

Anju Garg vs Deepak Kumar Garg on 28 September, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Dinesh Maheshwari

REPO

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1693 OF 2022
[Arising out of SLP(Crl.) NO. 10353 OF 2018]

ANJU GARG & ANR.

APPELLANT(S)

VERSUS

DEEPAK KUMAR GARG

RESPONDENT

J U D G M E N T

BELA M. TRIVEDI, J.

- 1) Leave granted.
- 2) The appellants herein are the wife and the son of the responde

present appeal is directed against the judgment and order dated 10 th September 2018 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 05/2017, whereby the High Court has dismissed the Revision application filed by the appellants, challenging the order passed by the District Judge, Family Court-1, Faridabad, Haryana (hereinafter referred to as the “Family Court”). The Family Court vide order dated 09.12.2016 had dismissed the Maintenance Petition filed by the appellants under Section 125 of Cr.P.C., qua the appellant no. 1 -wife (original applicant no. 1) and her daughter Ms. Megha Garg (original applicant no. 2), and had allowed the application qua the son-appellant no. 2 (original applicant no.3) granting him maintenance allowance of Rs. 6,000/- per month from the date of filing of application till he attained the age of 18 years.

3) The short facts giving rise to the present Appeal are that the appellant no.1 and the respondent had married on 07.12.1991 as per the Hindu rites and out of the said wedlock, two children i.e.,

daughter Megha Garg and son Rachit Garg were born on 10.10.1992 and 11.04.1999 respectively. The appellants (original applicants) filed the Maintenance Petition under Section 125 of Cr.P.C. seeking maintenance from the respondent alleging inter-alia that the respondent was subjecting the appellant-wife to utmost cruelty and physical and mental torture. As a result thereof, she had to leave her matrimonial home along with children time and again. Allegations were also made against the respondent that he was demanding Rs. One crore as dowry from the father of the appellant no. 1. Though, her father had given him Rs. 2,00,000/- in 2005, and had also made payment of Rs. 4,50,000/- to one Rajdip Soan Industries, on behalf of the respondent to pay off the loan, the respondent had continued to harass the appellant. Ultimately, the appellant along with her children left the matrimonial home in 2010 and started residing in a rental premises. According to the appellants-applicants, the respondent had failed and neglected to maintain them, and they being unable to maintain themselves, the Maintenance Petition under section 125 of Cr.P.C. was filed.

4) The said petition was contested by the respondent by filing a reply. The respondent while not denying the marriage with the appellant no.1, had denied the allegations with regard to the demand of dowry and harassment. He also denied that he had failed and neglected to maintain the appellants. According to him, the appellant had left her matrimonial home along with children without any reason. The respondent while admitting that daughter Megha was born out of his wedlock with the appellant, had alleged that the appellant no. 2 Master Rachit was not his biological son.

5) The Family Court vide the order dated 15.07.2014 had granted Interim Maintenance Allowance of Rs. 40,000/- per month in favour of the appellants, however, the daughter Megha having attained majority, no interim maintenance was granted to her. It appears that the respondent had filed an application in the Family Court praying for the DNA test to substantiate his allegation that the son Rachit was not his biological son, however his application was dismissed by the Family Court vide order dated 19.02.2014. It further appears that despite issuance of conditional warrants of arrest against the respondent by the Family Court, he had failed to appear in the Court and to make payment of interim maintenance, and therefore his defence was also struck off vide the order dated 16.07.2015. The respondent had challenged all the three orders passed by the Family Court, by filing Revision Applications before the High Court, however, in none of the said proceedings, the High Court had granted any stay of the proceedings of the Family Court. The appellant-wife, therefore, in support of her petition examined herself along with other 04 witnesses and adduced documentary evidence, The Family Court after appreciating the said evidence passed the order rejecting the application of appellant no.1 and her daughter, and granting maintenance allowance of Rs. 6,000/- per month to the appellant no.2 (original applicant no.3). As stated earlier, being aggrieved by the same, the appellants had preferred the revision application before the High Court, which has been dismissed vide the impugned order.

6) This Court at the request of ld. counsel for the parties had referred the matter to the Supreme Court Mediation Centre for exploring the possibility of settlement, however, the same having failed, this Court had passed the following order on 17.08.2022:-

“It has been pointed out by the learned counsel for the parties that the efforts for settlement have not fructified. Hence, we have commenced hearing of the matter.

During the course of submissions, learned counsel for the petitioners has made a pertinent point that the respondent-husband indeed leveled allegation of the personal nature against the petitioner No. 1 questioning her chastity, particularly with reference to the birth of the son and therefore, she cannot be said to be unjustified in living separate.

We have taken note of the submissions so made and have posed the question to the learned counsel for respondent that prima facie the petitioner No. 1 appears to be justified in living separately and if that be so, her entitlement to claim maintenance cannot be ignored. Learned counsel for the respondent prays for time to complete his instructions as also to advise the respondent appropriately.

Time, as prayed for, is allowed.”

7) The Court thereafter had heard the learned counsel for the parties, as also the respondent who was present in person in the Court on 16.09.2022.

8) The learned counsel for the appellants vehemently submitted that the High Court had passed the impugned order in a very perfunctory manner without appreciating the conduct of the respondent during the proceedings before the Family Court. He submitted that the version of the appellant-wife, who had stepped into the witness box, as also the version of the other witnesses examined by her had remained unchallenged, as the Family Court had closed the right of the respondent to cross-examine the witnesses and, therefore, there was no reason for the Family Court not to believe the version of the appellant-wife which was stated by her on oath. However, the Family Court accepted all the oral submissions of the learned counsel for the respondent, without there being any evidence on record adduced by the respondent, and disallowed the Maintenance application qua the appellant-wife, and the High Court also erroneously confirmed the said order passed by the Family Court.

The learned counsel for the respondent however submitted that the appellant-wife had left the matrimonial home along with the children without any justifiable reason and had failed to prove that she was unable to maintain herself. He further submitted that though the respondent has a party plot, the same having been closed, he has no source of income. According to him, the concurrent findings of facts recorded by the two courts, should not be interfered by this Court.

9) At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in *Bhuwan Mohan Singh vs. Meena & Ors.* 1. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under

Section 125 Cr.P.C have to be dealt with by the Court. It held as under:

“In *Dukhtar Jahan v. Mohd. Farooq* [(1987) 1 SCC 624 :

1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)

16. “... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)* [(1991) 2 SCC 375 : 1991 SCC (Cri) 442] , while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. “Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.” 1 (2015) 6 SCC 353

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* [(1996) 4 SCC 479 : 1996 SCC (Cri) 762] , while advertng to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. “... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

10. In *Chaturbhuj v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , reiterating the legal position the Court held : (SCC p. 320, para 6)

6. “... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man

to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636 : 2005 SCC (Cri) 787] .”

11. Recently in *Nagendrappa Natikar v. Neelamma* [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346] , it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children”.

10) This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuj vs, Sita Bai*², it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

11) The Family Court, in the instant case had not only over-looked and disregarded the aforesaid settled legal position, but had proceeded with the 2 (2008) 2 SCC 316 proceedings in absolutely pervert manner. The very fact that the right of the respondent to cross-examine the witnesses of the appellant-original applicant was closed, as he had failed to appear before the Family Court despite the issuance of warrants, clearly established that he had no regards for his own family nor had any regards for the Court or for the law. The allegations made by the appellant-wife in her evidence before the Court had remained unchallenged and, therefore, there was no reason for the Family Court to disbelieve her version, and to believe the oral submissions made by the learned counsel appearing for the respondent which had no basis. In absence of any evidence on record adduced by the respondent disputing the evidence adduced by the appellant, the Family Court could not have passed the order believing the oral submissions of the learned counsel for the respondent. She had clearly stated as to how she was harassed and subjected to cruelty by the respondent, which had constrained her to leave the matrimonial home along with her children, and as to how the respondent had failed and neglected to maintain her and her children. She had also proved by producing the documentary evidence that her father had paid money to the respondent from time to time to help the respondent for his business. Even if the allegations of demand of dowry by the respondent were not believed, there was enough evidence to believe that money was being paid to the respondent by the father of the appellant-wife, which substantiated her allegation that the respondent was demanding money from her father and was subjecting her to harassment. The errant respondent had also gone to the extent of questioning her chastity alleging that Rachit was not his biological son. There was nothing on record to substantiate his such baseless allegations. His

application for DNA test was also rejected by the Family Court. Of course, the Family Court granted the Maintenance petition so far as the appellant no.2-son was concerned, nonetheless had thoroughly mis-directed itself by not granting the maintenance to the appellant-wife.

12) Such an erroneous and perverse order of Family Court was unfortunately confirmed by the High Court by passing a very perfunctory impugned order. The High Court, without assigning any reasons, passed the impugned order in a very casual manner. This Court would have remanded the matter back to the High Court for considering it afresh, however considering the fact that the matter has been pending before this Court since the last four years, and remanding it back would further delay the proceedings, this Court deemed it proper to pass this order.

13) Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs.10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no. 2-son.

14) It is accordingly directed that the respondent shall pay maintenance amount of Rs. 10,000/- per month to the appellant-wife from the date of filing of her Maintenance Petition before the Family Court. The entire amount of arrears shall be deposited by the respondent in the Family Court within eight weeks from today, after adjusting the amount, if any, already paid or deposited by him.

15) The appeal stands allowed accordingly.

..... J.

[DINESH MAHESHWARI]J. [BELA M. TRIVEDI] NEW DELHI 28.09.2022