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Pawan Kumar vs.rekha

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SooperKanoon Citation : sooperkanoon.com/1225915

Court : Delhi

Decided On : Oct-11-2019

Appellant : Pawan Kumar

Respondent : Rekha

Advocate for Def. : Ms. Geeta Luthra

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Crl.M.C.No.4347/2019 & Crl. M.A. 34796/2019 Judgment reserved on :

02. 09.2019 Date of decision :

11. 10.2019 PAWAN KUMAR .....

... Petitioner
REKHA Through: Mr. A.K. Pandey, Advocate versus Through: ..... Respondent CORAM: HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT ANU MALHOTRA, J.

1. The petitioner vide the present petition assails the impugned order dated 02.08.2019 of the learned ASJ-02, South-West, Dwarka Courts, New Delhi in Criminal Appeal No.15/2019 whereby the learned Appellate Court though set aside the order dated 07.12.2018 of the learned MM (Mahila Court), South West in CC No.11772/2016 whereby the learned trial Court had granted interim

maintenance of Rs.15,000/- p.m. in favour of the respondent, the wife of the present petitioner directed that the amount of maintenance to be given by the appellant was fixed at Rs.10,880/- per month to be paid by the appellant i.e. the present petitioner to the respondent on or before the 10th day of each English calender month directing further that the arrears from the date of filing of the petition before the learned trial Crl.M.C.No.4347/2019 Page 1 of 7 Court be cleared within six months from the date of the impugned order dated 02.08.2019 by the deposit of the same in equal instalment into the bank account of the respondent.

2. The petitioner and the respondent are husband and wife and have a girl child named Devanshi born of their wedlock born on 13.11.2016.

3. The petitioner submits through the present petition that there are material irregularities in the impugned order of the learned trial Court in as much as virtually 50% of the earnings of the petitioner herein have been awarded as maintenance to the respondent and the minor daughter of the parties to the present petition whereas the maintenance ought to be fixed at only 25% of the income of the husband. Reliance in relation thereto has been placed on behalf of the petitioner on the verdict of the Honble Supreme Court in Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy in Civil Appeal No.5369/2017 arising out of SLP (C) No.34653/2016, disposed of vide judgment dated 19.04.2017.

4. The petitioner has further submitted that he is partially handicapped i.e. he is a 50% handicapped and works as Contractual Field Worker (CFW) on daily basis in the North Delhi Municipal Corporation, Malaria Department and earns Rs 19,260/- per month. The petitioner has further submitted that the respondent had filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against him in order to extort money and to harass him and had frivolously sought grant of interim maintenance under Section 23 of the said enactment. The petitioner further submitted that Crl.M.C.No.4347/2019 Page 2 of 7 he submitted a detailed affidavit in response to the application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 wherein he had stated that his earnings were Rs.19,260/- per month, which he receives as a salary from the

North Delhi Municipal Corporation, Malaria Department, New Delhi and had submitted therein that he pays a sum of Rs.5,000/- to his parents pursuant to an undertaking given by him in the Family Court in Tis Hazari Courts on 19.07.2018 in addition to other expenses and that the respondent herein through her affidavit submitted before the learned trial Court had stated that she was working as a lady guide in Mount Carmel School, Scetor-22, Dwarka and earns a salary of Rs 6,000/- per month.

5. The petitioner has further submitted that the petitioner has no other source of income apart from his salary and that the learned Appellate Court had not taken into account the factum that he was a temporary employee and works in the MCD on contractual basis and that the petitioner belonged to a poor family and his parents ironed clothes for their livelihood. The petitioner has further submitted that his parents has disowned him and he has to live in a rented accommodation and pay Rs.3500/- per month as rent and has an insurance policy in his name for which he has to pay Rs.2510/- per month to the insurance company and has to spend Rs.2680/- towards his physical disability. The petitioner has further submitted that the disability allowance of Rs.2500/- per month, which the petitioner gets, ought not to have been computed as part of his income as being Rs.21,760/- . Crl.M.C.No.4347/2019 Page 3 of 7 6. The petitioner has further submitted that after making payment of maintenance to his parents, he is left with only the balance of Rs.14,260/- per month and it is very difficult for him to survive on a meagre sum of Rs.3380/- per month. The petitioner has further submitted that the learned Appellate Court has not considered the factum that he was suffering from Neurological disability of 50% and was unable to do any other part time job for his livelihood to earn the extra money to meet his day-to-day expenses.

7. At the outset, it is essential to observe that each case is to be determined on its own facts. Reliance thus placed on behalf of the appellant on the verdict of the Honble Supreme Court in Kalyan Dey Chowdhury (supra) does not aide the petitioner in as much as in that case the maintenance awarded of Rs.23,000/- per month to the wife and son of the husband was reduced to Rs.20,000/- per month in view of the factum that the husband in that case had got married for the second time and has child from the second marriage. It is essential to observe that it has

been laid down by the Honble Supreme Court in Kalyan Dey Chowdhury (supra) itself to the effect that the maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

8. The verdict of this Court in Annurita Vohra Vs. Sandeep Vohra 2004 SCC Online Del 192 lays down vide observations in para 2 thereof, which reads to the effect: 2. In other words the court must first arrive at the net disposable income of the Husband or the dominant Crl.M.C.No.4347/2019 Page 4 of 7 earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurative with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members. 9. In the instant case, the petitioner undoubtedly has an undisputed income of Rs.19,260/- per month with the respondent no.2 earning Rs.6,000/- per month and the respondent no.2 paying Rs.5,000/- towards the fees of the minor child born of the wedlock between the parties. On behalf of the petitioner it is sought to be contended that the Crl.M.C.No.4347/2019 Page 5 of 7

sum of Rs.2500/- per month cannot be added to his earnings of Rs.19,260/- per month and that after deduction of sum of Rs.5,000/- for payment to his parents in terms of the order of the learned Principal Judge, Family Court, West District, all that remains with the petitioner is a sum of Rs.14,260/- per month and that thus by payment of a sum of Rs.10,880/- per month, it would be difficult for the petitioner to meet his aims and to survive in a bare sum of Rs.3380/- per month.

10. On a consideration of the submissions made on behalf of the petitioner and the undisputed facts on record, the factum that the petitioner receives a disability allowance of Rs.2500/- per month cannot be overlooked and if added to the sum of Rs.3380/- per month, the amount available with the petitioner works out to be Rs.5880/- per month and taking into account the observations that have been made by the learned trial Court and the learned Appellate Court that there are no withdrawals from the account of the appellant from April to December, 2016 and withdrawals, if any, have been only for a petty amount and that the amount withdrawn was only in lumpsum to contribute towards construction of the house on receipt of a sum of Rs.3 lakhs by the petitioner on 17.05.2016 on sale of the undivided property No.426, Block-K, JJ Colony Shakarpur, Delhi by his father, the observations of the learned trial Court and the First Appellate Court that the appellant has some other source of income/ support from his parents other than his monthly emoluments cannot be disbelieved and that in the circumstances, the award of a sum of Rs.10880/- per month to be paid towards maintenance to the Crl.M.C.No.4347/2019 Page 6 of 7 respondent and the minor child born of the wedlock between the parties cannot be faulted.

11. In the circumstances, there is no merit in the prayer made by the petitioner seeking the setting aside of the impugned order dated 02.08.2019 of the learned ASJ-02, South-West, Dwarka Courts, New Delhi.

12. The petition and the accompanying application are thus declined. ANU MALHOTRA, J.

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