

Shalu Ojha vs Prashant Ojha on 23 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3693, 2018 CRI LJ 4040, (2018) 189 ALLINDCAS 267 (SC), (2018) 104 ALLCRIC 996, (2018) 189 ALLINDCAS 267, (2018) 2 ALD(CRL) 771, (2018) 2 DMC 788, (2018) 2 UC 1185, 2018 (3) ABR(CRI) 273, (2018) 3 BOMCR(CRI) 594, (2018) 3 CRILR(RAJ) 768, (2018) 3 CRIMES 428, (2018) 3 CURCC 400, (2018) 3 CURCRIR 197, (2018) 3 RECCRIR 1004, (2018) 4 CIVILCOURTC 207, (2018) 72 OCR 265, 2018 (8) SCC 452, (2018) 9 SCALE 127, 2018 CRILR(SC MAH GUJ) 768, 2018 CRILR(SC&MP) 768, (2019) 1 RAJ LW 173, (2019) 3 MH LJ (CRI) 28, AIR 2018 SC(CRI) 1153, AIRONLINE 2018 SC 67

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Bench: Ashok Bhushan, A.K. Sikri

NON-REPO

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 3935 OF 2016

SHALU OJHA

.....PET

VERSUS

PRASHANT OJHA

.....RESPO

JUDGMENT

A.K. SIKRI, J.

On an earlier occasion, after hearing the petitioner who appeared in person, and the learned counsel for the respondent, we had passed order dated September 4, 2017, thereby disposing of this petition with the following directions:

(a) insofar as domestic violence proceedings before the Family Court are concerned, necessary documents shall be filed by both the parties within four weeks from today

and evidence led pursuant thereto. The trial court shall endeavour to decide the case finally, within a period of eight months from today, on the basis of evidence and fix the rate of Reason:

maintenance finally; and

(b) Crl.MC. No. 850 of 2015, pending before the High Court, shall be taken up for hearing immediately and the High Court shall endeavour to dispose of the same as expeditiously as possible and determine at what rate interim maintenance is to be given, i.e. whether order dated February 13, 2015 passed by the learned ASJ need any modification or not.

2) Thereafter, review petition was filed by the petitioner pointing out that there was apparent error in passing the aforesaid directions inasmuch as matter was remitted to the High Court for presumption that proceedings were pending but the fact is that no such proceedings are pending under the Protection of Women from Domestic Violence Act, 2005 (for short the 'DV Act').

Realising this error, the review petition was allowed and the Special Leave Petition was restored which has been heard afresh.

3) Notwithstanding the aforesaid factual error which had crept in the order dated September 4, 2017, the other factual details recorded in the said order are a matter of record. Therefore, it would be in the fitness of things to reproduce the same:

Though this case has a chequered history, only those facts which are very material are taken note of, eschewing other unnecessary details, in order to avoid burdening this judgment with the facts which may not be relevant.

The petitioner is the respondent's wife. It is unfortunate that after their marriage on April 20, 2007 in Delhi, they stayed together hardly for four months. Thus, for almost ten years they have parted company and are living separately. It is not necessary to go into the reasons which led to the matrimonial discord as in the present petition this Court is concerned only with the dispute regarding the rate of maintenance.

The petitioner had filed an application sometime in June 2009 claiming maintenance under the provisions of Section 12 of the DV Act. In that application, apart from other reliefs, she has claimed maintenance as well. Order dated July 05, 2012 was passed by the learned Metropolitan Magistrate granting interim maintenance @ Rs.2,50,000/- per month with effect from the date of filing of the complaint as well as compensation of Rs.1,00,000/-. Since the respondent did not honour the said order, the petitioner filed the execution petition for recovery of the arrears of maintenance. In the meantime, the respondent challenged the order of the Metropolitan Magistrate granting maintenance, by filing appeal under Section 29 of

the DV Act, in the Court of Additional Sessions Judge, Delhi (for short, the 'ASJ'). In the said appeal, the learned ASJ issued interim directions dated January 10, 2013 for depositing of the entire arrears of maintenance within two months. As this order was not complied with, the appeal filed by the respondent was dismissed on May 07, 2013. This order of dismissal was challenged by the respondent before the High Court. In those proceedings, order dated July 23, 2013 was passed allowing the appellant herein to file the reply, etc. As no stay was granted, order dated July 23, 2013 was challenged by the respondent in this Court by filing a special leave petition. This Court, however, did not entertain the same. At the same time, while disposing of the special leave petition, observations were made to the effect that if the parties apply for mediation, the matter shall be referred to the Delhi High Court Mediation and Conciliation Centre at the earliest. Keeping in view these observations, the High Court referred the dispute to the Mediation Centre at the Delhi High Court and also stayed the execution proceedings in the meantime. Mediation proceedings failed. As a result, the High Court took up the matter on merits and passed orders dated September 10, 2013 directing the respondent to pay Rs.5,00,000/- on or before September 30, 2013 and another sum of Rs.5,00,000/- on or before October 31, 2013. The petitioner filed an application seeking modification of these orders and prayed for the directions to the respondent to pay entire arrears of maintenance as per the order of the Family Court in domestic violence proceedings. In the said application only notice was issued and since interim stay on the execution proceedings continued, the petitioner filed special leave petition in this Court for vacation of the interim order passed by the High Court in the execution proceedings. This special leave petition was converted into appeal on grant of leave, in which judgment was delivered on September 18, 2014 allowing the said appeal. Operative portion of the said judgment reads as under:

“31. The issue before the High Court in Crl.MC. No. 1975 of 2013 is limited i.e. whether the sessions court could have dismissed the respondent's appeal only on the ground that respondent did not discharge the obligation arising out of the conditional interim order passed by the sessions court. Necessarily the High Court will have to go into the question whether the sessions court has the power to grant interim stay of the execution of the order under appeal before it.

32. In a matter arising under a legislation meant for protecting the rights of the women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order.

33. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside.

34. We are of the opinion that the conduct of the respondent is a gross abuse of the judicial process.

We do not see any reason why the respondent's petition Crl.MC No. 1975 of 2013 should be kept pending. Whatever be the decision of the High Court, one of the parties will (we are sure) approach this Court again thereby delaying the conclusion of the litigation. The interests of justice would be better served if the respondent's appeal before the Sessions Court is heard and disposed of on merits instead of going into the residuary questions of the authority of the appellate Court to grant interim orders or the legality of the decision of the Sessions Court to dismiss the appeal only on the ground of the non-compliance by the respondent with the conditions of the interim order. The Criminal Appeal No. 23/2012 stands restored to the file of the Sessions Court.

35. We also direct that the maintenance order passed by the magistrate be executed forthwith in accordance with law. The executing court should complete the process within 8 weeks and report compliance in the High Court. We make it clear that such hearing of the Sessions Court should only be after the execution of the order of maintenance passed by the Magistrate.

36. In the event of the respondent's success in the appeal, either in full or part, the Sessions Court can make appropriate orders regarding the payments due to be made by the respondent in the execution proceedings." Notwithstanding the aforesaid judgment, as the respondent did not clear the entire arrears of maintenance, he was sent to judicial custody, where he remained till December 22, 2014. A miscellaneous application was filed by the respondent in this Court in the afore-mentioned disposed of appeal stating that he was in judicial custody due to his inability to pay the entire maintenance and requested that his matter be heard by the Sessions Court on merits. In this application this Court passed orders dated December 18, 2014 directing the Sessions Court to decide the appeal of the respondent within six weeks. He remained in judicial custody till December 22, 2014, on which date he was released. During this period, though the respondent had paid certain amounts towards maintenance, but he did not clear the entire outstanding dues.

Thereafter, on February 13, 2015, the learned ASJ decided the appeal of the respondent reducing the maintenance from Rs.2,50,000/-, as fixed by the Family Court, to Rs.50,000/- per month, from the date of filing of the petition under Section 12 of the DV Act. This order was challenged by the appellant by filing a petition (Crl.MC. No. 850 of 2015) before the High Court under Section 482 read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.').

It will also be of interest to note that the maintenance of Rs.50,000/-, as fixed by the learned ASJ, even when reduced significantly from Rs.2,50,000/-, was still not acceptable to the respondent either. Seeking further reduction in the maintenance, the respondent also challenged this order before the High Court by filing petition under Section 482 Cr.P.C. However, his petition was dismissed by the High Court vide order dated April 06, 2015.

The special leave petition filed by the respondent there against was also dismissed by this Court on May 11, 2015. In this manner, insofar as maintenance granted by the learned ASJ @ Rs.50,000/- per month is concerned, this order has attained finality qua the respondent. The question, therefore,

is as to whether the petitioner is entitled to enhancement and whether the learned ASJ rightly reduced the amount of maintenance.

Though, the petitioner has filed a petition under Section 482 Cr.P.C., which is registered as Crl.MC. No. 850 of 2015, as pointed out above, and the same is still pending. Notwithstanding, the petitioner has chosen to file the instant special leave petition challenging the order dated February 13, 2015 passed by the ASJ.

Normally, when the proceedings are still pending before the High Court, where same order dated February 13, 2015 passed by the ASJ is challenged, this Court should not have entertained the instant petition from the very beginning. However, notice was issued in this petition, keeping in mind the consideration as to whether the dispute can be resolved amicably, suitably and appropriately by this Court. For this purpose, matter was taken up from time to time. Attempts were even made that the parties settle all their disputes amicably. We even called the parties to the Chambers and had discussions with them. However, amicable solution to the problem, acceptable to both the parties, could not be achieved.

The petitioner, who appears in person, has submitted that there were no valid reasons for the learned ASJ to reduce the maintenance. In order to prove that the respondent is a man of means who is running number of businesses either as the proprietor or partner of firm(s) or shareholder/director in certain companies and possesses various assets and is also enjoying the life of affluence, she has produced plethora of documents in support. The respondent has refuted the authenticity or the relevance of those documents and his submission is that his stakes in all these businesses are no longer there. According to him, some of the companies/firms mentioned by the petitioner never took off and started any business and in some other companies he no longer enjoys any stakes. Picture painted by the respondent is that he is undergoing very hard times and his financial condition is pathetic. It is also stated that he had to even go behind bars and remain in custody for more than fifty days because of his inability to pay the arrears.

4) We may point out that during arguments, it was contended by learned counsel for the respondent that apart from the monthly maintenance amount which the respondent was giving to the petitioner every month, the petitioner had some other source of income as well. This submission was based on the premise that the amount of maintenance so far received by the petitioner, which was to the tune of Rs.49 lakhs, was kept by the petitioner in the fixed deposits accounts in the banks. According to him, it proves that the petitioner had other source of income and she was employed/self-employed and from that income, she was meeting her day to day needs. We accordingly passed order dated January 29, 2018 directing the petitioner to file an affidavit of her income which would be in the format as prescribed in the judgment of Delhi High Court in the case of Kusum Sharma v. Mahinder Kumar Sharma decided on January 14, 2015 (FAO No. 309/1996). Respondent was also given opportunity to file additional documents along with affidavit. Such an affidavit of income was, therefore, filed by the petitioner. Respondent also filed reply to the said income affidavit to which petitioner filed her rejoinder.

5) In the income affidavit filed by the petitioner in the prescribed format, she has, inter alia, mentioned that she is staying with her parents in their house in Mansarovar Garden. The petitioner has also mentioned about monthly expenditure. Col. 11 and Col. 16 of Part I being relevant are reproduced below:

Sl. No.	Description	Particulars
11.	Monthly expenditure mentioned in S. No. 60)	(as Rs. 1.5 lac approx. spent jointly by parents and self. My share in the above expenditure is around Rs. 1 lac per month.

16. If not staying at Matrimonial Staying with my parents in House home, relationship and in which my brother has a sizable income of the person with share. Income Rs. 1.5 lac p.m. whom you are staying?

6) It is not understood as to how petitioner's share of expenditure is Rs. 1 lakh per month out of Rs.1.5 lakhs monthly expenditure. Likewise, it is not explained in Col. 16 as to in what form, income of Rs. 1.5 lakhs per month is generated and who is earning that income. Of course, the petitioner has otherwise maintained that she is not having any other source of income except the amount of maintenance given to her by the respondent. The petitioner has also stated that she is compelled to live in her parents house as the maintenance amount is not sufficient even to pay monthly rent of an apartment.

7) In Part II of the affidavit, the petitioner has made averments relating to respondent. The petitioner says that respondent is earning about Rs.20 lakhs per month. She has given the details of certain business ventures/restaurants owned by the respondent in which he is having his share. The petitioner has also given particulars of assets allegedly owned by the respondent. The petitioner has annexed photocopies of various documents in support of her assertions.

8) In the reply affidavit filed by the respondent, it is averred that the petitioner is maintaining four bank accounts and the total amount lying in these accounts is Rs.8,36,610/-. It is also stated that the petitioner is having fixed deposits in the banks for a total sum of Rs. 35,75,000/-. In this manner, the total bank balance of the petitioner is Rs.44,11,610/-. As against this, the respondent has paid to the petitioner a sum of Rs.49 lakhs from June 4, 2009 to July, 2017. Thus, in the last eight years, against a sum of Rs.49 lakhs paid by the respondent to the petitioner, the petitioner is still having bank balance of Rs.44 lakhs. According to the respondent, it would be inconceivable that petitioner has spent only Rs.5 lakhs of rupees (or little more if interest earned by the petitioner on the aforesaid Rs.49 lakhs is added) in eight years and that shows that she has other sources of income as well. Other averments in the petitioner's affidavit was also denied including her share of expenditure in the neighbourhood of Rs.1 lakh per month or that respondent is earning Rs.20 lakhs per month. In respect of the particulars given by the petitioner about the businesses of the respondent, the respondent has denied the same and submits that, at present, there is no Restaurant or Bar anywhere in India in which respondent has any share or interest. He has his own explanation and has given alleged circumstances in which he had to give up his share in certain businesses. The petitioner has controverted his averments in her rejoinder affidavit. During arguments, the

petitioner also tried to demonstrate, by referring to certain documents filed by her, that the respondent was indulging in falsehood.

9) We have given a glimpse of the respective cases set up by both the parties, without giving details thereof, as asserted by the petitioner and the manner in which the respondent has refuted the same.

10) After giving conscious and objective consideration to the documents placed on record by both the sides, we are of the view that it is only after the evidence is led by both the parties, the veracity and evidential value of such material can be finally adjudged, more particularly, when the said material and assertions of the parties would be tested with their cross-

examination.

11) The present proceedings arise out of the petition which was filed by the petitioner under Section 12 of the DV Act. The trial court had arrived at a figure of maintenance on the basis of affidavits filed by both the parties along with their respective documents. Same exercise is undertaken by the learned ASJ in the impugned order while adjudging the correctness of the order passed by the trial court and, in the process, reducing the maintenance from Rs.2.50 lakhs to Rs.50,000/- per month. This obviously happened as the proceedings under the DV Act are of summary nature.

12) In these circumstances, the appropriate course of action would be to allow the petitioner to file an application for maintenance under the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Code of Criminal Procedure, 1973 so that in these proceedings, both the parties lead their documentary and oral evidence and on the basis of such material, appropriate view is taken by the said Court.

13) We accordingly dispose of this petition by granting liberty to the petitioner to move appropriate application for maintenance, as indicated above. Once such application is moved, same shall be decided by the concerned Court most expeditiously having regard to the fact that the petitioner is fighting for her maintenance for last number of years and these proceedings should attain finality at the earliest. We also make it clear that any maintenance fixed shall not, in any case, be less than Rs.50,000/- per month which figure of maintenance has already attained finality.

14) As a sequel, the respondent shall continue to pay Rs.50,000/- per month to the petitioner in the meanwhile. The present petition stands disposed of accordingly.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN)
NEW DELHI;

JULY 23, 2018.