



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

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

1. Neha Mathur
2. Anay Mathur

----Petitioners

Versus

Dr. Arvind Kishore,

----Respondent

Connected With

S.B. Criminal Revision Petition No. 1095/2018

Arvind Kishore

----Petitioner

Versus

1. Neha Mathur
2. Anay (Minor)

----Respondents

For Petitioner(s) : Mr. Parvej Moyal (for wife)
For Respondent(s) : Mr. Shadan Farasat a/w
Mr. Harshit Bhurani (for husband)

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 25/05/2022

Pronounced on 26/05/2022

1. The petitioner-husband (respondent herein in Petition No.1345/2018) has preferred S.B. Criminal Revision Petition



No.1095/2018 against the order dated 30.08.2018 passed by the learned Judge, Family Court No.2, Bikaner in Criminal Misc. Case No.18/2016 (268/2015), whereby the learned court below has allowed the application under Section 125 Cr.P.C. preferred by the wife, while awarding a monthly maintenance to the wife and son, to the tune of Rs.50,000/- and Rs.20,000/- (totalling Rs.70,000/-) respectively, and thus, the husband sought quashing and setting aside of the said order. The petitioner-wife (respondent herein in Petition No.1095/2018) has preferred S.B. Criminal Revision Petition No.1345/2018, challenging the same order dated 30.08.2018, while making prayer only to the extent that the amount of monthly maintenance, as already awarded by the learned court below, be enhanced to Rs.2,50,000/- (for wife) and Rs.1,30,000/- (for son).

2. Mr. Shadan Farasat assisted by Mr. Harshit Bhurani, learned counsel, who appeared on behalf of the husband submitted that the marriage in this case was solemnized on 27.05.2010 at Bikaner; thereafter, the couple went to reside in United States of America (USA). Learned counsel further submitted that out of the said wedlock, Master Anay (son) was born on 21.05.2011.

2.1 Learned counsel further submitted that however, on count of the alleged disharmony in their (husband and wife) matrimonial relationship, the wife left her matrimonial home at USA on 13.11.2013 and came back to India alongwith the son. Learned counsel also submitted that thereafter, on 19.06.2015, the wife filed an application against the husband under Section 125 Cr.P.C. before the learned court below, which was allowed vide the impugned order dated 30.08.2018, while awarding the monthly



maintenance to the wife and the son (who is in custody of the wife), as mentioned above.

2.2. Learned counsel further submitted that it is an admitted position that the wife is earning Rs.85,000/- per month and staying at Hyderabad, and thus, competent to earn her own livelihood, while the husband does not oppose the maintenance granted to the son vide the impugned order. Learned counsel also submitted that the wife deserted the husband of her own sweet and free will, and thus, she is not entitled for any kind of maintenance.

2.3 Learned counsel relied upon the order dated 16.09.2019 passed by the Hon'ble Supreme Court in ***Kusum Bhatia Vs. Sagar Sethi (Special Leave to Appeal (C) No(s).16051/2017***. Learned counsel further relied upon the judgment rendered by the Hon'ble Supreme Court in ***Deb Narayan Halder Vs. Anushree Halder (Smt.), (2003) 11 SCC 303***, and the judgment rendered by the Hon'ble High Court of Delhi in ***K.N. Vs. R.G., 2019 SCC Online Del 7704***.

3. On the other hand, Mr. Parvej Moyal, learned counsel for the wife submitted that the husband is taking the plea of desertion by the wife, merely to deny maintenance to her, as awarded by the learned court below, whereas, he himself had sought divorce in the Court at USA and the same was *ex parte* done in favour of the husband on 29.04.2015, while passing the necessary decree.

3.1 Learned counsel further submitted that there is no factual dispute to the extent that the wife is earning Rs.85,000/- and husband is earning about 15000 US\$, which comes to Rs.11,62,000/- (INR per month).



3.2 Learned counsel also submitted that in accordance with the precedent law laid down by the Hon'ble Supreme Court in ***Rajnish Vs. Neha & Anr., AIR 2021 SC 569***, even if the wife is earning, then also she is entitled for the determination of maintenance, in accordance with the lifestyle of her husband in the matrimonial home.

Relevant portion of the judgment rendered in ***Rajnish Vs. Neha & Anr. (supra)***, reads as under:

"

(c) ***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. The Courts have provided guidance on this issue in the following judgments.

In Shailja & 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 & Ors. v Anil Kachwaha 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. 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 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.

.....”

3.3 Learned counsel thus submitted that the sustenance does not mean and cannot be allowed to mean a mere survival, and the lifestyle at Hyderabad, where the wife alongwith her son is presently residing, is very costly, and the son is also going in a good and reputed school at Hyderabad, the expenditure whereof is also too high. Learned counsel thus submitted that even if the wife is earning something, then also she is entitled to claim the necessary and adequate maintenance from her husband.

4. After hearing learned counsel for the parties as well as perusing the record of the case along with the precedent laws cited at the Bar, this Court holds that merely the fact that the wife is earning would not dis-entitle her from the maintenance. The husband himself has taken the divorce on 29.04.2015, fact not in dispute, and therefore, the charge of desertion cannot become a ground so as to enable the husband to disqualify the wife from



claiming the amount of monthly maintenance, in any manner whatsoever.

5. The learned trial court, vide the impugned order, has rightly arrived at a considered decision and looking to the cost of living at Hyderabad and the fact that both the husband and wife were maintaining a very good lifestyle in USA, which is clearly apparent on the face of the record, it would be appropriate to dispose the present petitions, while enhancing the amount of monthly maintenance payable by the husband to the wife and son.

6. This Court finds that the husband is earning about Rs.12,00,000/- per month and the wife is earning Rs.85,000/- per month, and therefore, a very reasonable capacity of the husband to pay the maintenance should be 1/12th of his income, which shall take care of the husband's claim for high cost of living in USA.

7. In view of the above, the amount of monthly maintenance as awarded by the learned court below, vide the impugned order dated 30.08.2018, to the wife and the son, is enhanced to Rs.75000/- (for wife) and Rs. 25000/- (for son). The impugned order dated 30.08.2018 stands modified accordingly.

8. In light of the observations made hereinabove and the modification in the impugned order passed by the learned court below, the present petitions stand disposed of. All pending applications also stand disposed of.

(DR.PUSHPENDRA SINGH BHATI), J.

104-105-SKant/-