

Sh Baljeet Singh vs Ms Amrit Kaur on 28 February, 2022

Author: Vipin Sanghi

Bench: Vipin Sanghi, Dinesh Kumar Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAT.APP.(F.C.) 22/2022
SH BALJEET SINGH

Through: Mr.D.K.Sharma, Advoca

versus

MS AMRIT KAUR . . .

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% 28.02.2022 CM APPL. 10453/2022 & CM APPL. 10454/2022 (for exemption) Exemptions are allowed subject to all just exceptions. Both the applications stand disposed of.

MAT.APP.(F.C.) 22/2022 CM APPL. 10452/2022 (stay)

1. The appellant has invoked the jurisdiction of this Court under Section 19 (1) of the Family Court Act assailing the impugned order dated 27.11.2021 whereby the Trial Court while deciding the application under Section 24 of Hindu Marriage Act (HMA) for grant of maintenance, awarded the maintenance allowance of Rs.1,10,318/- per month to the respondent and the minor daughter.

2. Briefly stated the facts of the case are that the marriage between the parties was solemnized as per Sikh rites and customs on 14.12.2014. A female child namely Baby Gurneet Kaur was born on 28.03.2016, who is presently in the custody of the respondent. The parties have been residing separately since 06.06.2020. The appellant filed a petition under Section 9 of the HMA on 01.09.2020. In the same proceedings, an application under Section 24 of the HMA for grant of maintenance and litigation expenses to the respondent and minor child was filed on 14.12.2020. The parties filed the income affidavit before the Trial Court. The appellant had filed an application under Section 340 Cr.P.C. read with Section 195 (1) (b) Cr.P.C. along with Sections 191/199/209 IPC and application under Section 91 Cr.P.C. for production of documents/invoices as claimed by the respondent in her allegedly false and fabricated affidavit of income and expenses.

3. The Trial Court vide order dated 27.11.2021 on the application filed under Section 24 of HMA awarded maintenance for a sum of Rs.1,10,318/- per month with effect from the date of filing of the application i.e. 14.12.2020.

4. The appellant has assailed the impugned order predominantly on the ground that the respondent has filed a false and fabricated affidavit of income and assets and the trial court without looking into the material facts has passed the impugned order. It has also been submitted that the trial court did not take into account the fact that the appellant- husband is also paying the monthly installments of Rs.12,500/- in Sukanya Samridhhi Yojna. The impugned order has been challenged on the ground that the same is contrary to the facts, record and circumstances of the case. The appellant has submitted that the respondent is not entitled for benefit and advantage of Section 24 of HMA as her case is false and frivolous. It is stated that the Trial Court has failed to consider that the respondent is qualified and capable to earn and maintain herself and is earning a handsome amount as reflected from her Facebook post. The appellant stated that the trial court has not taken into consideration the other settled principles of law that wife too is expected to mitigate her own losses by showing at least some semblance of efforts at work and earnings.

5. The appellant has also assailed the impugned order on the ground that the trial court did not call for income tax returns of the respondent, her employment record and pay slip/certificate and the reasonable expenses incurred so as to assess her income. The appellant has stated that the respondent is not entitled to any maintenance as she has left the matrimony on her own will without any sufficient reason. It is stated that the allegations made regarding demand of dowry or torture are baseless and without any basis as there is no material to support the same. The appellant has placed reliance upon the following judgments:

(i) Deb Narayan Halder V. Smt. Anushree Halder, 2003 (1 1) SCC

(ii) Bheekha Ram v. Goma Devi & Ors., 1999 SCC On Line Raj 265 :

1999 CriLJ 1789,

(iii) S. P. Chengalvaraya Naidu (Dead) vs Jagannath (Dead) by LRs [(1994) 1 SCC 1]:

(iv) Rajnesh v. Neha &Anr., Cr. Appeal No. 730 of 2020 dated 04.11.2020, (2021) 2 SCC 324

(v) Amit Aggarwal v. Ritu Aggarwal &Ors., Cr.Misc. No. M-26990 of 2016 dated 26.10.2018

6. The appellant stated that the trial court has not awarded interim maintenance as detailed by Apex Court in Rajnesh vs. Neha (supra).

The appellant has further stated that the trial court also did not take into account the fact that the appellant is paying monthly expenditure voluntarily towards the respondent and minor child to the

tune of Rs.40,000/- per month which includes education expenses of the minor child, money deposits in Sukanya Samridhi Yojna for the minor child, other miscellaneous expenses along with voluntary maintenance for the respondent and the minor child to the tune of Rs.15,000/-. The appellant stated that the respondent has not come with clean hands and her request for maintenance is liable to be rejected. It was stated that the maintenance awarded is highly excessive and exorbitant and has caused grave prejudice to the appellant.

7. Learned counsel for the appellant submitted that the trial court has passed the order without any application of mind and facts. It is submitted that the trial court has failed to take into account the fact that the respondent had left the matrimony of her own without any sufficient cause. It has further been argued by the appellant that the respondent has filed false affidavit of assets, income, expenditure and liabilities in 24 HMA proceedings. For which the appellant had filed an application under Section 340 Cr.P.C. and trial court has passed the impugned order without looking into that. Learned counsel has submitted that the manner adopted by the trial court for awarding the maintenance to the wife and daughter is contrary to the principles laid down by the Supreme Court. Learned counsel submitted that the Trial Court has awarded the interim maintenance on the basis of unjustified claims made by the respondent.

8. We have heard learned counsel for the appellant and perused the record carefully. trial court after noting down the averments of the parties has inter alia held as under:

Petitioner is reported to be a commercial pilot and earning Rs.2,47,955/- per month as per his salary slip of September 2021. Besides the statutory deductions, he is also getting Rs.83,000/- deducted from his salary towards VPF (voluntary Provident Fund). In the course of arguments, petitioner stated that he has old aged parents, who are dependent upon him. On the other hand, respondent is B.Tech and MBA, who has stated that earlier she was earning Rs.2,16,000/- annually by working as IT Analyst in HCL,. She stated that presently she is unemployed and has no source of income and totally dependent upon her mother and father for her day to day needs.

The respondent being a well qualified lady has capacity and capability to earn. She has not given any reasons as to why she is not working despite the fact that she is well qualified and capable to earn. It is well settled that every case is required to be appreciated in the backdrop of its peculiar facts and circumstances. The wife is required to be maintained to the status which she was enjoying and living at the time when she was residing with her husband. The respondent cannot demand huge amount of maintenance in view of the income of petitioner as he has other responsibilities i.e. to maintain himself and his parents. The facts regarding the accustomed life of parties are triable issues and can be more crystallized in maintenance cases after parties lead their evidence.

Having considered the aforesaid facts into account and overall facts and circumstances of the case, the income of petitioner is considered as Rs.3,30,955/- per month (Rs.2,47,955/- in hand salary Rs.83,000/- VPF).

In view of the aforesaid position, for calculating the amount of maintenance, on giving one unit each to the petitioner and the respondent, one unit each to minor daughter and parents of petitioner, and one unit extra to the petitioner, being an earning member, the maintenance in favour of respondent and minor daughter comes to Rs.1,10,318/- (Rs.3,30,955/- X 2/6=Rs.1,10,318.33/- rounded off to Rs.1,10,318/-) per month. Thus, the respondent and minor daughter are entitled to Rs.1,10,318/- per month as maintenance allowance."

9. In the affidavit filed by the appellant before the Trial Court, the appellant has stated his monthly income to be approximately Rs.2,50,524/- per month along with interest from savings and PPF account in the sum of Rs.10,000/- per month. The appellant had also filed a salary slip and Form-16 along with affidavit. In regard to expenditure and other liabilities, the appellant has stated that his monthly expenditure in the sum of Rs.2,41,726/- which includes repayments of loans, religious contribution of charities and miscellaneous expenses. The appellant has also stated to have been spending Rs.30,000/- per month to his parents. The appellant in his affidavit has also stated that the respondent is earning Rs.30,000/- per months from personal/private home tuitions beside rent from her ancestral/deceased father's properties at C-74, Mansarovar Garden, New Delhi, interest from various Bank accounts, PPF accounts and income from other sources. The appellant has also stated that he has been spending Rs.26,544/- per months on his minor daughter Baby Gurneet Kaur.

10. Section 24 of the HMA provides as under:

Section 24:

"24 Maintenance pendente lite and expenses of proceedings. --Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]"

11. The bare perusal of Section 24 of HMA would indicate that the court while exercising the jurisdiction in this provision may grant expenses of the proceedings and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. If it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and

the necessary expenses of the proceeding. Thus, in order to award maintenance under this provision it is not necessary that the party claiming the maintenance should not have any income. The necessary benchmark is whether the income is sufficient for her or his support and the necessary expenses of the proceedings. The court is also required to take into account the petitioner own income and income of the respondent and maintenance awarded should be reasonable.

12. The interim maintenance in the present case has been awarded by the trial court on the basis of affidavit of income filed by the parties. The criteria for awarding maintenance is well established. The courts are required to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The maintenance awarded also cannot be static and may vary depending upon the subsequent facts.

13. The courts are required to strike a careful and just balance and the amount must be reasonable and realistic. In the proceedings for maintenance parties do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible.

14. As per the work sheet of the appellant dated 01.04.2020 and 31.03.2021, the taxable income of the appellant has been shown to be Rs.65,82,983/-. The income tax work sheet also reveals that the appellant is contributing provident fund Rs.114026/-, towards public provident fund Rs.1,50,000/- and towards voluntary provident fund Rs.7,33,561/- . Income tax work sheet also reveals that the appellant is also making huge investments under Section 80C.

15. Work sheet is reproduced as follows:

16. For arriving at a conclusion the trial court has taken this fact into account as noted that besides Rs.2,47,955/- the appellant is getting Rs.83,000/- per month deducted from his salary towards voluntary provident fund besides the statutory directions and therefore, in hand salary and voluntary PF monthly salary of the appellant has been assessed to be Rs.3,30,955/-. The Trial court gave one unit to each petitioner and respondent, one unit to each to minor daughter and parents of the respondent and one unit extra to the petitioner. The Family Court judge after adopting this formula awarded Rs.1,10,318/- . We consider that no fault can be found with the method adopted by the Family court judge. The appellant is employed gainfully as a pilot in IndiGo and is earning handsome amount. The respondent i.e. wife and minor daughter are entitled to similar amount of comfort in their life.

17. We are not impressed with the contentions raised by the learned counsel for the appellant and we consider that the Family Court has correctly assessed the income of the petitioner and therefore do not find any infirmity in the impugned order passed by the Family Court judge.

18. The appeal is, accordingly dismissed.

VIPIN SANGHI, J DINESH KUMAR SHARMA, J FEBRUARY 28, 2022/rb