



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Misc. Application No. 243/2022

in

S.B. Criminal Revision Petition No.1345/2018

Dr. Arvind Kishore

----Applicant

Versus

1. Neha Mathur

2. S/o Dr. Arvind Kishore, Aged About 2 Years
Being Minor Through Petitioner No. 1

----Respondents

For Applicant : Mr. Prabhjit Jauhar (on VC)
Ms. Rosemary Raju
Mr. Pushkar Taimni
For Respondents : Mr. Parvej Moyal

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 12/09/2022

Pronounced on 22/09/2022

सत्यमेव जयते

1. This Criminal Misc. Application under Section 482 Cr.P.C. has been preferred claiming the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court that may be pleased to:

a) Misc. Application and set aside the Order dated 26.05.2022 passed by this Hon'ble Court;

b) to pass any others orders as this Hon'ble Court deems fit and proper in view of the above mentioned facts and circumstances of the present matter so as to be in the interest of justice as well as in the interest of the applicant."



2. The present application has been preferred on behalf of the applicant (respondent in the above-numbered criminal revision petition), assailing the judgment passed by this Court on 26.05.2022, whereby this Court, while upholding the order impugned therein, as passed by the learned Family Court No.2, Bikaner, enhanced the maintenance payable by the applicant to the non-applicants (petitioners in the above-numbered criminal revision petition), from Rs. 50,000/- to Rs. 75,000/- to the non-applicant No.1/wife and from Rs. 20,000 /- to Rs. 25,000/- to their minor son (non-applicant No.2).

3. At the outset, the learned counsel appearing on behalf of the applicant-husband, drew the attention of this Court to the judgment rendered by the Hon'ble Apex Court in the case of **Sanjeev Kapoor v. Chandana Kapoor & Ors. (2020) 13 SCC 172**, with regard to the maintainability of the present application.

Relevant portion of the said judgment is reproduced as hereunder:-

*"Section 127 Code of Criminal Procedure also discloses the legislative intendment where the Magistrate is empowered to alter an order passed Under Section 125 Code of Criminal Procedure Sub-section (2) of Section 127 Code of Criminal Procedure also empower the Magistrate to cancel or vary an order Under Section 125. **The Legislative Scheme as delineated by Sections 125 and 127 Code of Criminal Procedure as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in proceeding Under Section 125 Code of Criminal Procedure as indicated above.**"*

(emphasis supplied)



4. Learned counsel for the applicant further submitted that both the spouses, the applicant (husband) and non-applicant No.1 (wife) herein, filed two separate revision petitions against the order passed by the learned Family Court No. 2, Bikaner whereby the application preferred under Section 125 Cr.P.C. by the non-applicant no. 1 – wife was allowed and a total sum of Rs. 70,000/- was awarded the non-applicants; Rs.50,000 to the non-applicant/wife and Rs. 20,000/- to their minor son (non-applicant No.2), who was residing with her. And that, a Coordinate Bench of this Hon'ble Court vide order dated 05.08.2019, while upholding the maintenance sum awarded to the minor son, reduced the maintenance sum awarded to the wife from Rs. 50,000/- to Rs.25,000/-. And that, this Court, vide judgment dated 26.05.2022, passed an order enhancing the maintenance of the wife to Rs.75,000/- and that of the minor son to Rs. 25,000/-.

5. Learned counsel for the applicant further submitted that a review of the impugned order was sought on the ground that the income of the applicant-husband is subject to certain statutory deductions, and that while the applicant-husband may be earning an income in U.S. Dollars, the same cannot be converted into Indian Rupees to ascertain the quantum of maintenance payable to the wife, owing to the high cost of living of the applicant-husband in the United States of America.

6. Learned counsel for the applicant also submitted that the non-applicant/wife is earning an income of about Rs 85,000/- per months, and that the same was concealed by her not only from the learned Family Court, but also from this Court, with the intention of obtaining favorable orders.



7. Learned counsel for the applicant-husband, while submitting that the judgment dated 26.05.2022 passed by this Court requires review, placed reliance on the judgments rendered by the Hon'ble Apex Court in the cases of **Bhushan Kumar Meen v. Mansi Meen (2010) 15 SCC 372; Sanjeev Kapoor v. Chandana Kapoor & Ors. (2020) 13 SCC 172** and; **Ganesh Patel v. Umakant Rajoria (S.L.P. (Crl.) No. 9313 of 2021, decided by the Hon'ble Supreme Court on 07.03.2022).**

8. Learned counsel for the applicant also submitted that the non-applicant/wife made a concealment of facts and did not approach the Courts with clean hands. Reliance was placed on the judgments rendered by the Hon'ble Apex Court in the cases of **S.P. Chengalvaraya Naidu (Dead) by L.R.s v. Jagannath (Dead) by L.R.s and Ors. AIR 1994 SC 853** and **State of A.P. & Anr. v. T. Suryachandra Rao (2005) 6 SCC 149.**

9. Learned counsel for the applicant further submitted that the non-applicant/wife was, as averred hereinabove, gainfully employed in a company at Hyderabad, and was earning an income sufficient to meet her expenses, and therefore, did not require any maintenance whatsoever from the applicant-husband. Reliance was placed on the judgment rendered by a Division Bench of the Hon'ble High Court of Delhi in the case of **K.N. v. R.G., 2019 SCC Online Del 7704.**

Relevant portion as relied upon by the learned counsel is reproduced hereinunder:-

"The said judgment has been relied upon by a coordinate bench of this court in the case of Rupali Gupta v. Rajat Gupta, 234 (2016) DLT 693 wherein this court has upheld the view of the Family Court declining interim maintenance to a wife who was a



qualified Chartered Accountant and in profession since 2003. In the case of *Damanreet Kaur v. Indermeet Juneja*, (2013) 1 JCC 306, this court was dealing with the similar situation and upheld the order of the trial court where the wife was declined maintenance under the Domestic Violence Act on the ground that she was well qualified and had capacity to work and had been actually working in the past.

In the light of the judicial pronouncements on the issue of the interim maintenance, we would now examine the facts of the present case. The undisputed fact is that the husband is well educated and employed at a senior position in a reputed company in Singapore and has been earning about Rs. 13 lakhs INR per month. That he lives in a rented accommodation is also not disputed between the parties. On the other hand, the appellant is also well educated and has been working with reputed companies from the days prior to her marriage and has been employed throughout the period post marriage and as her own income affidavit reveals, is presently also employed and has a net salary of about Rs. 1 Lac per month. **The contention of the appellant is that she is entitled to maintenance pendente lite @ Rs. 2.50 lakhs per month, is primarily based on the fact that the respondent is earning in 'dollars' in Singapore. The contention of the respondent, however, is that while the respondent may be earning in 'dollars' but even his expenditures are in 'dollars'. We cannot agree with the contention of the appellant that merely because the respondent is earning in 'dollars' she is entitled to the maintenance claimed by converting his salary in dollars into Indian rupees. We agree with the respondent that his expenditure being in dollars, the salary being in dollars is a fact which cannot be overemphasized. We are supported in our view by a judgment of this court in *Bindu Chaudhary v. Deepak Suga* reported at (2016) 234 DLT 108 (DB), where this court has held that if a person is employed in Dubai and earns in currency of that country, then he also spends in that currency. So, it is not open to the wife to convert his income in Indian currency and seek enhancement. The relevant para of the said judgment is extracted herein:**



"9. If a person is working in Dubai, he earns in the currency of that country and spends also in that currency. So it is not open to the wife to just convert his income in Indian currency and then seek enhancement. The Court has to consider the cost of living as per the living standards in country where he is employed."

The respondent is thus justified in his submission that the courts will have to consider the cost of living as per the living standard in the country where he is employed and mere earning 'dollars' cannot be the sole criteria to award exorbitant maintenance in favour of other spouse. Thus, this contention of the appellant does not appeal to this court and is hereby rejected.

There is no doubt that the appellant has been working with reputed multinational companies. Her own income affidavit reveals that her net income is approximately Rs. 1 Lac per month. There is no child from the wedlock and she has no other liabilities. Looking at the totality of the facts, we find that this is not the case where the appellant is unable to maintain herself. In fact, the earnings of the appellant are sufficient to maintain herself and give her the required comforts of life. The law on the subject as discernible from some of the judgments mentioned above is clear that when a spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted. In a given situation, the courts have been granting some maintenance in a case where there is capacity to earn but some other factors prevent the spouse from earning despite making best efforts. However, in a case like the present, where the spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted. We do not agree with the submission of the appellant that though she is earning a good amount of salary, she should still be given interim maintenance to bring her at par with the lifestyle of the respondent. The provisions of this section are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to tie over the litigation expenses and to provide a comfortable life to the spouse. **Where, however, both the spouses are earning and have a good salary, merely because there is some salary difference cannot be a reason for seeking maintenance. In**



the present case, what the appellant seeks is an equalization with the respondent which we are afraid cannot be granted under Section 24.”

(emphasis supplied)

10. Learned counsel for the applicant also placed reliance on the judgment rendered by the Hon'ble High Court of Madhya Pradesh in the case of **Mamta Jaiswal v. Rajesh Jaiswal, 2000 (3)**

MPLJ 100.

Relevant portion of the said judgment as relied upon by the learned counsel is reproduced hereinunder:-

“In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente life alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. **A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente life alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose.** In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M. Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. **A lady who is fighting matrimonial**



petition filed for divorce, can not be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice-versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.

In the present case, wife Mamta Jaiswal, has been awarded Rs. 800/-per month as pendente lite alimony and has been awarded the relief of being reimbursed from husband whenever she makes a trip to Indore from Pusad, Dist. Yeotmal for attending matrimonial Court for date of hearing. She is well qualified woman once upon time obviously serving as lecturer in Education College. How she can be equated with a gullible woman of village ? Needless to point out that a woman who is educated herself with



Master's Degree in Science, Masters Degree in Education, would not feel herself alone in travelling from Pusad to Indore, when atleast a bus service is available as mode of transport. The submission made on behalf of Mamta, the wife, is not palatable and digestible. This smells of oblique intention of putting extra financial burden on the husband. Such attempts are to be discouraged."

(emphasis supplied)

11. Learned counsel for the applicant-husband further submitted that the non-applicant/wife has indulged in parental alienation, and is in violation of the order passed by the Hon'ble Apex Court in the case of **Arvind Kishore v. Neha Mathur S.L.P. (Civil) No. 3234/2020 dated 03.09.2021.**

Relevant portion of the said order as placed before this Court, is reproduced hereinunder:-

"In the circumstances, it is directed:

- a) *The petitioner can meet the child Anya Kishor Mathur on week days between 4.30 p.m. to 6.30 p.m. and on weekends between 10.00 a.m. to 5.00 p.m.*
- b) *The petitioner shall be at liberty to have unsupervised visitation on weekdays and to take the child out on weekends during the time stated above.*
- c) *The aforementioned facility shall be made available to the petitioner for two weeks beginning from 07.09.2021.*
- d) *The petitioner shall however deposit his Passport with Family Court, Bikaner, Rajasthan and only thereafter the petitioner can avail the visitation as well as the facility of company of the child as stated above.*
- e) *After the visitation as aforesaid is availed of for two weeks, the Passport shall be returned to the petitioner."*

12. Learned counsel for the applicant lastly submitted that the maintenance sum so awarded to the child may be upheld, but the maintenance sum so granted to the non-applicant no. 1 – wife be



reduced adequately, in light of the submissions so made hereinabove.

13. On the other hand, learned counsel for the non-applicants opposed the submissions made on behalf of the applicant-husband and submitted that the judgment dated 26.05.2022 was rightly passed by this Court after taking into due consideration the overall facts and circumstances of the present case, and the material placed on record.

14. Learned counsel for the non-applicants placed reliance on the judgment of the Hon'ble Apex Court rendered in the case of **Mohammed Zakir v. Shabana & Ors. (2018) 15 SCC 316** and the judgment of the Hon'ble High Court of Judicature at Allahabad rendered in the case of **Yaqoob Husain v. State (Criminal Recall Application No. 3 of 2020, decided on 16.12.2020)** and submitted that the present assailment, as made by the applicant-husband, is not maintainable, and that this Court does not have the jurisdiction to review the same.

Relevant portions of the said judgments, as relied upon by the learned counsel, are reproduced hereinunder:-

In **Mohammed Zakir (supra):-**

"The High Court should not have exercised the power Under Section 362 Code of Criminal Procedure for a correction on merits. However patently erroneous the earlier order be, it can only be corrected in the process known to law and not Under Section 362 Code of Criminal Procedure The whole purpose of Section 362 Code of Criminal Procedure is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to rehear the matter on merits, since, according to the learned Judge, the earlier order was patently erroneous. That is impermissible under



law. Accordingly, we set aside the impugned order dated 28.04.2017.

Now that the parties have appeared before us, we have ascertained that the Appellant approached the High Court, aggrieved by the notice issued by the Sessions Court on 25.01.2017 in Criminal Appeal No. 95/2017. Since the said appeal is pending before Principal City Civil and Sessions Judge, Bengaluru, we do not propose to deal with the matter on merits. Accordingly, we set aside the order dated 18.04.2017 passed by the High Court and dispose of this appeal with a direction to the Principal City Civil and Sessions Judge, Bengaluru to dispose of the Criminal Appeal No. 95/1997 expeditiously."

In **Yaqoob Husain (supra)**:-

"The question, which has cropped up for consideration, as to the maintainability of recall application in view of bar of Section 362 Cr.P.C., had been under consideration for long time. The Apex Court as well as different High Courts had been constantly addressing and adjudicating on the question of bar of Section 362 Cr.P.C.

Before this Court, the controversy for the first time erupted before their Lordships in the year 1958 when the old Criminal Procedure Code was in existence and the question, which was referred to the Full Bench was.

"whether this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same? If so, in what circumstances?"

The Full Bench constituted in *Raj Narain and others (supra)* by a majority view, held as under:

"105. Our answer to the question referred is as follows:

1. That this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same.
2. That this can be done only in cases failing under one or the other of the three conditions mentioned in Section 561-A, namely:

- (i) for the purpose of giving effect to any order passed under the Code of Criminal Procedure;
- (ii) for the purpose of preventing abuse of the process of any Court;
- (iii) for otherwise securing the ends of justice."



15. Learned counsel for the non-applicants further submitted that a bare reading of the judgment passed by this Court on 26.05.2022, reveals that no concealment was made by the wife regarding her income, and that this Court has in fact, dealt with the same, while keeping into due consideration the judgment of the Hon'ble Apex Court in the case of **Rajnish v. Neha & Anr., AIR 2021 SC 569.**

16. Learned counsel for the non-applicants also submitted that the applicant-husband is earning sufficient income, and even after making the necessary deductions against the same, the sum of maintenance so awarded has been rightly and fairly computed.

And that the applicant-husband is bound to maintain the non-applicant/wife to the same standard of living that she was accorded during the marriage, which she is rightly entitled to.

17. Learned counsel for the non-applicants thus prayed for the dismissal of the present application so preferred on behalf of the applicant-husband.

18. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.

19. This Court, at the outset, observes that on a bare perusal of the judgment dated 26.05.2022 passed by this Court, the submissions made herein have been squarely dealt with, in the said judgments, and only two issues arise for consideration before this Court, in the backdrop of the present case, which are as follows:



19.1 The first issue being whether this Court has jurisdiction to review the impugned judgment i.e. whether there is any scope for review of the impugned judgment by this Court; and,

19.2 The second issue being whether the amount of maintenance so granted to the non-applicant/wife was fairly and justly calculated i.e. whether on the merits of the case, the said amount ought to be reduced.

20. With regard to the first issue, this Court finds that the scope of review of the judgment impugned exists and is within the jurisdiction of this Court. This Court in arriving at this conclusion, draws strength from the judgment rendered in the case of **Sanjeev Kapoor (supra)** wherein the Hon'ble Apex Court has held that the application of Section 362 Cr.P.C. is relaxed, with respect to Section 125 Cr.P.C. and that a judgment passed with regard to the same, may be altered or reviewed, owing to circumstances which may have changed subsequently. The judgments cited on behalf of the non-applicants, in this regard, do not render any assistance to their case, that the application preferred by the husband is not maintainable. The first issue thus stands answered.

21. This Court, with regard to the second issue, finds from a perusal of the documents placed on record, specifically the income-tax documents of the applicant-husband, that it was claimed that the total monthly income of the applicant-husband was incorrectly calculated and that certain statutory deductions were kept into consideration while arriving at the final amount of monthly maintenance payable to the non-applicant/wife. However, the same cannot be accepted in view of the fact that the



applicant-husband availed certain leaves, due to which certain deductions were accordingly made from his monthly income. However, such deductions cannot become a part of the baseline in computing maintenance as, in all likelihood, the same will fluctuate over time, owing to very many reasons.

22. This Court further observes, that the impugned judgment clearly reflects that the income of the wife, of about Rs. 85,000/- per months has been already categorically dealt with, and considered by this Court before enhancing the sum of maintenance granted to the non-applicants, vide the judgment impugned.

23. This Court also observes, as contended that on behalf of the applicant-husband, that the non-applicant/wife is guilty of parental alienation, is not subject matter of the *lis* before this Court, and any alleged violation of the order, passed by the Hon'ble Apex Court, as referred to by the learned counsel for the applicant-husband, cannot be a matter of adjudication before this Court.

24. This Court further observes, that the judgment impugned was passed, while keeping into consideration the judgment rendered by the Hon'ble Apex Court in the case of **Rajnish v. Neha & Anr. (supra)**. The judgment relied upon by on behalf of the applicant-husband in **K.N. v. R.G (supra)** do not render any assistance to his case.

For the sake of brevity, the relevant portion of **Rajnish v. Neha & Anr. (supra)** is reproduced as hereunder:-

"Where wife is earning some income

The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband.



In Shailja and Anr. v. Khobbanna, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

In Sunita Kachwaha and Ors. v. Anil Kachwaha (2014) 16 SCC 715 the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale while relying upon the judgment in Sunita Kachwaha (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v. Shila Rani Chander Prakash AIR 1968 Delhi 174 The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

This Court in Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705 cited the judgment in Chander Prakash (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."

25. This Court thus observes that the object of granting maintenance to the wife, is thus to ensure that the standard of living as enjoyed by the wife during the marriage, is maintained



by the husband even after the marriage ceases to exist. And such consideration is made after looking into the facts and circumstances surrounding each case.

26. Thus, for the foregoing reasons, this Court, while observing that the present application is without merit, finds that the judgment dated 26.05.2022 passed by this Court, directing the applicant-husband to pay a monthly maintenance of Rs.75,000/- to the non-applicant No.1/wife and Rs.25,000/- to the non-applicant No.2/son, does not require any review by this Court.

27. Resultantly, the present misc. application is dismissed.

(DR.PUSHPENDRA SINGH BHATI), J.

Skant/-

