

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.5148-5149 OF 2024
(Arising out of SLP(Cr1.)Nos.10093-10094/2022)

APURVA @ APURVO BHUVANBABU MANDAL**... APPELLANT****Versus****DOLLY & ORS.****... RESPONDENTS****O R D E R**

1. Leave granted.

2. The appellant-husband has laid challenge to the order dated 12.09.2022, passed by the High Court of Gujarat at Ahmedabad, whereby the respondent-wife has been granted maintenance at the rate of Rs.1,00,000/- (Rupees One Lakh) per month whereas both the children have been granted maintenance of Rs.50,000/- (Rupees Fifty Thousand) each per month. It may be seen that the Family Court, Surat had previously granted a paltry amount of Rs.6,000/- per month to the wife and Rs.3,000/- per month to each of the children. Thereafter, the aggrieved wife and children approached the High Court through a Revision Application, which was allowed vide the impugned order.

3. While enhancing maintenance, the High Court took notice

the fact that the appellant is a businessman, who owns a diamond

factory. The status of the appellant was briefly highlighted,

referring to the fact that he had employed a Manager in his office

to look after day-to-day affairs. The High Court has also drawn adverse inference against the appellant as he failed to produce income-tax documents, despite admittedly being an income-tax assessee. The appellant, however, for reasons best known to him, did not produce his income-tax return despite a direction issued by the High Court to that effect. It is in this backdrop that the High Court accepted the claim of the respondents for enhancement of maintenance. The High Court further directed that the above-stated amount shall be payable from the date of filing the application and the appellant shall be obligated to deposit the arrears before the Family Court within a period of six months.

4. We have heard learned Senior Counsel for the appellant as well as learned counsel for the respondents and carefully perused the material placed on record.

5. The appellant has placed the income-tax returns and some other documents in order to assail the monthly income, as projected before the High Court by the respondent-wife, being highly exaggerated. The appellant further claims that he is not in a financial position to pay the maintenance at the rate awarded by the High Court. It is also urged that the respondent-wife is self-employed and earns her own income and, thus, does not require any maintenance.

6. We have given our thoughtful consideration to the rival submissions. It may be mentioned that when the matter came up for hearing on 07.11.2022, this Court passed the following interim directions:

"3. Issue notice, returnable on 20.01.2023.

4. Meanwhile, subject to the petitioner paying interim maintenance of Rs.50,000/- (Rupees fifty thousand) to respondent No.1 - wife and Rs.25,000/- (Rupees fifty thousand) each to both the children (respondent Nos.2 and 3), the payment of enhanced amount of maintenance, as directed by the High Court, shall remain stayed.

5. In addition to the above, the petitioner shall also pay 25% of the arrears of maintenance before the next date of hearing."

7. Vide order dated 12.03.2024, it was clarified that the reduced amount of maintenance, in terms of order dated 07.11.2022, was required to be paid, from the date the higher amount of maintenance was awarded by the High Court. In other words, it was clarified that the respondent-wife shall be paid Rs.50,000/- per month as maintenance with effect from 12.09.2022 and the children shall be paid maintenance at the rate of Rs.25,000/- per month from the same date, i.e., 12.09.2022. As a necessary corollary, the appellant-husband was held liable to pay the maintenance at the enhanced rate, as awarded by the High Court, from the date when they applied for grant of maintenance till 12.09.2022.

8. In this context, we are inclined to take notice of some of the subsequent events highlighted on behalf of the appellant to suggest that owing to certain setbacks suffered in business, he is presently not in a position to pay maintenance at the rate as awarded by the High Court.

9. It may also be noticed that the maintenance has been awarded by the High Court in the proceedings under Section 125 of the Code of Criminal Procedure, 1973. The appellant's plea that on account of losses in business, his income has substantially reduced

or that the recovery proceedings have been initiated, is essentially a question of fact and it will not be prudent to accept or reject the same at this stage. Suffice to observe that such like factors can be taken into account by the court of competent jurisdiction as and when a party approaches it under Section 127 Cr.P.C.

10. Taking into consideration the totality of the circumstances, we are of the view that the tentative maintenance, as granted by us vide order dated 07.11.2022, will be just and fair, as of now, for the sustenance of the respondents. Consequently, we allow these appeals in part and modify the impugned judgment of the High Court to the extent that the respondent-wife is held entitled to maintenance at the rate of Rs.50,000/- per month from the date of the order passed by the High Court. Similarly, both the children are also held entitled to maintenance at the rate of Rs.25,000/- per month, each with effect from the date of the High Court order. They shall, however, be entitled to arrears of maintenance at the higher rate, awarded by the High Court upto the date the said order was passed by the High Court.

11. The appellant is directed to pay the arrears of maintenance within a period of three months. In this regard, we direct that the charge of arrears of maintenance, payable to the respondents, shall have preferential right over the assets of the appellant, over and above, the rights of a secured creditor or similar right holders, under any recovery proceedings. Wherever such proceedings are pending, that forum is directed to ensure that

the arrears of maintenance are released to the respondents forthwith. No objection of any secured creditor, operational creditor or any other claim shall be entertained opposing the entitlement of the respondents for maintenance.

12. We say so for the reason that the right to maintenance is commensurate to the right to sustenance. This right is a subset of the right to dignity and a dignified life, which in turn flows from Article 21 of the Constitution of India. In a way, the right to maintenance being equivalent to a fundamental right will be superior to and have overriding effect than the statutory rights afforded to Financial Creditors, Secured Creditors, Operational Creditors or any other such claimants encompassed within the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the Insolvency and Bankruptcy Code, 2016 or similar such laws.

13. In case the appellant fails to pay the arrears of maintenance to the respondents, the Family Court shall take coercive action against the appellant and, if so required, may auction the immovable assets for the purpose of recovery of arrears of maintenance.

14. This order shall not be construed such that the enhanced amount of maintenance awarded by the High Court is perceived to be totally erroneous. The view taken by us is only in light of the fact that there was no proper documentary evidence before the High Court to assess the income of the appellant, and as noticed earlier, it may not be prudent to entertain such documents at one end. That being so, nothing precludes the respondent-wife or the

children to approach the Court under Section 127 Cr.P.C. to seek suitable amendment in the grant of maintenance, provided they are able to produce some evidence/particulars of the income of the appellant.

15. As a result, the pending interlocutory applications also stand disposed of.

.....J.
(SURYA KANT)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 10, 2024.

ITEM NO.9

COURT NO.3

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).10093-10094/2022

(Arising out of impugned final judgment and order dated 12-09-2022 in CRLRA No.193/2020 and CRLRA No.363/2020 passed by the High Court of Gujarat at Ahmedabad)

APURVA @ APURVO BHUVANBABU MANDAL**Appellant(s)****VERSUS****DOLLY & ORS.****Respondent(s)**

IA No. 160670/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 160669/2022 - EXEMPTION FROM FILING O.T.

IA No. 62639/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 160671/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 10-12-2024 These matters were called on for hearing today.

CORAM :**HON'BLE MR. JUSTICE SURYA KANT****HON'BLE MR. JUSTICE UJJAL BHUYAN**

For Appellant(s) Ms. Meenakshi Arora, Sr. Adv.
 Mr. Krishnagopal Abhay, Adv.
 Mr. Chandratanay Chaube, Adv.
 Ms. Pari Bharadwaj, Adv.
 Ms. Anita Kanungo, AOR

For Respondent(s) Mr. Samar Vijay Singh, AOR
 Ms. Sabarni Som, Adv.
 Mr. Keshav Mittal, Adv.
 Mr. Fateh Singh, Adv.
 Dr. Sukhdev Sharma, Adv.
 Mr. Abhishek Kumar Suman, Adv.
 Mr. Nepal Singh, Adv.

Ms. Swati Ghildiyal, AOR
 Mr. Rajat Nair, Adv.
 Ms. Devyani Bhatt, Adv.
 Ms. Sneha Menon, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in part in terms of the signed order.

As a result, the pending interlocutory applications also stand disposed of.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(PREETHI T.C.)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

