

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.26 of 2015 and Cr.
Revision No. 369 of 2014.

Judgement reserved on: 28.5.2015.

Date of decision: 1.6.2015.

1. Cr.MMO No. 26 of 2015.

Vipul Lakhanpal Petitioner.

Vs.

Smt. Pooja Sharma Respondent

2. Cr. Revision No. 369 of 2014.

Smt. Pooja Sharma Petitioner.

Vs.

Vipul Lakhanpal Respondent

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes

For the petitioner : Mr. G.D.Sharma, Advocate, for the petitioner in Cr.MMO No. 26 of 2015 and for respondent in Cr.Revision No. 369 of 2014.

For the respondents : Mr. Anirudh Sharma, Advocate, for the respondent in Cr.MMO No. 26 of 2015 and for petitioner in Cr. Revision No. 369 of 2014.

Tarlok Singh Chauhan, Judge.

Since both the petitions arise out of the same judgement, they are being taken up together for disposal. The parties shall hereinafter referred to as wife and husband.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

2. The wife filed a petition through Protection Officer, under section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Act) against her husband. It transpires that wife had made a written complaint before the Protection Officer, in which it had been averred that her marriage was solemnized with the husband on 30.10.2009 in accordance with the Hindu Rites. After the marriage, she went to the house of husband at Longwood, Shimla where on the first night the husband threatened her and told her that had he been in possession of a knife he could have killed her and in case she opened her mouth her entire family will be killed by him.

3. The wife thereafter was taken to the native village at Hamirpur by her husband and his family members for POOJA purpose, where the husband and his family members also maltreated her. The husband also told the wife that in fact he wanted to marry with the niece of Karuna Vaid and he does not like her.

4. The husband could not consummate the marriage with the wife as he is not physically fit. The wife also joined the company of her husband at Mumbai where he could also not consummate the marriage with her, rather he had beaten her and her mother at Mumbai. Two meetings were called by the relatives of the wife, where father of the husband admitted that his son is not physically fit.

5. Thereafter, the husband attacked his wife in her parental house and in this manner, made her life hell by making telephonic calls and SMS and, therefore, action be taken against him. The Protection Officer filed incident report. The complaint was forwarded by him through incident report in the Court.

6. The respondents contested the petition by filing their separate replies. In his reply the husband took preliminary objection regarding maintainability. On merits, he denied that he or his family members ever maltreated or had beaten the wife. The wife remained with him and his family members even at his native place in District Hamirpur and also stayed with him at Mumbai. The wife joined his company at Mumbai when she was brought by his father to Mumbai. The meeting was convened by the relatives of the husband but the wife refused to join the company of her husband without sufficient cause. In fact, in the meeting father and relatives of the wife asked the father of husband to pay Rs.15-20 lacs and get divorce from the wife and the husband and his family members never maltreated the petitioner. The wife also lodged FIR against the respondents under Sections 498-A and 506 IPC at Solan just to harass the respondents. The petition filed by the wife is false and frivolous, same be dismissed with costs.

7. The other respondents also filed the reply in which they denied the allegations as had been made by the wife.

8. The learned Magistrate after recording evidence and hearing the parties vide his order dated 1.9.2012 partly allowed the petition of the wife against the respondent-husband, whereby he was prohibited from committing any act of domestic violence and further ordered to pay a maintenance to the tune of Rs.5,000/- per month alongwith compensation of Rs.10,000/-.

9. The husband assailed this order before the learned appellate authority, who affirmed and upheld the order passed by the learned Magistrate.

10. Aggrieved by the orders passed by the learned courts below, the husband has invoked the jurisdiction of this court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set-aside the aforesaid orders.

11. I have heard the learned counsel for the parties and have gone through the records of the case.

12. It has been alleged that the learned courts below have failed to appreciate the fact that the wife who is TGT in Maths and was drawing a handsome salary of Rs.9,000/- per month and was therefore, not entitled to maintenance. It was further alleged that due to the act and conduct of the wife, the husband was compelled to tender resignation from his job as Manager on 25.4.2010 and ever since then not only that he is doing any job, rather he is under mental distress and undergoing treatment at IGMC Shimla. It has been lastly contended that the courts below have miserably failed to appreciate that the husband has no source of income and therefore, cannot be directed to pay maintenance.

13. The learned counsel for the husband has vehemently argued that since the wife is earning an amount of Rs.9,000/- per month whereas the husband is not at all earning, therefore, she is not entitled to maintenance.

14. In support of his contention, strong reliance has been placed by him on the judgement of learned single Judge of Delhi High

Court in **Crl. M.C. No. 491 of 2009** titled **Sanjay Bhardwaj & ors. vs. The State & anr., decided on 27.8.2010**, particularly on the following observations:-

“4. A perusal of Domestic Violence Act shows that Domestic Violence Act does not create any additional right in favour of wife regarding maintenance. It only enables the Magistrate to pass a maintenance order as per the rights available under existing laws. While, the Act specifies the duties and functions of protection officer, police officer, service providers, magistrate, medical facility providers and duties of Government, the Act is silent about the duties of husband or the duties of wife. Thus, maintenance can be fixed by the Court under Domestic Violence Act only as per prevalent law regarding providing of maintenance by husband to the wife. Under prevalent laws i.e. Hindu Adoption & Maintenance Act, Hindu Marriage Act, Section 125 Cr.P.C - a husband is supposed to maintain his un-earning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage. If the husband was BSc. and Masters in Marketing Management from Pondicherry University, the wife was MA (English) & MBA. If the husband was working as a Manager abroad, the wife with MBA degree was also working in an MNC in India. Under these circumstances, fixing of maintenance by the Court without there being even a prima facie proof of the husband being employed in India and with clear proof of the fact that the passport of the husband was seized, he was not permitted to leave country, (the bail was given with a condition that he shall keep visiting Investigating Officer as and when called) is contrary to law and not warranted under provisions of Domestic Violence Act.

5. We are living in an era of equality of sexes. The Constitution provides equal treatment to be given irrespective of sex, caste and creed. An unemployed husband, who is holding an MBA degree, cannot be treated differently to an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one

cannot be asked to maintain other unless one is employed and other is not employed. As far as dependency on parents is concerned, I consider that once a person is grown up, educated he cannot be asked to beg and borrow from the parents and maintain wife. The parents had done their duty of educating them and now they cannot be burdened to maintain husband and wife as both are grown up and must take care of themselves.

6. It must be remembered that there is no legal presumption that behind every failed marriage there is either dowry demand or domestic violence. Marriages do fail for various other reasons. The difficulty is that real causes of failure of marriage are rarely admitted in Courts. Truth and honesty is becoming a rare commodity, in marriages and in averments made before the Courts. “

15. I have gone through the aforesaid judgement and find myself unable to agree with the same.

16. Indisputably the factum of marriage has not been denied by the husband. If that be so, it is not only his moral obligation but legal duty to maintain his wife by providing food, clothing and shelter, if not anything more.

17. The law on the subject has been elaborately dealt in **Kota Varaprasada Rao and another vs. Kota China Venkaiah and others AIR 1992 AP 1**, wherein it has been held as follows:-

“8. The oldest case decided on the subject is one in Khetramani Dasi v. Kashinath Das, (1868) 2 Bengal LR 15. There, the father-in-law was sued by a Hindu widow for maintenance. Deciding the right of the widow for maintenance, the Calcutta High Court referred to the Shastric law as under:

"The duty of maintaining one's family is, however, clearly laid down in the Dayabhaga, Chapter II, Section XXIII, in these words:

'The maintenance of the family is an indispensable obligation, as Manu positively declares.' Sir Thomas Strange in his work on Hindu Law Vol. I page 67, says:

'Maintenance by a man of his dependants is, with the Hindus, a primary duty. They hold that he must be just, before he is generous, his charity beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his children the only objects, co-extensive as it is with the family whatever be its composition, as consisting of other relations and connexions, including (it may be) illegitimate offspring. It extends according to Manu and Yajñavalkya to the outcast, if not to the adulterous wife; not to mention such as are excluded from the inheritance, whether through their fault, or their misfortune; all being entitled to be maintained with food and raiment.'

At page 21, the learned Judges have also referred to a situation where there is nothing absolutely for the Hindu widow to maintain herself from the parents-in-law's branch by referring to the following texts from NARADA:

"In Book IV, Chapter I Section I, Art. XIII of Celebrooke's Digest, are the following texts from NARADA:

'After the death of her husband, the nearest kinsman on his side has authority over a woman who has no son; in regard to the expenditure of wealth, the government of herself, and her maintenance, he has full dominion. If the husband's family be extinct, or the kinsman be unmanly, or destitute of means to support her, or if there is no Sapindas, a kinsman on the father's side shall have authority over the woman; and the comment on this passage is : "Kinsman on the husband's side; of his father's or mother's race in the order of proximity. 'Maintenance' means subsistence. Thus, without his consent, she may not give away anything to any person, nor indulge herself in matters of shape, taste, smell, or the like, and if the means of subsistence be wanting he must provide her maintenance. But if the kinsman be unmanly (deficient in manly capacity to discriminate right from wrong) or destitute of means to support her, if there be no such person able to provide the means of subsistence, or if there be no SAPINDAS, then any how, determining from her own judgment on the means of preserving life and duty, let her announce her affinity in this mode : 'I am the wife of such a man's uncle; 'and if that be ineffectual, let her revert to her father's kindred; or in failure of this, recourse may be had even to her mother's kindred" (Emphasis supplied.)

In Book III, Chapter II, Section II, Art. CXXII, of Colebrooke's Digest, we have the following texts and comments:

"She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband's father or mother, or from her maternal uncle; else she becomes infamous."

As per the above texts and comments, a Hindu widow if the parents-in-law's branch is unmanly or destitute of means to support her is entitled to be with the father or the kinsman on the father's side.

9. In *Janki v. Nand Ram*, (1889) ILR 11 All 194 (FB), a Hindu widow after the death of her father-in-law sued her brother-in-law and her father-in-law's widow. The Full Bench of the Allahabad High Court held that the father-in-law was under a moral, though not legal, obligation not only to maintain his widowed daughter-in-law during his life time, but also to make provision out of his self-acquired property for her maintenance after his death; and that such moral obligation in the father became by reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by a suit against the son and against the property in question. While so deciding, the learned Judges at page 210 made a reference to a passage from Dr. Gurudas Banerjee's Tagore Law Lectures, thus:

"We have hitherto been considering the claim of a widow for maintenance against the person inheriting her husband's estate. The question next arises how far she is entitled to be maintained by the heir when her husband leaves no property and how far she can claim maintenance from other relatives. The Hindu sages emphatically enjoin upon every person the duty of maintaining the dependant members of his family. The following are a few of the many texts on the subject:--

MANU: 'The ample support of those who are entitled to maintenance is rewarded with bliss in heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.'

NARADA: 'Even they who are born, or yet unborn and they who exist in the womb, require funds for subsistence; deprivation of the means of subsistence is reprehended.'

BRIHASPATI: 'A man may give what remains after the food and clothing of his family, the giver of more who leaves his family naked and unfed, may taste honey at first, but still afterwards find it poison.'

The text of MANU as added reads:

"He who bestows gifts on strangers, with a view to worldly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with

honey, but swallows poison; such virtue is counterfeit: even what he does for the sake of his future spiritual body, to the injury of those whom he is found to maintain, shall bring him ultimate misery both in this life and in the next."

Having so quoted the texts, the Full Bench based its judgment on the proposition:

".....under the Hindu law purely moral obligations imposed by religious precepts upon the father ripen into legally enforceable obligations as against the son who inherits his father's property."

10. In *Kamini Dasee v. Chandra Poda Handle*, (1890) ILR 17 Cal 373, it is held by the Calcutta High Court that the principle that an heir succeeding to the property takes it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal School and accordingly decreed the suit for maintenance laid by a widowed brother against her husband's brothers.

11. In *Devi Prasad v. Gunvati Koer*, (1894) ILR 22 Cal 410, deciding an action brought for maintenance by a Hindu widow against the brothers and nephew of her deceased husband after the death of her father-in-law, the Calcutta High Court held that the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's life time, enforced partition of that property, and as the Hindu law provides that the surviving coparceners should maintain the widow of a deceased coparcener, the plaintiff was entitled to maintenance.

12. In *Bai Mangal v. Bai Rukmini*, (1899) ILR 23 Bom 291, the statement of law of MAYNE that

"After marriage, her (meaning the daughter's) maintenance is a charge upon her husband's family, but if they are unable to support her, she must be provided for by the., family of her father."

was understood to have been one of monetary character than laying down any general legal obligation. The learned Judge,

Ranede, J., after examining all the authorities has broadly laid down the law, as he understood, thus:

"In fact, all the text writers appear to be in agreement on this point, namely, that it is only the unmarried daughters who have a legal claim for maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs." (page 295).

13. However, the same learned Judge, Ranede, J., in a later case in *Yamuna Bai v. Manubai*, (1899) ILR 23 Bom 608, expressed his absolute concurrence with the law laid down by the Allahabad High Court in *Janaki's case*, (1889 ILR 11 All 194) (*supra*), as regards the right of the widow of a predeceased son to maintenance against the estate of the deceased father-in-law in the hands of his heirs.

14. The view of Ranede, J., in *Bai Man-gal's case*, (1899 ILR 23 Bom 291) (*supra*), was further conditioned by Ammer Ali, J., in *Mokhoda Dasse v. Nundo Lall Halidar*, (1900) ILR 27 Cal 555, by holding that the right of maintenance is again subject to the satisfaction of the fact that the widowed sonless daughter must have been at the time of her father's death maintained by him as a dependant member of the family.

15. But, both the views of Ranede, J., in *Bai Mangal's case*, (1899 ILR 23 Bom 291) (*supra*), and Ameer Ali, J., in *Mokhode Dasse's case*, (1900 ILR 27 Cal 555) (*supra*), did not find acceptance of A. K. Sinha, J., of the Calcutta High Court in *Khanta Moni v. Shyam Chand*, . The learned Judge held that a widowed daughter to sustain her claim for maintenance need not be a destitute nor need be actually maintained by the father during his life time... All that she is required to prove to get such maintenance, the learned Judge held, is that at the material time she is a destitute and she could not get any maintenance from her husband's family."

“19. In *Appavu Udayan v. Nallamrnal*, AIR 1949 Madras 24, the Madras High Court has to deal with the rights of daughter-in-law against her father-in-law and his estate in the hands of his heirs. There it is held that the father-in-law is under a moral obligation to maintain his widowed daughter-in-law out of his self-acquired property and that on his death if his self-acquired property descends by inheritance to his heirs, the moral liability of the father-in-law ripens into a legal one against his heirs.

20. A Full Bench of this High Court in *T. A. Lakshmi Narasamba v. T. Sundaramma*, AIR 1981 Andh Pra 88 held:

"The moral obligation of a father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property.

Under the Hindu law there is a moral obligation on the father-in-law to maintain the daughter-in-law and the heirs who inherit the property are liable to maintain the dependants. It is the duty of the Hindu heirs to provide for the bodily and mental or spiritual needs of their immediate and nearer ancestors to relieve them from bodily and mental discomfort and to protect their souls from the consequences of sin. They should maintain the dependants of the persons of property they succeeded. Merely because the property is transferred by gift or by will in favour of the heirs the obligation is not extinct. When there is property in the hands of the heirs belonging to the deceased who had a moral duty to provide maintenance, it becomes a legal duty on the heirs. It makes no difference whether the property is received either by way of succession or by way of gift or will, the principle being common in either case."

21. *It is rather pertinent to notice here that the view of Ranede, J., in Bai Mangal's case, (1899 ILR 23 Bom 291) (supra) has been dissented from specifically by the Full Bench of this High Court."*

18. The next question, which arises for consideration is as to whether employed wife can be refused maintenance only on the ground that the husband is unemployed.

19. It can never be forgotten that inherent and fundamental principle behind section 12 of the Act is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands that there has to be some acceptable arrangements so that she can sustain herself. Sustenance does not mean and can never allow to mean a mere survival.

20. A woman, who is constrained to leave the matrimonial home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. She cannot be compelled to become a destitute or a beggar.

21. Now, I deal with the plea advanced by the husband that he does not have the job and his survival is on the little pension that his father is getting. Similar question came up before the Hon'ble Supreme Court in **Shamima Farooqui vs. Shahid Khan JT 2015 (3) SC 576**, wherein it has been held as follows:-

“15. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. While determining the quantum of maintenance, this Court in *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.* [JT 1997 (7) SC 531: 1997 (7) SCC 7] has held as follows:-

“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.”

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai* [JT 2008 (1) SC 78 : 2008 (2) SCC 316], it has been ruled that:-

“Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* [1978 (4) SCC 70] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [JT 2005 (3) SC 164]”.

16.1. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

17. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash* [AIR 1968 Delhi 174] wherein it has been opined thus:-

“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 to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

22. From the aforesaid enunciation of law, it is absolutely clear that once the husband is an able-bodied young man capable of earning sufficient money, he cannot simply deny his legal obligation of maintaining his wife.

23. It has to be remembered that when the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm for which she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance. [Ref: **Shamima Farooqui vs. Shahid Khan** (supra)].

24. The learned counsel for the husband has vehemently argued that the learned courts below have ignored the fact that the wife is earning Rs.9,000/- by taking her income only to be Rs.5000/-. I am afraid that such contention is belied from the records as the learned appellate court has duly taken into consideration the fact that the wife was getting a salary of Rs.9,000/-.

25. The learned counsel for the wife has further vehemently argued that since the husband is already getting a salary of Rs.9,000/-, therefore, the amount of maintenance can in no manner be said to be justified. I am afraid that this contention is without force. It has to be remembered that it was probably because of the fact that husband was getting Rs.60,000/- when he was at Mumbai and his carry home salary was Rs.45,000/- that too in the year 2010 that this matrimonial relationship came into existence. It was after taking into consideration the status and the earning capacity of the husband that the marriage proposal was accepted and thereafter solemnized.

Therefore, taking into consideration all the aforesaid facts, coupled with the price index and the high cost of living, the maintenance of Rs.5,000/- in no manner can be held to be excessive.

26. That apart after having rendered the wife a total destitute, the husband cannot be heard to complain that because now she is earning, therefore, she is not entitled to any maintenance. After-all, it was the circumstances created by the husband which compelled the wife to look for means to sustain herself and she accordingly took up the job of teaching.

27. Though the wife has filed a separate revision petition claiming enhancement of maintenance and compensation, but after having gone through the records of the case, I find that award of maintenance at the rate of Rs.5,000/- and award of compensation to the tune of Rs.10,000/- is just and proper.

28. In view of the aforesaid discussion, I find no merit in both the petitions and the same are accordingly dismissed, leaving the parties to bear their own costs. The Registry is directed to place a copy of this judgment on the file of connected matter.

June 1, 2015.
(Hem)

(Tarlok Singh Chauhan),
Judge.