(2024) 10 SHI CK 0034

High Court Of Himachal Pradesh

Case No: Criminal Revision No. 304 Of 2023

Naresh Kumar	APPELLANT
Vs	
Surekha And Another	RESPONDENT

Date of Decision: Oct. 16, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 125, 397
- Evidence Act, 1872 - Section 146

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: R.L. Chaudhary, Jai Prabha

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the order dated 18.4.2023, passed by learned Additional Principal Judge, Family Court, Hamirpur, H.P.

(learned Trial Court), vide which the petition filed under Section 125 of Cr.P.C. by the respondent (applicant before learned Trial Court) was allowed

and maintenance at the rate of ₹3,000/- per month each was awarded to each of the applicants from the date of filing of the petition. (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 revision are that the applicants filed an application under Section 125 of Cr.P.C. for grant of

maintenance @ ₹10,000/- per month to each of the applicants. It was asserted that marriage between the applicant No.1 and the respondent was

solemnized on 12.6.2005 at village Dhangota, Tehsil and District Hamirpur, H.P. according to Hindu Rites and Customs. They started residing

together as husband and wife and applicant No.2 was born to them. The relationship between the parties remained cordial for 5-6 months of the

marriage. The respondent went to Dubai to earn his livelihood and remained in Dubai till 2007. The behaviour of the respondent changed after he

returned from Dubai. He started maltreating, beating and harassing applicant No.1. He started taking up quarrels with applicant No.1 on petty matters

without any reasonable and probable cause. He also levelled false allegations regarding the character of applicant No.1. He denied proper food,

clothing and medicine to her. The applicant tolerated the behaviour of the respondent with the hope that the situation would improve with the passage

of time but in vain. The behaviour of the respondent and his family members did not change after the birth of applicant No.2. Applicants were

compelled to leave the house of the respondent on 1.4.2011. The applicants are residing in the parental home of applicant No.1. They are unable to

earn any money whereas the respondent has a source of income. He has the money earned by him in Dubai and can easily pay ₹10000/- per month to

each of the applicants. Hence, the application was filed for seeking maintenance of ₹10,000/- per month to each of the applicants.

3. The application was opposed by filing a reply admitting the relationship between the parties. It was admitted that the respondent lived abroad from

2005 till 2009. It was asserted that applicant No.1 treated the respondent and his parents with cruelty. Respondent provided everything to applicant

No.1 when she was residing in her matrimonial home. He continuously sent money to her. However, the details of the money sent by the respondent

were not provided by applicant No.1. Applicant No.1 created hindrances in the life of the respondent. She has been residing separately since 2015 and

is serving in a private school. She made a statement in the mediation that she did not claim any maintenance for herself and she would claim

maintenance for the applicant No.2. The respondent agreed to pay the maintenance of ₹3,000/- per month to applicant No.2 but could not provide the

maintenance to her due to compelling circumstances. Applicant No.1 has not performed any matrimonial obligation. She did not attend the death rituals

of the father of the respondent. She is residing separately from the respondent and is not entitled to any maintenance. The respondent was working as

a labourer. Therefore, it was prayed that the present application be dismissed.

4. A rejoinder denying the contents of the reply and affirming those of the application was filed. It was asserted that the statements made during the

mediation proceedings are not admissible in a Court of law and no reliance can be placed upon the statements made during the mediation proceedings.

Therefore, it was prayed that the present application be allowed and maintenance be awarded to the parties.

5. The parties were called upon to lead their evidence and applicant No.1 examined herself. The respondent No.1 examined himself (RW1) and

Surinder Sharma (RW2). Both the parties had also filed the affidavits of other witnesses but did not produce them for their cross-examination,

therefore, no reliance could be placed on the affidavits filed by the parties.

6. Learned Trial Court held that the relationship between the parties was not disputed. The respondent had agreed to pay maintenance to the applicant

No.2 @₹3,000/-per month and the Court had awarded maintenance to her @₹3,000/- per month. Even if the applicant No.1 is earning something she

cannot be held disentitled from claiming maintenance. The respondent claimed his income to be ₹8,000/- per month. However, the State Government

has fixed the minimum wage as ₹300/- per day or ₹10,500/- per month. The respondent can earn minimum wages and easily pay ₹3,000/- per month

as maintenance to each of the applicants. The plea taken by the respondent that the applicant had left the home voluntarily was not established. The

respondent had not shown that he had made any effort to bring the applicant to his home and the neglect was writ large. Therefore, the application

was allowed and maintenance at the rate of ₹3,000/- per month was awarded to each of the applicants.

7. Being aggrieved from the order passed by the learned Trial Court, the respondent has filed the present petition asserting that the learned Trial Court

had failed to notice that applicants had left their home without any reasonable cause and applicant No. 1 cannot be held entitled to any maintenance.

Applicant No.1 was working as a teacher in a private school and she was earning ₹50,000/- per month. This aspect was not considered by the learned

Court below. Efforts were made by the respondent to bring the applicant to his home but applicant No.1 refused to do so because she is more

qualified than the respondent. Applicant No.1 had stated before the mediator that she did not require any maintenance for herself and she only

required maintenance for her daughter. This statement was ignored by the learned Trial Court. The record maintained by the learned Trial Court

shows that applicant No.1 became aggressive during her examination which corroborates the plea taken by the respondent that applicant No. 1 did not

treat him properly. The respondent is working as a casual labourer and he is earning ₹3,000/- to ₹5,000/- per month. It is difficult for him to pay the

maintenance at the rate of ₹3,000/- per month to each applicant. Therefore, it was prayed that the present petition be allowed and the order passed by

the learned Trial Court be set aside.

8. I have heard Mr R.L. Chaudhary, learned counsel for the respondent and Ms Jaya Prabha, Advocate (Court Guardian), for applicant No.2. None

appeared on behalf of applicant No.1, therefore, none could be heard.

9. Mr. R.L. Chaudahry, learned counsel for the respondent submitted that the applicants had left their home voluntarily without any reasonable cause

and they are not entitled to any maintenance. Applicant No.1 was working as a teacher and she was earning more than ₹50,000/- per month. She

could not be held entitled to the maintenance. She had also made a statement before the learned Mediator that she did not claim any maintenance for

herself and this statement was ignored by the learned Trial Court. The respondent is earning ₹3,000/- to ₹5,000/- by working as a casual labourer.

Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

10. Ms Jai Prabha, learned counsel for applicant No.2 supported the order passed by the learned Trial Court and submitted that the maintenance is

awarded to a party to prevent the vagrancy and destitution. The children are entitled to maintenance for incurring the expenses of food, clothing,

residence and their education. The maintenance of ₹3,000/- per month awarded to the applicant No.2 cannot be said to be exorbitant. Hence, she

prayed that the present petition be dismissed. She relied upon the judgments of P. Geeta Vs. V. Tirubarahan TRCMP No. 764 of 2022, decided on

22.12.2022 and Anju Garg Vs. Deepak Kumar Garg, Cr. Appeal No. 1693 of 2022, decided on 28.9.2005 in support of her submission.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Honâ€™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 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€

13. 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.

14. TheÂ respondentÂ hasÂ notÂ specificallyÂ deniedÂ the averments of the application in the reply filed by him. He stated in para 1 of his

proof affidavit (Ex.RW1/A) that marriage between him and applicant no. 1 was solemnized on 12.6.2005 as per Hindu Rites and Customs and a

female child was born to the parties. Therefore, the learned Trial Court had rightly held that the relationship between the parties was undisputed.

15. The applicant No.1 stated in her proof affidavit (Ex.PW1/A) that she and the respondent resided together for 5-6 months. The respondent left for

Dubai to earn his livelihood. She was being harassed by the father, brother and sister-in-law of the respondent. The respondent also used to harass

her. He used to abuse her and level allegations against her character. He used to deprive her of the necessities of life. She and her daughter were

turned out of her matrimonial home. She denied in her cross-examination that she was working as a teacher. She admitted that she had taken a room

on rent at Hamirpur in the year 2015. She admitted that her husband had not gone to Dubai w.e.f. 2009-2010. She denied that she had left her home

and the respondent was stressed due to this act.

16. The statement of this witness that she was being harassed by the respondent and his family members was not specifically challenged in the cross-

examination and the same had gone unrebutted. It was laid down by the Honâ€™ble Supreme Court in State of Uttar Pradesh Versus Nahar Singh

1998 (3) SCC 561 that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the

arguments. This position was reiterated in Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine

SC 4 and it was held at page 34:

â€œ58. A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by

injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or

forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies, and discrepancies, and to prove the

untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18: 50 hrs, therefore, it was required for him to cross-examine the truthfulness of the

prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19: 00 hrs is an incorrect reading of the

arrest form (Ext. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14: 30 hrs at Wanjri Layout, Police

Station, Kalamna. The time i.e. 17: 10 hrs mentioned in Column 2, appears to be when A-1 was brought to Police Station, Lakadganj. As per the IO, A-1 was called for

interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his

employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses

about the place and manner of the arrest, such an argument that the accused was arrested on 1-9-2014 at 18: 50 hrs is not tenable.

59. The House of Lords in a judgment reported as Browne v. Dunn [Browne v. Dunn, (1893) 6 R 67 (HL)] considered the principles of appreciation of evidence.

Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth

on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his

evidence and pass it by as a matter altogether unchallenged. It was held as under:

â€œNow, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a

witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is

intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he

might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to

argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to

give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a

case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has

been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him

without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has

had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.â€

60. Lord Halsbury, in a separate but concurring opinion, held as under:

â€œMy Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to

the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they

have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having

given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to

the accuracy of the facts they have deposed to.â€

61. This Court in a judgment reported as State of U.P. v. Nahar Singh [State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850], quoted from Browne

[Browne v. Dunn, (1893) 6 R 67 (HL)] to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged

and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by

the opposite party. This Court held as under: (Nahar Singh case [State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850], SCC pp. 566-67, para 13)

â€œ13. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the

delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of

cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a

witness to be questioned:

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend

directly or indirectly to expose him to a penalty or forfeiture.â€

62. ThisÂ CourtÂ inÂ aÂ judgmentÂ reportedÂ as Muddasani Venkata Narsaiah v. Muddasani Sarojana [Muddasani Venkata Narsaiah v. Muddasani

Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268] laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The

rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under : (SCC pp. 294-95, paras 15-16)

â€œ15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed, PW 1 and PW 2

have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance not of procedure one is required to put

one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The

effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963

SC 1906]. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is

required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal

Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440]

16. In Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60], it has been laid down that the matters sworn

to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of

Calcutta in A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359] has laid down that the party is

obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and

not merely a technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949

SCC OnLine MP 35: AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of

attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it

in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan

Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of

administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the

witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing

the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.â€

17. Therefore, the learned Trial Court had rightly accepted the version of the applicant no. 1 that she was being harassed in her matrimonial home.

18. The respondent stated in his proof affidavit (Ex.RW1/A) that applicant No.1 had left the company of the respondent without any justifiable cause

and she was residing separately at Hamirpur. He stated in his cross-examination that his father had expired and his estate had been inherited by him

and his brother. He denied that he used to give beatings to applicant No.1. He also denied that he was not providing any maintenance to applicant

No.1. He volunteered to say that applicant No. 1 used to beat him. He admitted that he had only paid maintenance of ₹2,000/- to the applicant No.2.

19. The statement of this witness is not satisfactory. He has stated that applicant No.1 used to beat him whenever they resided together, however, this

fact was not mentioned in the reply filed by him and it is not shown that he had made any complaint to anyone regarding the beatings. Hence, this

version cannot be relied upon.

20. The respondent examined Surinder Kumar (RW2), who stated in his proof affidavit (Ex.RW3/A) that applicant No.1 used to leave her matrimonial

home and visit her parental home without any reason. She used to quarrel with her husband and her behaviour was not proper. He stated in his cross-

examination that he is the representative of Panchayat and is running a shop in the village. The respondent is his neighbour and he had attended the

marriage. He knew about the relationship between the parties because he was a neighbour. He also knew about applicant No.1 leaving her

matrimonial home. She had left the matrimonial home many times. He had given his affidavit based on the guesswork.

21. The statement of this witness is not satisfactory. Even if it is assumed that he is a neighbour of the parties, he would not have any knowledge

regarding the affairs inside the respondentâ€™s house.

22. Thus, on the balance of the probability, the version of the applicant that the respondent had treated applicant No.1 with cruelty and had turned her

out of her matrimonial home has to be accepted as correct.

23. It was submitted that applicant No.1 is working as a teacher in a school and she is not entitled to maintenance. However, there is no proof of this

fact. The respondent could not provide the name of the school where the applicant was working. He specifically stated that he did not know the name

of the school or the place where the applicant No.1 was posted. Similarly, witness Surinder Sharma stated in his cross-examination that he had heard

that Surekha was employed in a private school and he could not say where she was residing. This statement also shows that his statement is hearsay

and the same cannot be relied upon; thus, the learned Trial Court had rightly discarded the statement.

24. The learned Trial Court had rightly held that even if applicant No.1 was earning something, that was not sufficient to deny maintenance to her. It

was laid down by the Honâ€™ble Supreme Court in Rajathi v. C. Ganesan, (1999) 6 SCC 326t hat words unable to maintain herself would include

the means available to the wife when she was living with her husband and does not include the efforts made by her after desertion to survive. It was

observed:

â€œThe words ""unable to maintain herself"" would mean that means available to the deserted wife while she was living with her husband and would not take within

themselves the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to

maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or

refuse to maintain them or any one of them.â€

25. This position was reiterated in Rajnesh v. Neha, (2021) 2 SCC 324: (2021) 2 SCC (Civ) 220: 2020 SCC OnLine SC 90w3 herein it was

observed:

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have

provided guidance on this issue in the following judgments:

90.1. In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199: (2018) 5 SCC (Civ) 30;8 See also the decision of the Karnataka

High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848: 2016 Cri LJ 4794 (Kar),]this Court held that merely because the wife is

capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether

the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.

[Chaturbhuj v. Sita Bai, (2008) 2 SCC 316: (2008) 1 SCC (Civ) 547: (2008) 1 SCC (Cri) 356 S]ustenance does not mean, and cannot be

allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252: 2015 Cri LJ 3451]

90.2. In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715: (2015) 3 SCC (Civ) 753: (2015) 3

SCC (Cri) 589] the wife had a postgraduate degree and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife

had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention and held that merely

because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC

OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3

SCC (Civ) 753 : (2015) 3 SCC (Cri) 589,] held that neither the mere potential to earn nor the actual earning of the wife, howsoever meagre, is

sufficient to deny the claim of maintenance.

90.4. 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 not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander

Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del 174]T. he onus is on the husband to establish with necessary material that there

are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the husband

does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705: (2015) 3 SCC (Civ) 274 :

(2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del

174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

26. Therefore, the learned Trial Court had rightly awarded maintenance to applicant No.1.

27. It was submitted that applicant No.1 had made a statement before the learned Mediator that she did not want any maintenance for herself. It was

rightly pointed out in the reply that the proceedings before the learned Mediator are based upon confidentiality. This High Court has framed the High

Court of Himachal Pradesh Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2005. Rule 20 provides for confidentiality disclosure

and inadmissibility of information. Rule 20(ii) provides that the receipt or perusal of any document or any information by the Mediator while serving in

that capacity shall be confidential and the Mediator shall not be compelled to reveal the information regarding the document, record or oral information

that transpired during the mediation. Rule 20 (iii) provides that the parties shall maintain confidentiality in respect of the mediation process and shall not

rely on the said information. Thus, it is apparent that the statements made before the learned Mediator are confidential and cannot be used in a Court

of law.

28. It was laid down by the Honâ€™ble Supreme Court in Moti Ram v. Ashok Kumar, (2011) 1 SCC 466 : (2011) 1 SCC (Civ) 334: 2010 SCC

OnLine SC 1398 that the Mediator should not disclose any information obtained by him during mediation. It was observed at page 466:

â€œ2. In this connection, we would like to state that mediation proceedings are totally confidential proceedings. This is unlike proceedings in court which are

conducted openly in the public gaze. If the mediation succeeds, then the mediator should send the agreement signed by both parties to the court without mentioning

what transpired during the mediation proceedings. If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the

court stating that the â€œmediation has been unsuccessfulâ€. Beyond that, the mediator should not write anything which was discussed, proposed or done during

the mediation proceedings. This is because in mediation, very often, offers, counter offers and proposals are made by the parties but until and unless the parties

reach to an agreement signed by them, it will not amount to any concluded contract. If the happenings in the mediation proceedings are disclosed, it will destroy the

confidentiality of the mediation process.

3. We are compelled to observe this because the mediators should know what kind of reports they should send to the courts. The report sent to this Court should not

have mentioned the proposals made by the parties, but should only have stated that the mediation was unsuccessful.â€

29. Kerala High Court held in Sreelal v. Murali Menon, 2014 SCC OnLine Ker 28501: (2014) 3 KLT 536 : (2014) 4 BC 296 : (2015) 3 CCC

528 : (2015) 4 CCC 30: 2014 ACD 921 : (2014) 3 KHC 316th at agreements entered between the parties before the mediator cannot be relied

upon. It was observed at page 543:

â€œ15. Then, the question is whether the agreement entered into between the parties in a mediation can be treated as evidence in a criminal matter. It may be

mentioned here unless the agreement is accepted by the court and a decree is passed under S. 89 of the Code of Criminal Procedure r/w 0.23 R. 3 of the Code of Civil

Procedure, that will have no effect, unless that has been converted into a conciliation agreement based on which an award is passed by the Conciliator under the

provisions of the Arbitration and Conciliation Act Further, it is the cardinal principle in the mediation that whatever transpired in the mediation cannot be disclosed

even before the court of law and that cannot be called upon to be produced as evidence as well as it will affect the confidentiality of the things transpired in the

process of mediation. So the party who did not honour the settlement which was effected in the process of mediation, then, is not entitled to use the same as

evidence before the court and the agreement also cannot be marked in evidence as it has no legal effect unless it is accepted by the court and a decree is passed

under S. 89 r/w O. 23 R. 3 of the Code of Civil Procedure. That cannot be possible in a Criminal Court. Further, even if the party had agreed to settle the matter for a

lesser amount than the amount mentioned in the cheque in the mediation, it cannot be said that that was the amount payable as in the mediation, parties can forgo so

many things for the purpose of achieving harmony between the parties and restore their relationship. So the amounts arrived in a mediation also cannot be used as

evidence for coming to the conclusion that the amount mentioned in the cheque is not the real amount due, and the complainant is not entitled to maintain the action

on the basis of that cheque. The court has to allow the parties to adduce evidence ignoring the mediation agreement and dispose of the case on the basis of evidence

adduced by parties as it should not be put in evidence in view of the bar under rules 20, 21 and 22 of the Civil Procedure (Alternative Disputes Resolution) Rules

Kerala 2008 which reads as follows: â€

Rule 20: â€" Confidentiality, disclosure and inadmissibility of informationâ€

(1) The mediator shall not disclose confidential information concerning the dispute received from any party to the proceedings unless permitted in writing by the said

party.

(2) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other

proceedings as to:

(a) views expressed by a party in the course of the mediation proceedings;

(b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or

mediators;

(c) Proposals made or views expressed by the mediator.

(d) Admission made by a party in the course of mediation proceedings.

(e) The fact that a party had or had not indicated willingness to accept a proposal.

(3) There shall be no stenographic audio or video recording of the mediation proceedings.

Rule 21: â€" Privacy- Mediation sessions and meetings are private; only the concerned parties or their counsel or authorised representatives can attend. Other

persons may attend only with the permission of the parties or with the consent of the mediator.

Rule 22: â€" Immunity- No mediator shall be held liable for anything bona fide or omitted to be done by him during the mediation proceedings for civil or criminal

action nor shall he be summoned by any party to the suit to appear in a court of law to testify in regard to information received by him or action taken by him or in

respect of drafts or records prepared by him or shown to him during the mediation proceedings.

16. So, that cannot be used in evidence in a court of law as well, unless, it was accepted by the parties and the terms of the agreements were put into effect by the

parties.

30. It was held in Arjab Jena vs. Utsa Jena (05.01.2022 â€" SC Order): MANU/SCOR/03592/202t2h at statement made during mediation

cannot be taken on record as it would impede conciliation and is contrary to the principle of confidentiality.

â€œWe disapprove of the observations made in the impugned order which refer to the comments made during the course of the mediation or settlement proceedings.

The High Court should not have taken the aforesaid comments on the record, as the same would impede conciliation and is contrary to and impinges on the principle

of confidentiality. Accordingly, paragraphs 11 and 12 of the impugned order would be erased from the record.â€

31. Thus, no advantage can be derived from the statement made by the applicant No.1 before the learned Mediator.

32. Even otherwise, applicant No.1 had only stated that if the respondent did not want to provide any maintenance to her, it was fine but he should

provide maintenance to her daughter. This shows that applicant No.1 was concerned about the maintenance of her daughter and had not forgone the

maintenance being claimed by her. She specifically stated in her cross-examination that she had made a statement before the learned Mediator but

she wanted maintenance for herself which clearly shows that she had not abandoned the claim of maintenance. Therefore, the plea taken by the

respondent that the applicant no. 1 is not entitled to any maintenance cannot be accepted.

33. It was rightly pointed out by the learned Trial Court that the respondent being an able-bodied person can easily earn income and he cannot avoid

the payment of maintenance to the applicant on the ground that he was an unemployed person. The minimum wages in the State of Himachal Pradesh

w.e.f. 1.4.2023 were fixed at ₹375/- or ₹11,250/- per month. The learned Trial Court had only awarded maintenance to the applicants @3,000/- per

month each, which means that he would have to pay ₹6,000/- and would be left with ₹5,250/- per month which would be sufficient to maintain him.

Further learned Trial Court had rightly pointed out that he had inherited the property from his father and he was getting income from the same.

Therefore, the maintenance of ₹3,000/- each awarded to the applicants cannot be said to be excessive or beyond the capacity of the respondent.

34. Thus, there is no infirmity in the order passed by the learned Trial Court. Hence the present petition is dismissed.

35. The pending applications, if any, are also disposed of.

36. Registry is directed to transmit the records of the case to learned Trial Court forthwith.