

Ms. Pooja Wahie vs Sh. Gagan Uppal (Husband) on 6 May, 2017

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IN THE COURT OF MS. NAVITA KUMARI BAGHA, ADDL. SESSIONS JUDGE-
04, WEST DISTRICT, TIS HAZARI COURTS, DELHI

CRIMINAL APPEAL No.14/17

Ms. Pooja Wahie
W/o Sh. Gagan Uppal
D/o Late Sh. Anoop Kumar Wahie
R/o 225, Jai Apartment,
Sector-9, Rohini, Delhi-110085

.....Appella

Vs.

- | | | |
|----|------------------------------|------------------|
| 1. | Sh. Gagan Uppal | (Husband) |
| | S/o Sh. Surender Kumar Uppal | |
| 2. | Sh. Surender Kumar Uppal | (Father-in-law) |
| 3. | Smt. Anshu Uppal | (Mother-in-law) |
| | W/o Sh. Surender Kumar Uppal | |
| 4. | Ishan Uppal | (Brother-in-law) |
| | S/o Sh. Surender Kumar Uppal | |

All residents of:
WZ-46/10, Mukherjee Park Extn.,
Chokhandi Road, Tilak Nagar,
New Delhi

.....Respondents

Date of Filing	:	10.01.2017
Date of Arguments	:	02.05.2017
Date of Judgment	:	06.05.2017

Appeal U/Sec.29 of Protection of Woman from Domestic Violence Act
against the order dated 17.12.2016

JUDGMENT

1. This is an appeal filed by appellant Pooja Wahie (hereinafter referred to as Pooja Wahie Vs. Gagan Uppal & Ors.

'appellant-wife') against the impugned order dated 17.12.2016 passed in CC No.431/1/15 by Ms. Anu Aggarwal, Ld. Metropolitan Magistrate, Mahila Court, West District, Tis Hazari Courts, Delhi vide which the application of appellant filed U/Sec.23 of Protection of Woman from Domestic Violence Act, 2005 (hereinafter referred to as 'PWDV Act') for grant of interim maintenance was dismissed.

2. The brief facts necessary for disposal of the present appeal are as follows:

2.1 That the present appellant-wife filed one petition bearing CC No.431/1/15 under Sec.12 r.w. Sec.17, 18, 19, 20, 22 and 23 of PWDV Act against respondent no.1 (hereinafter referred to as 'respondent-

husband'), respondent no.2, 3 & 4, stating therein that she got married to respondent no.1 on 03.11.2014 according to Hindu rites and ceremonies, but soon after her marriage, she was subjected to cruelties at the hands of the respondent no.1, 2, 3 & 4. Since 04.04.2015 she has been residing with her parents as it had become impossible for her to stay with respondents at her matrimonial home due to the inhuman treatment given to her by them.

2.2 An application U/Sec.23 PWDV Act was filed alongwith the abovesaid petition praying therein for grant of interim maintenance of 40,000/- per month to her. It was stated by the appellant-wife that the respondent-husband was a man of means as he was a government employee working in the office of CAG and drawing a salary of Pooja Wahie Vs. Gagan Uppal & Ors.

40,000/- per month approximately apart from rental and interest income. It was stated that his total monthly income was 90,000 - 1,00,000/- approximately and that he was not having any other liability because both his parents were government employees and his brother was software engineer.

2.3 The joint reply/written statement was filed by the respondents wherein the allegations mentioned in the petition under Sec.12 PWDV Act were denied and it was stated that the appellant-wife was not entitled to claim maintenance as she had left the matrimonial house without any cause and further that she had professional degree of MBA and was thus capable to maintain herself. It was further stated that she was not entitled to claim any maintenance as she had not approached the Court with clean hands as she was previously employed. It was also stated that she was helping her parents at Kumar Medicos shop situated at Metro Station Pul Bangash, Delhi.

2.4 Vide impugned order dated 17.12.2016, the Ld. Trial Court dismissed the interim maintenance application of appellant-wife by holding that she was highly educated lady and no plausible explanation was given by her for not working.

3. By way of present appeal, the impugned order has been challenged on the following main grounds:-

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(i) That the impugned order is based on conjecture and surmises.

(ii) That the Ld. Trial Court has failed to appreciate that the respondent-

husband has failed to produce any document to show that the appellant-wife was doing any job or helping her parents at Kumar Medicos Shop.

(iii) That the Ld. Trial Court has passed the impugned order merely on one fact that both appellant-wife and respondent-husband are MBA whereas there was no documentary proof that inspite of holding MBA degree, the appellant-wife was doing any job at any point of time ever since June, 2014. That the Ld. Trial Court totally ignored the fact that the respondents had compelled her to leave the job before marriage.

(iv) That the Ld. Trial Court has failed to appreciate the law laid down by Hon'ble Supreme Court and Hon'ble High Court of Delhi that merely the wife being educated does not mean that she is earning.

(v) That the Ld. Trial Court has failed to appreciate that it is well settled law that it is the abundant duty of husband to maintain his wife if she is unemployed.

(vi) That the Ld. Trial Court has failed to appreciate that the respondent-

husband is a man of means and is a government employee and Pooja Wahie Vs. Gagan Uppal & Ors.

does not have any other liability except to maintain his wife.

4. Notice of present appeal was sent to the respondents and they contested the appeal by filing their respective replies and advancing arguments.

5. I have heard the arguments from counsel Sh. Rajesh Bhatia for appellant-

wife, counsel Sh. O.P. Jatav for respondent-husband and counsel Sh. M.K. Gahlaut for respondent no.2, 3 & 4. I have perused the record also.

6. The Counsel for appellant-wife has vehemently argued that the impugned order is liable to be set-aside as it is illegal, whereas the counsels for respondents have argued that the impugned order does not require any interference as all the issues raised by the appellant-wife before this Court were raised before the Ld. Trial Court as well and the same were duly considered by the Ld. Trial Court.

7. The counsels for respondents argued that the appellant-wife is not entitled to any interim relief as she is guilty of suppression of facts because she did not disclose about her previous employment in her detailed affidavit filed before the Ld. Trial Court. But it is submitted by counsel for appellant-wife that she has not suppressed any fact from the Court. He has submitted that the appellant-wife was doing a temporary private job prior to her marriage but the respondent-husband and his family members had set up a condition that she had to leave the job as they wanted either a government employee or a non-working bride and that since the detailed Pooja Wahie Vs. Gagan Uppal & Ors.

affidavit filed before the Ld. Trial Court was pertaining to current status of the party concerned, so, there could not be said to be any concealed by her about her past job. He has further submitted that she had disclosed each and everything regarding her previous employment in subsequent affidavit, filed on the directions of the Ld. Trial Court. The counsels for respondents, in order to substantiate

their contention, placed reliance upon following case-laws:

- (i) Dalip Singh Vs. State of Uttar Pradesh, 2010(2) SCC 114
- (ii) Sciemed Overseas Inc. Vs. BOC India Limited, 2016(3) SCC 70
- (iii) Hamza Haji Vs. State of Kerala, AIR 2006 SC 3028
- (iv) Muthu Karuppan Vs. Parithi Ilamvazhuthi, 2011(5) SCC 496

8. Though there is no dispute with respect to the proposition of law laid down in the above-said authorities, but every case has its own facts and circumstances and the ratio of law laid down in a particular authority is to be applied according to the peculiar facts and circumstances of that case. The facts as well as the point of consideration of this case are different from the facts and point of consideration of the above-said authorities and therefore the said authorities are not going to render any help to the respondents.

9. In Dalip Singh Vs. State of Uttar Pradesh (supra), the relief was declined to the appellant by the Hon'ble Apex Court because in that case Pooja Wahie Vs. Gagan Uppal & Ors.

efforts were made by the tenure holder through three generations to mislead the authorities and the courts and in view of their false statements, the Hon'ble High Court felt persuaded to stay the orders passed by the prescribed authority and the appellate authority, which resulted in frustration of the action to be taken by the authority concerned for distribution of the surplus land to landless persons for a good period of more than eleven years and enabled the heirs of the tenure holder to retain possession of the surplus land and enjoy the same.

10. In Sciemed Overseas Inc. Vs. BOC India Limited (supra), a cost of 10 Lakhs was imposed on the petitioner for filing false affidavit before the Hon'ble Supreme Court.

11. In Hamza Haji Vs. State of Kerala (supra), the appellant had played fraud upon the courts by making false pleas and suppressing material documents and transactions and procured the order of restoration of a big chunk of land from forest department which was sold by him long prior to the acquisition of said land by the forest department. Thus it was a case of suppression of the most vital fact and the founding of a claim on a non-existent fact and there was clear intention to deceive.

12. In Muthu Karuppan Vs. Parithi Ilamvazhuthi (supra), the accused arrested in a criminal offence was granted bail by Sessions Judge but the Contemnor (an Inspector of Police) filed application for cancellation of bail Pooja Wahie Vs. Gagan Uppal & Ors.

and obtained stay order by giving false information in his affidavit that accused was in custody and therefore the Contemnor was held guilty of Criminal contempt and sentenced to 7 days S.I.

13. Thus in each of the above mentioned cases, there were false affidavits/statements filed/made before the Courts whereas in the present, there is no allegation that the affidavits filed by the appellant-wife are false. The non-mentioning about the earlier job has been sufficiently explained. Moreover, the subsequent affidavit was filed by the appellant-wife wherein she has explained everything about her previous employment. Thus it is clear that the authorities cited by the respondents are clearly distinguishable on facts and circumstances.

14. The impugned order has been challenged by the appellant-wife basically on the ground that possessing of a professional degree does not mean that the wife is employed and that the maintenance could not be denied to her merely on the ground that she is capable to earn because she is having professional degree. But the counsels for the respondents have vehemently argued that the impugned order is absolutely correct and that the findings of the Ld. Trial Court are justified in view of the following case- laws:-

(i) Rupali Gupta Vs. Rajat Gupta, 2016(234) DLT 693

(ii) Damanpreet Kaur Vs. Indermeet Juneja, 2012(19) R.C.R.(Criminal) Pooja Wahie Vs. Gagan Uppal & Ors.

(iii) Mamta Jaiswal Vs. Rajesh Jaiswal, 2000(3) M.P.L.J. 100

(iv) Bhushan Kumar Meen Vs. Mansi Meen Allas Harpreet Kaur, 2010(15) SCC 372

(v) Sanjay Bhardwaj Vs. The State, 2010(7) AD (Delhi) 615

(vi) Smt. Haunsabai Vs. Balkrishna Krishna Badigar, 1980(2) KantLJ

(vii) Kaveri Vs. Neel Sagar, 2010(173) DLT 533

15. But these authorities are also not going to help the respondents as the same are also distinguishable from present case on account of different facts and circumstances. It has been held in Smt. Sulochana Devi Vs. DDA, 2014(2) PLR (Delhi) 7, "The Apex Court had laid down in catena of judgments that while applying the ratio laid down in a case, the facts of the reiterated case in which such a proposition of law has been laid down, must also be correlated and seen in the light of the fact of the cases in which it is sought to be applied. The propositions of law which are laid down in different case cannot be treated like theorems or principles of mathematics and made applicable to the facts of the case in hand in an implied manner."

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16. In Rupali Gupta Vs. Rajat Gupta (supra), the wife was declined interim maintenance as she was a qualified Chartered Accountant and working in that capacity since 13 years.

17. In Damanpreet Kaur Vs. Indermeet Juneja (supra), the interim maintenance was declined to the wife as she was well educated lady and even after marriage was earning 50,000/- per month but after separation, had chosen not to work of her own will though had the capacity to work.

18. In Mamta Jaiswal Vs. Rajesh Jaiswal (supra), the wife's claim of travelling expenses of one adult attendant who was to come with her for attending Matrimonial Court was declined as she was having high qualification as M.Sc., M.Ed. and was working in Gulamnabi Azad College of Education and her monthly salary was 4,000/- whereas her husband's was Rs.5852/-. Though it was not clear if she had left the job at the time of such claim, but it was held that even if the same was presumed to be correct, yet in view of her high qualification and work experience, the same could be termed as sitting idle out of choice with the intention to put extra financial burden upon the husband.

19. In Bhushan Kumar Meen Vs. Mansi Meen Allas Harpreet Kaur (supra), the interim maintenance granted to the wife was reduced as the amount of such interim maintenance was more than the take home salary of the husband.

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20. In Sanjay Bhardwaj Vs. The State (supra), the interim maintenance to wife was declined by the Hon'ble High Court on the ground that the husband was jobless as his job in Angola (Africa) was lost because he could not go back and join the same as his passport was seized by the police in FIR got registered by his wife U/Sec.498-A/406 IPC.

21. In Smt. Haunsabai Vs. Balkrishna Krishna Badigar (supra), the wife had filed petition U/Sec.125 Cr.P.C. and maintenance was declined to her as she failed to prove that there was any justifiable reason for her to refuse to live with husband (whereas her husband was ready to maintain her if she joined him) and further that she failed to aver that she was unable to maintain herself.

22. In Kaveri Vs. Neel Sagar (supra), the appellant had filed petition under PWDV Act against her mother and brother and interim maintenance was declined to her because she was employed woman, working with Indian Airlines and living separately and being a major having her own independent source of income.

23. Thus in most of the above-said authorities, the wives were either working till the time of filing maintenance petitions or were working even after marriage but left the jobs out of choice after getting separated from their husbands. But in the present case, the situation is not so as here the appellant-wife had not been working since the day of marriage and it is not Pooja Wahie Vs. Gagan Uppal & Ors.

a case of sitting idle by choice.

24. The counsel for appellant-wife, on the other hand, has argued that it is no more res integra that maintenance to a wife could not be denied merely because she is educated and has capacity to earn. In order to substantiate his contention, he has placed reliance upon the following case-laws:-

(i) Manish Jain Vs. Akanksha Jain, C.A. No.4615 of 2017, date of decision 30.03.2017 of Hon'ble Supreme Court

(ii) Kripa Narayan Vs. Mamta Pathak, 2016(3) JCC 2026

(iii) Gaurav Mantrao Vs. Lilly Khullar, 2016(3) R.C.R.(Civil) 672

(iv) Shailja & Anr. Vs. Khobbanna, Cr.App. Nos.125-126 of 2017, date of decision 18.01.2017 of Hon'ble Supreme Court

(v) Sunita Kachwaha Vs. Anil Kachwaha, AIR 2015 SC 554

25. In Manish Jain Vs. Akanksha Jain (supra), it was contended before the Court that the respondent-wife was an educated lady and that she had completed her one year course of Fashion Designing from J.D. Institute, Hauz Khas, New Delhi and that she was capable of earning monthly salary of 50,000/-. But the Hon'ble Supreme Court of India in that case held that the interim maintenance could not be denied to the wife merely on the ground that she is educated and capable of maintaining herself. The Hon'ble Apex Court held, Pooja Wahie Vs. Gagan Uppal & Ors.

"It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support."

26. In Kripa Narayan Vs. Mamta Pathak (supra), it was contended before the Court that wife was not entitled for maintenance as she was a well qualified lady and maintained herself. But the Hon'ble High Court upheld the order of the Trial Court of grant of interim maintenance of 35,000/- per month to the wife by holding that it is settled law that it is the duty of the husband to maintain his wife and it is expected from a husband to give his wife the same standard of living, whether living jointly or separately.

27. In Gaurav Mantrao Vs. Lilly Khullar (supra), also the petitioner-husband contested the interim maintenance application on the plea that the respondent-wife was well educated and qualified as MBA and was thus able to maintain herself. But the Hon'ble High Court held that the potential earning capacity is not equivalent to independent income and that mere this fact that respondent-wife was educated is no ground to decline her the maintenance pendente lite.

28. The Hon'ble Supreme Court in Shailja & Anr. Vs. Khobbanna (supra), Pooja Wahie Vs. Gagan Uppal & Ors.

has held that whether the wife is capable of earning or whether she is actually earning are two different requirements and merely because she is capable of earning is not a sufficient reason to reduce the maintenance awarded by the Family Court.

29. In Sunita Kachwaha Vs. Anil Kachwaha (supra), the Hon'ble Supreme Court has held that merely because the appellant-wife is a qualified post- graduate, it would not be sufficient to hold that she is in a position to maintain herself and that in any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

30. It is well known fact that in these days, it is very difficult to secure a job even if a person is highly qualified. A wife could not be refused maintenance merely on the ground that she is well educated and has capacity to earn. Though in the present case, the appellant-wife has MBA degree but it is admitted fact that she is unemployed. It is also admitted fact that she has never worked since the day of her marriage. Though, she was working on temporary basis prior to her marriage, but she has stated that she left the job at the demand of respondent-husband's family as they wanted a bride either with government job or non-working. Be that as it may, but there is no dispute that it is not a case where the wife was working even after her marriage but left the job intentionally after getting Pooja Wahie Vs. Gagan Uppal & Ors.

separated from her husband just to rope him in a maintenance litigation. As held by the Hon'ble Supreme Court, the wife could not be refused interim maintenance just on the ground that she is well qualified and can earn her livelihood. In Minakshi Gaur Vs. Chiranjay Gaur, AIR 2009 SC 1377, the Hon'ble Supreme Court has held to the extent that even if the wife is earning, but if her earning is insufficient and the husband has substantial salary then he is liable to pay maintenance to his wife. In the present case, the appellant-wife is admittedly unemployed whereas the respondent-husband is earning substantial amount and thus the former is entitled to be maintained by the latter.

31. The Hon'ble Supreme Court has held that the financial wellness of wife's parents is not material for the purpose of granting her interim maintenance. Thus, if the parents of a wife are financially well off, even then she could not be denied maintenance from husband if she is unemployed. But here in the present case, the financial position of her parental family is stated to be not good. It is submitted by the counsel for appellant-wife that her father, who was the earning member of family by running the Kumar Medicos shop, died during the pendency of PWDV Act proceedings and the said shop got closed down. Hence, it could be understood how difficult it is for the appellant to make her both ends meet. Possessing of professional qualification or potential earning capacity is not equivalent to independent income. As husband is legally and morally liable Pooja Wahie Vs. Gagan Uppal & Ors.

to maintain his wife, so, appellant herein is entitled to get maintenance from the respondent herein. It is also settled principle of law that wife is entitled to the same living standard as the husband is enjoying. Hence, in view of the aforesaid discussion, the order of Ld. Trial Court dated 17.12.2016 is set-aside and it is held that the appellant-wife is entitled to get interim maintenance from the respondent-husband.

32. Now, so far as the amount of such interim maintenance is concerned, the paying capacity of the respondent-husband is required to be looked into. It is admitted fact that the respondent-husband is working as government employee in Comptroller and Auditor General of India (CAG) office. It is

also admitted fact that he was getting salary of more than 33,000/- per month in the year 2015 at the time of filing of petition before the Ld. Trial Court. Obviously, his present salary must be more than the above figure. It is not disputed that both the parents of the respondent-husband are in government service and his brother is software engineer, meaning thereby that he does not have any other liability except to maintain his wife. Hence, keeping in view his paying capacity and liability, the respondent- husband is directed to pay interim maintenance @ 12,000/- per month to the appellant-wife from the date of filing of petition U/Sec.12 of PWDV Act till its disposal by 10th of each month. He is directed to clear the arrears of maintenance within four months from today. However, it is clarified that any amount, if received by the appellant-wife in any other proceedings Pooja Wahie Vs. Gagan Uppal & Ors.

before any other Court towards maintenance, would be accordingly adjusted/deducted from the present interim maintenance amount. Anything stated herein-above shall not tantamount to be expression of opinion on the merits of the case.

(Announced in open
Court on 06.05.2017)

(Navita Kumari Bagha)
ASJ-04, West District,
Tis Hazari Court, Delhi

Pooja Wahie Vs. Gagan Uppal & Ors.