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Court : Delhi

Decided On : May-16-2012

Judge : The Honourable Ms. Justice Pratibha Rani

Appeal No. : CRL.M.C. 298 OF 2012

Appellant : Kamla Devi

Respondent : Rajmal Singh

Judgement :

1. This petition under Section 482 read with Article 227 of the Constitution of India has been filed by the petitioner impugning the order dated 23.11.2011 vide which the learned Judge, Family Court, Dwarka enhanced the maintenance awarded to her in the proceedings under Section 125 Cr.P.C. from Rs.1,000/- to Rs.2,000/- per month. The petitioner feeling dissatisfied with this enhancement, is claiming that the maintenance be increased from Rs.1,000/- to Rs.10,000/-.

2. It is admitted case of the parties that they got married on 22.06.1978 as per Hindu rites and ceremonies. It is also not in dispute that within a few days of the marriage the petitioner left the matrimonial home and started living separately. The cause of leaving matrimonial home, as per petitioner, is harassment on account of dowry from the very second day of the marriage and she being thrown out of the matrimonial home due to her ugly look and also because the respondent wanted to marry her younger sister.

3. As per the respondent, cause of leaving the matrimonial home by the petitioner was neither her looks nor any harassment on account of dowry demand. The respondent is having white patches on his skin, the disease known as leucoderma. The petitioner on seeing the white patches on his body deserted him by leaving the matrimonial home within a few days of the marriage and never returned thereafter.

4. Whatever may be the cause of leaving the matrimonial home by the petitioner, the fact remains that after the petitioner left the matrimonial home in July, 1978, the parties are living separately and for 11 years they were living as such without any litigation. However, on 23.09.1989, the respondent filed a divorce petition which was dismissed and immediately thereafter on 01.11.1989 the petitioner filed a petition under Section 125 Cr.P.C. claiming maintenance from the husband. Vide order dated 24.10.2002 passed by the learned Metropolitan Magistrate, the petitioner was awarded monthly maintenance to the tune of Rs.1,500/-. The said order awarding maintenance was impugned by the respondent before the Court of Sessions and the learned Addl. Sessions Judge vide order dated 28.01.2004 reduced the monthly maintenance from Rs.1,500/- to Rs.1,000/-.

5. Thereafter, the petitioner filed an application under Section 127 Cr.P.C. on 19.03.2010 seeking enhancement of the monthly maintenance. The learned Judge, Family Court, Dwarka vide the impugned order, after considering the income of the parties and the material available on record, doubled the amount of maintenance i.e. from Rs.1,000/- to Rs.2,000/- per month, which is now being considered a very meager amount by the petitioner for her survival. Hence inherent powers of this Court have been invoked to get the enhancement of the maintenance from Rs.1,000/- to Rs.10,000/- per month.

6. The enhancement has been sought primarily on the ground that she is entitled to have 1/3rd salary of the respondent as maintenance to have same kind of living standard.

7. Since neither the relationship is in dispute nor the respondent disowns his responsibility to pay the maintenance awarded to the petitioner, the real issue is the quantum of maintenance. Undisputedly, for 11 years the petitioner never

considered herself to be destitute in need of any maintenance from the respondent who was serving in Delhi Police even at that time. The income of the parties is also not in dispute for the reason that the petitioner is working in Anganwadi Centre and as per the certificate dated 01.03.2012 placed on record by her she is receiving Rs.4,000/- per month as honorarium. During the proceedings before the concerned Family Court, the salary slip of the respondent was proved through PW-2 ASI Ratan Singh which shows the gross salary of the respondent Rs.28,664/- per month. It is the case of the respondent that apart from maintaining himself, responsibility to take care of his aged father and younger brother is also on his shoulder. On the other hand, the petitioner has no responsibility on her shoulders. Apart from deductions towards Income Tax and on other counts, he is also contributing towards GPF and responsibility to fulfill social obligations is also on his shoulder because of inability of his father to fulfill the same and younger brother being not suitably employed.

8. In **Chandni Sharma Vs. Gopal Dutt Sharma - 2011 V AD (Delhi) 493,** after considering the decision of Apex Court, the criteria to be considered by the Court while enhancing the maintenance was considered and observed as under :-

“As observed in the decision of the Supreme Court in the case of **Jasbir Kaur Sehgal Vs. District Judge, Dehradun and Ors. -** (1997) 7 SCC 7, it is settled law that no set formula can be laid down for fixing the amount of maintenance payable and the calculation of the same would always depend upon the facts and circumstances of each case.”

9. In the case **Sheo Brat Vs. State of U.P. and Anr - 2012 (1) AD 451**, identical issue was involved and dealt with as under:-

“9. Indisputably the law is intended to protect the destitute and harassed women and any rigid interpretation impeding the course of justice goes against the legislative intent. This appears to be the intention of legislator by omitting the words of limitation, so far as the amount is concerned. By the Code of Criminal Procedure (1amendment) Act, 2001 (Central Act 50 of 2001) the words “not exceeding Rs.500/- in the whole have been omitted w.e.f. 24.9.2001”. In the present case, it is not in dispute that when the claim petition was filed, Rs.500/-

was claimed as maintenance as that was the maximum amount which could have been granted because of un-amended Section 125 Cr PC but presently, there is no such limitation in view of the amendment as referred to above.

10. Learned counsel appearing for the revisionist vehemently argued that there was no amendment made to the claim petition seeking enhancement, yet the Court had enhanced the quantum of maintenance to the sum of Rs.1,000/- per month. I find that this is a too technical plea. As a matter of fact, Section 127 of the Code permits increase in the quantum. It is significant to note that the application for maintenance was filed on 13.9.1994. The order granting maintenance was passed by the learned Judicial Magistrate, Jaunpur on 3.6.2006. One should not forget that the Additional Sessions Judge, Jaunpur in criminal revision enhanced the quantum of amount from Rs.500/- to Rs.1,000/- per month w.e.f. the date of order in lieu from the date of application. Otherwise also the object behind the maintenance proceeding under Section 125 Cr.P.C., is not to punish a person for his past neglect but to prevent vagrancy and destitution by compelling those who can provide support to those who are unable to support themselves and who have normal claim to support. Such a deserted wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family, with this intent the legislature has inserted Section 127 Cr.P.C. giving the right to such a women, children or parents whosoever they may be to claim for enhancement of the quantum of the maintenance allowance under the changed circumstances. Perceived with this view if the revisional Court had enhanced the quantum of maintenance allowance from Rs.500/- to Rs.1,000/- from the date of the order of the Judicial Magistrate in lieu of from the date of application, has committed no mistake."

10. The memo of parties shows that while respondent is residing in Delhi in Shahbad Mohammad Pur which can be considered to be an urbanized Village, the respondent is living in Village Lakhan Majra, Hair Pana, Distt. Rohtak, Haryana. Obviously, the respondent is attending his duty in Delhi from his village either as daily passenger or must be staying in barrack in exigency to perform his duty to be discharged by him. It is not the case of petitioner that respondent is having luxuries of life of which she has been deprived.

11. The petitioner, apart from the honorarium being received by her, has been awarded Rs.2,000/- per month towards maintenance which cannot be termed as too low so as to put the petitioner on the verge of vagrancy and destitution.

12. As the learned ASJ has already enhanced the amount of maintenance from Rs.1,000/- to Rs.2,000/-, I do not find any illegality, infirmity or impropriety in the impugned order passed by the Judge, Family Court, Dwarka, New Delhi. The impugned order, therefore, does not warrant interference by this Court in exercise of inherent jurisdiction.

13. There is no merit in the present petition and the same is hereby dismissed.

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