

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08th FEBRUARY, 2022

IN THE MATTER OF:

+ **CRL.M.C. 2385/2021 & CRL.M.As. 15783/2021 & 18164/2021**

JAGMIT SINGH

..... Petitioner

Through Mr. Mandeep Singh Vinaik, Mr.
Anjali Sharam, Mr. Deepak Bashto,
Ms. Simmi Bhamrah, Ms. Geetika
Vyas, Ms. Ragini Vinaik, Ms. Vandini
Dagar and Mr. Pawan, Advocates

versus

SONIA SINGH

..... Respondent

Through Mr. Anunaya Mehta and Mr. Vinayak
Thakur, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 482 Cr.P.C. has been filed challenging Order dated 20.06.2015 passed by the Metropolitan Magistrate-01, Mahila Court, South District, Saket Courts, New Delhi in C.C. No. 200/1 (464853/16) and Order dated 20.09.2021 passed by the Additional Sessions Judge – 05, South East, Saket Courts, directing the Petitioner herein to pay a sum of Rs. 1,35,000/- per month to the Respondent herein as maintenance.

2. The facts, in brief, leading up to this petition are as follows:

- a) It is stated that the marriage between the Petitioner and the Respondent was solemnized on 12.12.1997. As differences arose between the two, the Respondent filed a complaint under Section 12 of the Protection of Women from Domestic Violence

Act, 2005 (*hereinafter*, “DV Act”), before the Ld. Mahila Court in the year 2012. An FIR had also been registered by the Respondent against the Petitioner alleging cruelty and cheating, and this had prompted the Petitioner to move this Court for anticipatory bail. Therein, this Court had directed the Petitioner to pay a sum of Rs. 50,000/- per month towards maintenance to the Respondent.

- b) *Vide* Order dated 26.06.2015, the Ld. Mahila Court, exercising its power under Section 23 of the DV Act, had increased the interim maintenance to Rs. 1,00,000/- per month in favour of the Respondent from the date of filing of the petition, i.e. 23.07.2012.
- c) This Order dated 26.06.2015 was challenged before the Ld. Sessions Courts. It is stated that *vide* judgement dated 20.09.2021, the Ld. Sessions Court dismissed the appeal preferred by the Petitioner and directed the Petitioner to pay a monthly sum of Rs. 35,000/- in addition to the interim maintenance awarded by the Ld. Mahila Court and that the same would be towards alternate accommodation from the date of filing of complaint till disposal of the case before the Ld. Trial Court.
- d) Aggrieved by Orders dated 26.06.2015 and 20.09.2021, the Petitioner has approached this Court by way of the instant petition, assailing the two impugned Orders.

3. Mr. Mandeep Singh Vinaik, learned Counsel for the Petitioner, has submitted that the Orders of the Ld. Mahila Court and the Ld. Sessions

Court have disregarded the financial constraints of the Petitioner by misreading the data available on record. He has stated that the reading of “liabilities” of the Petitioner as “assets” has led to the Courts below to arrive at the inflated figure of maintenance. Mr. Vinaik has submitted that this misreading has also led the Courts below to believe that the Petitioner has concealed his true assets and this selective reading glosses over the fact that the Petitioner has taken loans and has utilised his savings for litigation expenses.

4. The learned Counsel for the Petitioner has submitted before this Court that the income of the Petitioner has been misinterpreted and that a temporary bank interest income resulting from a one-time sale of property, loan taken and maturity of an old LIC policy only in the financial year 2013-2014 cannot be considered as the basis for calculating the regular monthly income of the Petitioner. Furthermore, Mr. Vinaik has submitted that there has been a misreading of the family holdings of the Petitioner as minor shareholding in various companies, including assets which are disputed/under litigation or non-functional.

5. Mr. Vinaik has submitted that the admissions in the affidavit of the Respondent have been largely ignored. He has stated that the wife of the Petitioner is a designer for large television networks, earning a handsome amount of money and has claimed that her annual income is only Rs. 2 lakhs and this is contradictory to her claim of her monthly rent being Rs. 45,000/-. The learned Counsel for the Petitioner has cited various instances to showcase that the Respondent has been concealing her income.

6. The learned Counsel for the Petitioner has argued that the impugned Order dated 20.09.2021 ignores the law laid down by the Supreme Court in

Rajnish v. Neha, (2021) 2 SCC 324 with regard to computation of interim maintenance and has proceeded on the basis that every woman in a marital dispute is to be granted maintenance, regardless of the facts of the matter. Further, the Ld. Sessions Court has overlooked the suppression of income tax returns on behalf of the Respondent. Mr. Vinaik has informed this Court that, despite the financial constraints of the Petitioner, he has unfailingly continued to pay Rs. 50,000/- per month to the Respondent as per the directions of this Court. He has further submitted that the Respondent leads a very luxurious lifestyle and that as per her ITR of FY 2007-2008, she generated an admitted personal income of Rs. 18.9 lacs per annum.

7. Mr. Vinaik has submitted that the impugned Orders of the Ld. Mahila Court and the Ld. Sessions Court suffer from various legal infirmities and lack application of mind. He has argued before this Court that the Courts below have failed to notice the evasions in the claims of the Respondent and has misinterpreted the claims disclosed by the Petitioner. Mr. Vinaik has stated that such a misreading has led to a grossly inflated figure being rendered as interim maintenance and that on these grounds, the impugned Orders are liable to be set aside. He has further submitted that such adverse orders lead to victimization of the Petitioner and that due to dire circumstances, it is financially unfeasible for the Petitioner to adhere to the directions of the Ld. Sessions Court.

8. *Per contra*, Mr. Anunaya Mehta, learned Counsel appearing for the Respondent, has argued that the impugned Orders of the Courts below are well-reasoned and based upon due consideration of the record before them. He has submitted that the decision of the Ld. Sessions Court to direct the Petitioner to pay Rs. 1,35,000/- per month to the Respondent as interim

maintenance has been taken after considering the status and the net-worth of the Petitioner, including his income, assets, expenses as well as the accommodation enjoyed by both the parties during the subsistence of their marital relations. Mr. Mehta has referred to Section 19(f) of the DV Act to state that the husband has to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in shared household or at least pay rent for the same, if the circumstances so require. Therefore, Mr. Mehta has stated that the grant of Rs. 35,000/- towards alternate accommodation is not erroneous or perverse, and does not warrant interference of this Court.

9. The learned Counsel for the Respondent has referred to Section 20(2) of the DV Act to state that the monetary relief which is granted to the aggrieved person shall be “adequate, fair and reasonable, and consistent with the standard of living to which the aggrieved person is accustomed”. Relying upon Rajnesh v. Neha (supra), Mr. Mehta has stated that the test for determination of maintenance in matrimonial disputes depends upon the financial status of the Respondent (Petitioner herein) and the standard of living that the applicant (Respondent herein) was accustomed to in her matrimonial home.

10. Mr. Mehta has informed this Court that the Petitioner is a very well-off individual belonging to the upper strata of society and that the monthly income of the Petitioner is more than enough to spare the amount of maintenance granted to the Respondent. He has stated that the actual income of the Petitioner is much more than what has been disclosed by him on affidavit and that these methods are being adopted by the Petitioner to evade payment of maintenance. He has submitted that the Petitioner has himself

disclosed that his expenditure on litigation fees in the year 2013-2014 was 21.75 lacs which is contradictory to the claim that the Petitioner has an annual income of Rs. 18 lacs. Furthermore, the claim of the Petitioner that he has taken a loan of Rs. 11.4 lacs for payment of the litigation fees from his uncle, Dr. J.B. Singh, is also incorrect as the affidavit states that the entire amount was paid by the Petitioner for himself.

11. The learned Counsel for the Respondent has referred to a list of immovable properties that have been purchased by the Petitioner and has stated that the value of his personal assets would be well over Rs. 150-200 crores. He has submitted that the Respondent has had no family support and has had to deal with the situation all alone, and that the business of the Respondent has also reduced which is evident from the fact that she had to shut down her shop in Santushti Complex and now runs her business from a very small place in Kotla.

12. Heard Mr. Mandeep Singh Vinaik, learned Counsel for the Petitioner, Mr. Anunaya Mehta, learned Counsel for the Respondent, and perused the material on record.

13. At the outset, this Court deems it appropriate to refer to Section 20 of the DV Act which stipulates that a Magistrate hearing an application under Section 12 of the DV Act may direct the Respondent to pay certain monetary relief to the aggrieved person. Section 20 further delineates the contours of the monetary relief that is to be paid to the aggrieved person, including the criteria governing it as well as the manner in which the payment is to be made. For ease of comprehension, Section 20 of the DV Act has been reproduced as under:

"20. Monetary reliefs:

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) **The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.**

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) xxx

(5) xxx

(6) xxx....."(emphasis supplied)

14. It would be pertinent to refer to the judgement of the Supreme Court in Rajnesh v. Neha (supra), wherein the Apex Court had laid comprehensively dealt with the issue of maintenance and had laid down the criteria for determining quantum of maintenance. The same has been reproduced as under:

"77. The objective of granting interim/permanent alimony is 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.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her

matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

15. The Supreme Court has, therefore, observed that while there is no straitjacket formula to determine the quantum of maintenance, it could be presumed that an able-bodied husband was capable of earning sufficient money to maintain his wife and children, and whether the wife was educated, earning money and could support herself was no answer to a claim of maintenance. A careful and just balance is to be drawn between all the relevant factors, and the test for determination of maintenance in matrimonial disputes depends on the financial status of the husband, and the standard of living that the applicant was accustomed to in her matrimonial life.

16. The material on record discloses that the Ld. Mahila Court *vide* Order dated 20.06.2015 had awarded monthly interim maintenance of Rs. 50,000/- to the Respondent herein, in addition to the Rs. 50,000/- that was already being paid by the Petitioner herein. However, the Ld. Mahila Court had refrained from granting any amount towards rent in lieu of maintenance on the ground that the Respondent herein could easily arrange accommodation for herself. An appeal against this Order led to the impugned Order dated 20.09.2021 wherein the Ld. Sessions Court has painstakingly considered the

assets and liabilities of both the Petitioner and the Respondent to arrive at the decision to uphold the Order dated 20.06.2015. However, the learned Sessions Court has further granted Rs.35,000/- to the Respondent for the purposes of accommodation.

17. It is pertinent to note at this juncture that the maintenance that has been awarded *vide* impugned Order dated 20.09.2021 is in the form of interim maintenance. Judicial discipline circumspects this Court from interfering in an Order rendered by Courts below and only justifies interference if the Order is egregious in nature and suffers from legal perversity. The scope and ambit of the High Court when exercising its powers under Section 482 Cr.P.C. while considering judgments of two Courts below is extremely narrow. It is well settled that unless the said Orders are perverse and have been passed on the basis of "nil evidence", the High Court must be slow in interfering with the concurrent judgments of the two Courts below. The High Court cannot substitute its own conclusion to the one arrived at by the two courts below who have rendered their decision it after considering all the material on record.

18. The Supreme Court in State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, the Supreme Court observed as under:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is

one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

19. In State of Haryana v. Rajmal, (2011) 14 SCC 326, the Supreme Court observed as under:

“14. In State of A.P. v. Pituhuk Sreeinvasa Rao [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted

when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

It has been also held by this Court in Amar Chand Agarwalla v. Shanti Bose [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)” (emphasis supplied)

20. While rendering the impugned Order dated 20.09.2021, the Ld. Sessions Court noted that the Petitioner was a man of substantial means and that a cursory reading of the affidavit of the Petitioner has revealed that the Petitioner has not been truthful while disclosing his income. The Ld. Sessions Court, after carefully considering the material placed before it, had come to the conclusion that the award of interim maintenance by the Ld. Mahila Court was fully justifiable and could not be faulted. To this extent, this Court finds no merit in the submissions of the Petitioner and does not deem it fit to interfere in the impugned Orders.

21. However, the Ld. Sessions Court has failed to provide cogent reasons for granting an extra award of Rs.35,000/- towards rent of accommodation of the Respondent herein. This Court is of the opinion that in the absence of a reasoned order pertaining to the grant of Rs.35,000/- over and above the interim maintenance of Rs.1,00,000/- that has been granted by the Ld. Mahila Court, this portion of the impugned Order dated 20.09.2021 cannot

be sustained.

22. *Vide* Order dated 04.10.2021, this Court had directed the Petitioner to pay a sum of Rs. 1,00,000/- per month to the Respondent herein as maintenance and had also directed the Petitioner to deposit a sum of Rs. 20,00,000/- within four weeks from the date of the Order which had been done so on 29.10.2021. The Respondent herein filed an application for withdrawal of the amount of Rs. 20,00,000/- wherein this Court had issued notice *vide* Order dated 16.11.2021. This Court, considering the fact that this amount is solely for the purpose of interim maintenance and is to be adjusted with the final amount, allows this application filed by the Respondent.

23. In light of the above, the instant petition is partly allowed, along with any other pending application(s), if any.

SUBRAMONIUM PRASAD, J.

FEBRUARY 08, 2022

Rahul

न्यायमेव जयते