

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

% **Reserved on: 21st April, 2022**
Pronounced on: 10th June, 2022

+ CRL. REV. P. 56/2018

JYOTI @ GAYATRI Petitioner

Through: Ms. Manika Tripathy (DHCLSC) and
Mr. Manish Vashist, Advocates

versus

ROHIT SHARMA @ SANTOSH SHARMA Respondent

Through: Respondent in-person

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant criminal revision petition has been filed under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C") by the revisionist seeking enhancement of quantum of maintenance awarded vide Judgment dated 27th November, 2017 passed by learned Principal Judge, Family Court, Central District, Tis Hazari, Delhi (hereinafter "learned Principal Judge") in MT No. 5861929/2016 claiming it to be on the lower side.

2. Brief facts of the case are as follows:

- i. The marriage between revisionist and respondent was solemnised on 11th July, 2008 as per the Hindu rites and ceremonies at Delhi. No issue was born from the said wedlock.

It is alleged that revisionist was abused, insulted and ill-treated for bringing insufficient dowry by the respondent/husband and his family members. It is further alleged that Respondent is an alcoholic person having affairs with other women. It is also alleged that the respondent and his parents demanded cash amount of Rs. 10 Lacs for supporting the business of the husband/respondent. Since the revisionist failed to bring dowry of Rs. 10 Lacs, she was thrown out of her matrimonial home on 28th October 2008.

- ii. The revisionist was totally neglected by the respondent and was unable to maintain herself. She is totally dependent upon her parents. She has filed a petition under Section 125 of the Cr.P.C for her maintenance. Since the respondent started absenting from the proceedings, Court proceeded ex-parte on 11th December 2015.
- iii. Vide Judgment dated 27th November 2017, the petition under Section 125 of the Cr.P.C was allowed by the learned Principal Judge, by which the respondent was directed to pay litigation cost of Rs. 11,000/- and maintenance, as follows:
 - a) Rs. 2,000/- per month from the date of filing of the petition i.e 26th May, 2010 to 25th May, 2015;
 - b) Rs. 2,500/- per month w.e.f 26th May, 2015 to 27th November, 2017; and

- c) Rs, 3,000/- per month w.e.f from 27th November 2017 till such time revisionist gets remarried.

3. Being aggrieved by the inadequate maintenance, awarded by the learned Family Court vide judgment dated 27th November 2017, revisionist has preferred the instant revision petition for the enhancement of the maintenance amount.

SUBMISSIONS

4. The learned counsel for the revisionist submitted that she was thrown out of the matrimonial house on 28th October 2008. Since then she is living with her parents and is totally dependent upon them. The maintenance awarded to tune of Rs. 3,000/-, is very inadequate for her sustenance. Whereas, the respondent/husband is working as the Incharge in Guru Bhog Floor Mill, Lawrence Road, Delhi, and drawing salary of Rs.82,000/- per month. But the Court below has not considered the fact that the respondent is trying to hide his actual salary and has deliberately not furnished any income proof or salary slip to prove his case. It is submitted that revisionist has claimed maintenance @ Rs.35,000/- per month for her livelihood.

5. The learned counsel for the revisionist submitted that from day one of the marriage, the respondent and his family members were very cruel towards the revisionist. The respondent and his family members were not satisfied with the dowry and started demanding cash of Rs. 10 Lakhs for starting their business.

6. It is submitted that since the revisionist was unable to maintain herself and the respondent/husband had totally neglected and failed to fulfill the basic financial needs, she was constrained to file a petition under Section 125 Cr.P.C for her maintenance on 26th May, 2010. It is submitted that the respondent, in sheer abuse of his rights, failed to appear before the learned Family Court and therefore, the learned Family Court finally proceeded ex-parte from 11th December, 2015.

7. It is submitted that the revisionist and respondent have entered into settlement wherein it was agreed that revisionist and respondent would be staying together and respondent would be bearing all her expenses. Since respondent failed to keep his promise, the settlement failed and they have started living separately. The revisionist has not even received Rs. 3 lakhs as promised. Despite this fact, the Court below has awarded such a meagre maintenance.

8. To strengthen his arguments, learned Counsel for the revisionist has relied upon the following judgments:

- i. In the case of ***Chander Prakash Bodhraj v Shila Rani Chander Prakash***, AIR (1968) Delhi 174, coordinate bench of this Court has held:

“7. ...an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for

such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. In the present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him”

- ii. In the case of ***Kusum Sharma v. Mahinder Kumar Sharma, (2014) SCC OnLine Del 7627*** wherein the coordinate bench of this Court has held:

“57. On careful consideration of the suggestions given by the learned amicus curiae, this Court is of the view that in order to implement Sections 21-B, 23-A and 24 to 27 of the Hindu Marriage Act in their true letter and spirit, all petitions under the Hindu Marriage Act should be accompanied by an affidavit of assets, income and expenditure of the petitioner. If the spouse claiming the maintenance is petitioner, application under Section 24 be filed along with the petition whereas if the spouse claiming maintenance is respondent, the application under Section 24 along with the affidavit of assets, income and expenditure of the respondent be filed within 30 days of the service of the notice. The response to the affidavit of assets, income and expenditure of the respondent be filed by the petitioner within two weeks and the Trial Court should thereafter take up the application under Section 24 of the Hindu Marriage Act for

hearing. With respect to Sections 25 and 27 of the Hindu Marriage Act, the well settled principles need to be followed.”

9. In view of the above facts and circumstances, the learned counsel appearing on behalf of the revisionist submitted that the impugned judgment is bad in law as the same was passed without considering the facts of the case and without perusing the documents/materials on record. It is therefore prayed that the judgment dated 27th November 2017 passed by the learned Principal Judge be modified and the quantum of maintenance be enhanced.

10. *Per contra*, respondent-in-person vehemently opposed the instant revision petition and submitted that the same is based on false, vague, concocted, frivolous and fictitious facts.

11. It is submitted that the settlement was arrived at between the parties on 15th November 2008 and on 21st March, 2009 the revisionist/wife had received Rs. 3 Lakhs as part of her *stridhan* items, therefore, she is not entitled for any further maintenance.

12. The respondent submitted that the present petition is not maintainable as the revisionist/wife is living separately on her own accord. The gross allegations of the revisionist/wife regarding abuse or ill-treatment on account of alleged demand of dowry are totally false and are nothing but tactics to extort money from him.

13. The respondent has further submitted that he is working as a cab driver and earning a meagre amount of Rs. 15,000/- per month out of which

Rs. 3000/- per month is being given to the revisionist/wife for maintenance as per the Judgment dated 27th November, 2017 passed by the learned Principal Judge. It is submitted that the revisionist/wife is a graduate and is capable enough to work and earn money for herself, whereas, the respondent himself is only a fifth standard pass. Moreover, he is living in a rented property and has to take care of his old and ailing parents as well for which he does not have sufficient means. It is submitted that if the maintenance is enhanced, he will suffer miserably and will not be able to survive with the minimum means available.

14. It is further submitted that the Court below has passed a well-reasoned judgment after considering the entire facts of the case as well as the evidence, documents and other materials available on record related to the income of the respondent. In the instant case there are no errors apparent on the facts or record and there is no illegality committed by the Court below. Therefore, the instant petition is devoid of merits and is therefore liable to be dismissed.

15. This Court has heard learned counsel of the revisionist and respondent-in-person at length and perused the record. I have also perused judgment dated 27th November 2017.

ANALYSIS AND FINDINGS

16. It is an admitted fact that marriage between the revisionist and respondent no. 1 was solemnized. But due to some differences between revisionist and respondent no.1, started living separately, pursuant to which revisionist has filed petition under Section 125 of Cr.P.C. The object

behind Section 125 of the Cr.P.C is to prevent vagrancy and destitution of wife, minor children and the parents. In the case of ***Manish Jain Vs. Akanksha Jain***, (2017) 15 SCC 801, the Hon'ble Supreme Court has observed as under:

“16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. 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. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

17. The reasons recorded by the Court below while granting maintenance vide judgment dated 27th November, 2017, are reproduced herein below:

“13. Bearing in mind the above said facts and circumstances of the case, the petitioner-wife is able to prove that she is unable to maintain herself and on the other hand the respondent-husband is an able-bodied person, and he had agreed to pay Rs.2,500/- per month as maintenance as on 27.08.2016. It could be assumed that his monthly income would not be less than Rs.15,000/- to Rs.20,000/-per month at present.

14. Therefore in the totality of the facts and circumstances of the case, the respondent husband is directed to pay monthly maintenance @ Rs.2,000/- to the petitioner-wife from the date of filing of the petition i.e., 26.05.2010 to 25.05.2015; and @ Rs.2,500/-per month w.e.f. 26.05.2015 to till date; and Rs.3,000/- w.e.f. 27.11.2017 till such time the petitioner-wife gets remarried, or life, or she becomes dis-entitled or disqualified to claim maintenance on any ground whatsoever as per law.”

18. In the case of ***Bharat Hedge vs Shrimati Saroj, (2007) SCC OnLine Del 622***, Co-ordinate Bench of this Court has laid down certain factors/guidelines to be considered for determining the maintenance. The relevant paragraphs are as follows:

“8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- 1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*

4. *The number of persons, the non applicant has to maintain.*
5. *The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*
6. *Non-applicant's liabilities, if any.*
7. *Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
8. *Payment capacity of the non applicant.*
9. *Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.*
10. *The non applicant to defray the cost of litigation.*
11. *The amount awarded u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act.”*

19. The intent behind 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 punishment to the other spouse. The financial capacity of the husband, his actual income with reasonable expenses for his own maintenance, and dependant 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. It is settled law that balance and equity must carefully be drawn between all relevant factors. The test of

determination of maintenance in matrimonial disputes depends on the financial status of the respondent and the standard of living that the revisionist was accustomed to in her matrimonial home.

20. Section 127 of the Cr.P.C, which provides for alteration in allowance, reads as follows:

“127. Alteration in allowance.

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance or interim maintenance, to his wife, child, father or mother, as case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance , as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order, -

(i) in the case where, such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.”

21. The plain import of sub-section (1) of Section 127 Cr.P.C is that a provision is made therein for an increase or decrease of the allowance consequent on a change in the circumstances of the parties at the time of the application for alteration of the original order of maintenance. It must be

shown that there has been a change in the circumstances of husband or of the wife.

22. In the case of *Bhagwan Dutt vs Kamala Devi*, (1975) 2 SCC 386, the Hon'ble Supreme Court has held that word "circumstance" as appearing in Section 127 Cr.P.C has been interpreted by Hon'ble Apex Court by observing that circumstances as contemplated in Section 127 (1) Cr.P.C must include financial circumstances and in that view, the inquiry as to the change of circumstances must extend to a change of financial circumstances. The relevant portion is reproduced herein:

"20. There is nothing in these provisions to show that in determining the maintenance and its rate, the Magistrate has to inquire into the means of the husband, alone, and exclude the means of the wife altogether from consideration. Rather, there is a definite indication in the language of the associate Section 489(1), that the financial resources of the wife are also a relevant consideration in making such a determination. Section 489(1) provides inter alia, that:

"on proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, the Magistrate, may make such alteration in the allowance as he thinks fit."

The "circumstances" contemplated by Section 489(1) must include financial circumstances and in that view, the inquiry as to the change in the circumstances must extend to a change in the financial circumstances of the wife."

23. In the case of *Krishnendu Das Thakur vs. The State of West of Bengal and Ors.*, (2019) SCC OnLine Cal 969, the Calcutta High Court has held:

“24. The words change in circumstances are used in the Code of Criminal Procedure. The expression 'change in circumstances' in Section 489 Cr.P.C. (now Section 127) of the Code of Criminal Procedure is wide enough to cover the cost of living, income of the parties, etc. In both the Code of Criminal Procedure and the Protection of Women from Domestic Violence Act, 2005, the words change in circumstances are used in connection with alteration of an order of maintenance.”

24. In the case of *Narayan Chandra Das v. Gita Rani Das*, (2005) SCC OnLine Cal 617, the Calcutta High Court has held:

“7. The word “maintenance” which should not be narrowly interpreted, means the most reasonable requirement for the existence of a person to live separate, and accordingly the expenditure, broadly speaking, not only includes on food, clothing and residence but also medical expenses. The concept of providing a wife merely with food, clothing and lodging as if he is only a chattel and has to depend on the sweet-will and mercy of the husband has now become completely outdated and absolutely archaic, as was observed in the case of Sirajmohamed Khan v. H. Yasinkhan, reported in 1981 Cr. LJ 1430 (SC). “Change in the circumstances” is the sine qua non for application of the provision of section 127 Cr. PC. Rise in the cost of living, increase of earning of the husband etc. fall under the purview of change in the circumstances. While determining the amount of

maintenance, not only the earning but also paying capacity of the husband should be considered.”

25. While determining the quantum of maintenance, the Hon’ble Supreme Court in **Jabsir Kaur Sehgal v. District Judge Dehradun & Ors., (1997) 7 SCC 7** has held as follows:-

“8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate ...”

26. The scope of a revision petition under Sections 397/401 of the Cr.P.C. has been succinctly explained in **Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460**. The relevant portion of the said judgment has been reproduced as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear

to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.*

27. The change of circumstances referred to in sub-section (1) of Section 127 Cr.P.C. is a comprehensive phrase which also includes change of circumstances of husband. The amount of maintenance once fixed under section 125(1) Cr.P.C. is not something which can be taken to be a blanket liability for all times to come. It is subject to variation on both sides. It can be increased or decreased as per the altered circumstances. Further, the circumstances alleged by the revisionist/wife already existed at the time of passing the original maintenance judgment; therefore, proof of such circumstances cannot form the basis for altering the amount of maintenance under sub-section (1) of Section 127 Cr.P.C. In the instant case, there is nothing on record to prove that there has been change in circumstances that would warrant an enhancement in maintenance.

28. In the present case, the revisionist submitted that the respondent is man of sufficient means and earning Rs. 82,000/- per month, but she has not placed on record any documents to assess his exact income and to establish that the he is earning such handsome amount of money. Even this Court does not find any material(s) on record to ascertain the exact income of the respondent nor is there any change in circumstances.

29. The revisionist has also not been able to point out any perversity in the impugned judgment dated 27th November 2017. The Court below i.e. learned Principal Judge, while disposing of the petition under Section 125 of the Cr.P.C, has taken into consideration entire facts and documents/materials on record while directing the respondent to pay monthly maintenance of Rs. 2,000/- per month from the date of filing of the

petition i.e 26th May, 2010 to 25th May, 2015; Rs. 2,500/- per month w.e.f 26th May, 2015 to 27th November, 2017; and Rs. 3,000/- per month w.e.f from 27th November 2017 till such time revisionist gets remarried and to clear the arrears within one year, in case of default, he shall be liable to pay penal interest @ 18% p.a.

CONCLUSION

30. The learned Principal Judge, while passing the impugned judgment has taken into account all facts, circumstances, arguments, material(s) on record as well as the law laid down under the Cr.P.C and the judgments passed by the Hon'ble Supreme Court. All the above contentions taken before the Court below were well appreciated, consequent to which the reasonable judgment was passed.

31. Keeping in view the above observations, this Court does not find any cogent reason to interfere with the impugned judgment dated 27th November, 2017 passed by learned Principal Judge, Family Court, since neither there is any illegality, impropriety or error apparent on record nor any change in circumstances.

32. Accordingly, the instant Criminal Revision Petition is dismissed for the reasons stated above.

33. Pending application, if any, also stands disposed of

34. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 10, 2022

Aj/ct