

Reema Salkan vs Sumer Singh Salkan on 25 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4606, 2019 CRI LJ 727, 2019 (1) ADR 576, (2019) 193 ALLINDCAS 237 (SC), (2018) 13 SCALE 33, (2018) 3 ALLCRIR 2695, (2018) 3 GUJ LH 671, (2018) 4 CIVILCOURTC 647, (2018) 4 CRILR(RAJ) 972, (2018) 4 CRIMES 232, (2018) 4 RECCRIR 395, (2018) 72 OCR 781, 2018 CRILR(SC MAH GUJ) 972, 2018 CRILR(SC&MP) 972, (2019) 106 ALLCRIC 312, 2019 (12) SCC 303, 2019 (135) ALR SOC 17 (SC), (2019) 193 ALLINDCAS 237, (2019) 1 ALD(CRL) 1008, (2019) 1 ALLCRILR 388, (2019) 1 HINDULR 33, (2019) 1 MADLW(CRI) 427, AIR 2018 SC(CRI) 1384, AIRONLINE 2018 SC 762

Author: A.M. Khanwilkar

Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1220 OF 2018
(Arising out of SLP(Crl.) No.5495 of 2018)

Reema Salkan

....Appellant(s)

:Versus:

Sumer Singh Salkan

....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.

2. This appeal takes exception to the judgment and order passed by the High Court of Delhi at New Delhi dated May 31, 2018 in Revision Petition (Criminal) No.204 of 2015, whereby

the High Court partly allowed the revision petition preferred by the appellant and was pleased to set aside the judgment and order dated 28th January, 2015 in Petition No.363 of 2014, passed by the Judge, Family Courts, North Rohini, Delhi, to the limited extent of not granting maintenance amount to the appellant/wife from 10th December, 2010 onwards. The High Court instead directed the respondent/husband to pay the maintenance amount at the rate of Rs.9,000/□ per month from 9th December, 2010 onwards to the appellant/wife.

3. There is a chequered history of litigation between the parties. Shorn of unnecessary details, the relevant facts for determination of the present appeal are that the appellant and the respondent got married on 24th March, 2002, according to Hindu rites and ceremonies at Infantry Hostel, Delhi Cantonment, Delhi. The respondent, being a permanent resident of Canada, had assured the appellant that he would take her with him to Canada on 28th March, 2002 on a Tourist Visa. However, soon after the marriage, relations between the appellant and the respondent became strained. The respondent, being a permanent resident of Canada, returned to Canada without making any arrangements to take the appellant to Canada even on a Tourist Visa, as assured. Rather, he caused impediments in issuance of the Tourist Visa to the appellant, by giving an application in writing in that behalf to the Canadian Immigration Department. As relations between the appellant and the respondent became strained, the appellant filed a complaint before the Women Cell against the respondent and her in□ laws. On 16th July, 2003, she also filed an application under Section 125 of the Code of Criminal Procedure for grant of maintenance of Rs.2 lakh per month from the respondent before the Chief Metropolitan Magistrate, Delhi. Be it noted that during the pendency of the said application, interim maintenance amount was fixed, which issue travelled upto this Court by way of Criminal Appeal Nos.2347□ 2349/2014, which was disposed of by this Court on 28th October, 2014 on the finding that the cause of justice would be subserved if the appellant was granted a sum of Rs.20,000/□ per month as interim maintenance commencing from November 1, 2014. However, for the reasons stated by the Family Court in its judgment dated 28th January, 2015, the final maintenance amount was fixed at Rs.10,000/□ per month starting from 17th July, 2003 till 8th December, 2010 and no maintenance was granted with effect from 8th December, 2010. The application for maintenance, filed in 2003, was finally disposed of on 28th January, 2015 in the following terms:

“Relief:

In view of my finding on issue no.1 above the petition u/s 125 Cr.P.C. is partly allowed and the respondent is directed to pay maintenance to the petitioner as under:□

1. From the date of filing of the petition i.e. 17.07.2003 till 08.12.2010, @ of Rs.10,000/□per month.

2. With effect from 08.12.2010 onwards the petitioner is not entitled to any maintenance and her claim in this respect stands dismissed.

The respondent shall clear off the arrears of maintenance if any, within three months from the date of order. Any payment made towards interim maintenance during the pendency of the present petition and any maintenance paid for the concurrent period, as per the order passed by any other competent court in any other proceeding/litigation between the parties, the money already deposited by the orders of the Superior Courts or by the order of the predecessor of this court, by the respondent shall be adjusted, if required. No orders as to costs. File be consigned to record room."

4. Against this decision, the appellant filed a revision petition before the High Court being Revision Petition (Criminal) No.204 of 2015, which has been partly allowed on the following terms:

"85. Consequently, the impugned order dated 28.01.2015 is set aside to the extent of non granting the maintenance in favour of the petitioner /wife from 09.12.2010 onwards. However, the impugned maintenance in favour of the petitioner/wife till 08.12.2010 at the rate of Rs. 10,000/ per month is upheld. The respondent is directed to pay maintenance amount of Rs . 9 , 0 0 0 / per month from 09.12.2010 onwards. Hence, the present revision petition is allowed. The arguments of the learned counsel for the respondent and the judgments relied upon by the respondent are of no help.

86. The present petition is allowed and disposed of in the above terms."

5. The respondent has not filed any independent petition to assail the judgment of the High Court rather, it is the appellant who has questioned the correctness of the quantum of maintenance amount as determined by the Family Court and the High Court, by filing the present appeal. As a result, the sole question to be decided in the present appeal is regarding the quantum of monthly maintenance amount payable by the respondent to the appellant.

6. According to the appellant, the High Court in the impugned judgment has inter alia overlooked the following points while determining the monthly maintenance amount payable by the respondent to the appellant:

(i) Order dt. 28.10.2014 passed by this Court in Criminal Appeal no.2347 of 2014 filed by Appellant against reduction & non payment of interim maintenance, whereby this Court granted Rs.20,000/ interim maintenance, cannot be reduced as there has been no change in circumstances of parties since then.

Rather, it can only be increased in final maintenance;

(ii) Appellant's Evidence, Affidavit of Financial Status Exhibited proves that Respondent owns vast capital assets including 26.50 bigha (6.625 hectare) agricultural land in Meerut, UP;

(iii) Respondent [B.Com, MA (Economics) & MBA from USA] has worked in USA, Dubai, Canada for nearly 20 years and hence can be presumed to be gainfully occupied, a fact which he is concealing, besides having savings, investments, social & medical security and insurance of Canada Govt.; and

(iv) Respondent's last disclosed salary for the year 2010, on the basis whereof quantum could have been calculated. As per the last disclosed salary of Cad \$48,372.34 p.a. (equal to Rs.21,28,368/□ @Rs.44 per Cad.\$), monthly salary comes to Rs.1,77,364/□ Even if minimum increase @ 5% per annum is added to salary of base year i.e. 2010, Respondent's monthly salary would be Rs.2,51,800/□ In absence of disclosure, this is a reasonable presumption for increase in salary. On adding Rs.50,000/□ per month agricultural income, Respondent's monthly income can be presumed to be Rs.3 Lakh.

7. The respondent, on the other hand, has supported the decision of the High Court but at the same time, by way of counter affidavit filed to oppose this appeal, has urged that the impugned judgment suffers from flawed reasoning on the following counts:

(a) The High Court does not deal with the reasoning of appreciation of evidence.

(b) The High Court does not notice that the Family Court, after a trial, has had an opportunity to observe the demeanour of the parties and has commented on it.

(c) In Paragraph 38 of the judgment, the High Court doesn't overturn the reasoning of the reduction of the interim maintenance from Rs.25,000/□ (Rupees Twenty Five Thousand Only).

(d) The High Court does not overturn the reasoning that she has not established anywhere that she, as a lawyer and an admittedly well educated and competent professional, is unable to maintain herself.

(e) The High Court also noted the scandalous allegations made by the Petitioner, against the Respondent's family which would reinforce his allegation of the Petitioner's vindictiveness.

(f) The High Court has noted judgments of various High Courts wherein the principle laid down is that the laws of maintenance are supposed to support but not enrich; payments cannot continue ad infinitum.

(g) The wife, too, is expected to mitigate her own losses by showing at least some semblance of effort at work and earning.

(h) The maintenance should be in accordance with tenure of marriage, meaning thereby that long tenure marriages with children or even with just a long term investment of time, loss of earnings and so on can be computed monetarily, but not so a 4 day marriage resulting in a 15 year litigation, driven by a desire for vengeance with a motive to harass.

8. We have heard the appellant appearing in person and Ms. Malavika Rajkotia, learned counsel appearing for the respondent.

9. As aforesaid, the sole question is about the quantum of monthly maintenance amount payable by the respondent to the appellant. In that, the Family Court has unambiguously held that the respondent neglected to maintain the appellant, for the elaborate reasons recorded in its judgment dated 28th January, 2015. That finding of fact has been upheld by the High Court vide the impugned judgment. The Family Court has also found as a fact that the appellant was unemployed, though she is an MA in English and holds a Postgraduate Diploma in Journalism and Mass Communication and is also a Law Graduate enrolled with the Bar Council of Delhi. The High Court has not disturbed that finding recorded by the Family Court. Resultantly, both the Courts have concurrently found that, in law, the respondent was obliged to maintain the appellant.

10. The Family Court, however, restricted the liability of the respondent to pay maintenance amount only between 17th July, 2003 and 8th December, 2010, which view did not commend to the High Court. The High Court, instead directed the respondent to pay a monthly maintenance amount to the appellant even after 9th December, 2010, but limited the quantum to Rs.9,000/- per month.

11. The High Court has recognized the fact that the appellant was not in a position to maintain herself but it restricted the maintenance amount to Rs.9,000/- per month on the finding that the respondent was unemployed and had no source of income. However, having found that the respondent was well educated and an able bodied person, the High Court went on

to hold that he was liable to maintain his wife. The High Court further noted that the respondent had failed to produce any evidence regarding his unemployment or that he had no source of income. Resultantly, the High Court posed a question as to how the respondent was able to manage his affairs after his return from Canada, since 2010. Therefore, the High Court applied notional income basis to arrive at his (respondent's) minimum income of Rs.18,332/□ as per the current minimum wages in Delhi, as a person possessing qualifications of B.Com., MA (Eco.) and MBA from Kentucky University, USA, and on that basis, directed the respondent to pay Rs.9,000/□ per month to the appellant from 9 th December, 2010 onwards until further orders.

12. The manner in which the proceedings, instituted by the appellant under Section 125 Cr.P.C., have progressed from 2003 leaves much to be desired. During the pendency of the maintenance application filed by the appellant on 16 th July, 2003, the respondent's father filed a civil suit which, according to the appellant, was intended to prevent attachment of the family property of the respondent from execution of the order in her favour passed in the maintenance proceedings. The suit for declaration filed by the respondent's father was dismissed on 30th August, 2003, after a full□ fledged trial but to prevent attachment of land/family property in interim maintenance case, he moved an application for restoration of the suit. Further, despite the injunction order passed by the Delhi High Court dated 28th October, 2004, which was operating against the respondent, he approached the courts in Canada and obtained an ex□parte divorce allegedly to escape the liability to pay the maintenance amount and also adopted delaying tactics in the progress of the subject maintenance proceedings. Furthermore, the Magistrate granted interim maintenance of Rs.25, 000/□ per month from the date of filing of the maintenance petition on the prima facie finding that the respondent's monthly salary, earned in Canada, was over Rs.1 lakh in the year 2003. That issue was finally resolved by this Court vide order dated 20 th October, 2014 by observing that the cause of justice would be subserved if the appellant was granted a sum of Rs.20,000/□ per month as an interim maintenance, commencing from November, 2014. That interim arrangement was continued till the final disposal of the maintenance petition by the Family Court.

13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able□bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

“79. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as

net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

80. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in Chander Prakash v. Shrimati Shila Rani, AIR 1968 Del 174 by this Court is relevant and reproduced as under:

"7.....an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

82. The husband being an able-bodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in Bhuwan Mohan Singh v. Meena, AIR 2014 SC 2875, is relevant: "3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial

suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

(emphasis applied)

83. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification." The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.

14. The only question is: whether the quantum of maintenance amount determined by the High Court is just and proper. The discussion in respect of this question can be traced only to paragraph 84 of the impugned judgment which reads thus:

"84. So far, the quantum of maintenance is concerned nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however the husband is legally bound to maintain his wife as per the status of a respectable family to which he belongs. The husband being able-bodied along with high qualification B.Com, M.A.(Eco) and MBA from Kentucky University, USA could earn at least

minimum of Rs. 18,332/□ as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs. 9,000/□ per month from 09.12.2010 onwards till further orders.”

15. The principle invoked by the High Court for determination of monthly maintenance amount payable to the appellant on the basis of notional minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable. We are of the considered opinion that regard must be had to the living standard of the respondent and his family, his past conduct in successfully protracting the disposal of the maintenance petition filed in the year 2003, until 2015; coupled with the fact that a specious and unsubstantiated plea has been taken by him that he is unemployed from 2010, despite the fact that he is highly qualified and an able-bodied person; his monthly income while working in Canada in the year 2010 was over Rs.1,77,364/□; and that this Court in Criminal Appeal Nos.2347□2349/2014 has prima facie found that the cause of justice would be subserved if the appellant is granted an interim maintenance of Rs.20,000/□ per month commencing from November 1, 2014. At this distance of time, keeping in mind the spiraling inflation rate and high cost of living index today, to do complete justice between the parties, we are inclined to direct that the respondent shall pay a sum of Rs.20,000/□ per month to the appellant towards the maintenance amount with effect from January 2010 and at the rate of Rs.25,000/□per month with effect from 1st June, 2018 until further orders. We order accordingly.

16. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms.

17. The appeal is allowed in the aforementioned terms.

.....CJI.

(Dipak Misra)J.
(Dr. D.Y. Chandrachud) New Delhi;

(A.M. Khanwilkar)J.

September 25, 2018.