1427 that the wife is entitled to maintain a status which she had in her matrimonial home. It was observed at page

320:

8â€!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 the status of a family.â€

16. Learned Trial Court referred to the affidavit of assets by the respondent which shows that he was earning ₹ 2,47,661/- and he was getting

₹1,38,546/- after the deduction of PF and income tax. He had revealed gross total income ₹42,65,690/- in his income tax return. He paid an income

tax of ₹ 10,86,476 as per the return for the year 2019. This shows that the applicant enjoyed a high status in her matrimonial home and considering the

income of the respondent, maintenance of ₹ 25,000/- per month cannot be said to be excessive.

17. Ms Suhani Guatam, learned vice counsel for the petitioner submitted that the applicant had admitted in her cross-examination while appearing in

the proceedings under the Protection of Women from Domestic Violence Act that she had left her home voluntarily. Therefore, she cannot be held

entitled to the grant of maintenance under Section 125 of Cr.P.C. This submission cannot be accepted. It was laid down by Tripura High Court in

Sarmistha Dewan Ghosh v. Milanmoy Dewan, 2020 SCC OnLine Tri 600 that interim maintenance cannot be denied to a wife on the ground that she had left her matrimonial home. It was observed:

â€œ32. The order reflects that the family court did not keep in mind the avowed object of interim maintenance which has been enunciated by the Apex Court in the case of Savitri W/O Govind Singh Rawat (supra). The consideration as to whether the wife voluntarily left the company of her husband will not come in the way of her getting an interim maintenance allowance. If she can convince the court that she is not able to maintain herself and her husband despite having income and the ability neglects or refuse to maintain his wife, there is no hurdle before the court to grant interim maintenance to the wife. As enunciated by the Apex Court, there is no bar even in passing ex parte order granting interim maintenance if the application is supported by an affidavit. In the given case the applicant wife in her petition supported by an affidavit has referred to numerous incidents of harassment and cruelty meted out to her by her husband. Though her husband has denied such allegations, he has admitted that the petitioner is his wife. It is also admitted by him that he is a chief engineer in ONGC. The monthly salary of the husband is more than Rs. 3 lakhs and the applicant's wife has also submitted documentary proof with regard to the income of her husband before the family court. The wife on the other hand does not have any income of her own for maintaining herself. No more proof is required for granting interim maintenance to a wife. The refusal of maintenance allowance to the wife in such circumstances is an injustice that has seriously affected the legal and substantial rights of the petitioner.â€

18. A perusal of the examination of the applicant does not show that she had left her matrimonial home voluntarily. She repeatedly stated that she was beaten and left at her paternal home. She admitted that she was not turned out of her matrimonial home but that does not falsify her earlier statement regarding beating and leaving her in her paternal home. Thus, there is insufficient evidence, at this stage, to show that the applicant had left her matrimonial home voluntarily.

19. It was submitted that the respondent has filed a petition seeking nullity of the marriage, which is pending before the Family Court at Shimla. This submission will not help the respondent as the applicant is to be treated as the legally wedded wife of the respondent till the marriage between them is dissolved by a valid decree of divorce and the maintenance cannot be denied to her simply on the ground that the respondent has failed has filed a

petition for declaring the marriage as a nullity.

20. No other point was urged.

21. In view of the above, there is no infirmity in the order passed by the learned Trial Court; hence the present petition fails and the same is dismissed.

22. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing, whatsoever, on the merits of the case.

23. Pending application(s), if any, also stand(s) disposed of.