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

% Judgment delivered on: 29.05.2019

+ CRL.REV.P. 456/2015

BABITA BISHT

..... Petitioner

versus

DHARMENDER SINGH BISHT

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Akshai Malik, Advocate with petitioner in person.

For the Respondent : Mr. C.S. Bhandari with Mr. Devagya Kainth, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 456/2015 & CrI.M.A.10428/2015 (stay) & CrI.M.A. 11133/2019 (directions)

1. Petitioner impugns judgment dated 29.04.2015, whereby, the Trial Court has reduced the quantum of maintenance being given to the petitioner from 30% of the gross income of the respondent to 15% of gross salary.

2. Parties were married on 07.05.2006 and separated on 15.10.2006. Subject application under Section 125 Cr.P.C. was filed

on 29.11.2006.

3. On 21.02.2008, order for grant of interim maintenance was passed and petitioner was granted 30% of the gross income of the respondent after making statutory deductions.

4. Respondent is employed as an Inspector in CISF.

5. After parties led their evidence, the Trial Court passed the impugned judgment holding the petitioner entitled to 15% of the gross salary of the respondent after deduction of minimum statutory legal deduction.

6. As per the directions of the Trial Court, the employer was making the calculations and transmitting the maintenance amount directly to the account of the petitioner.

7. Learned counsel for the petitioner submits that no rational or reasoning has been given by the Trial Court for reducing the maintenance amount from 30% to 15 %. He further submits that the Trial Court has erred in directing the calculation on gross salary basis instead of gross income basis.

8. Learned counsel for the respondent submits that payment of 30% of the gross income is on the higher side and petitioner has income from other sources as is reflected in her bank account. He, however, fairly states that as per the understanding of the respondent,

there is no difference between gross income and gross salary.

9. Respondent has also filed an application seeking a direction to the petitioner to produce her bank accounts statements as also to disclose the amounts received by her from other sources.

10. Petitioner in reply to the said application has given an explanation with regard to the amounts received by the petitioner from other sources. As per the reply, the petitioner has received money from her father. The explanation rendered by the petitioner is that her father was putting money into her bank account for daily expenses of the family. She submits that income being received by her father was transferred to her account so that she could make the expenses of the family from her own account. It is submitted that parents of the petitioner are old and are not in a position to operate their bank account on daily basis for incurring expenses.

11. It is an admitted position that by order dated 21.02.2008, interim maintenance was fixed at 30% of the gross income. There are no children from the wedlock.

12. There is no other dependant member of the respondent apart from the petitioner. In case the formula of apportionment is applied, respondent would be entitled to retain two parts of his income after making the mandatory statutory deductions and one part of the same would be payable to the wife.

13. It is clear that there was a rationale of the Trial Court in awarding interim maintenance at 30% of the gross income of the respondent.

14. It is also an admitted position that from the year 2008 till the passing of the impugned order, 30% of the gross income was being deducted from the salary of the respondent and being paid to the petitioner by the authorities.

15. Impugned judgment is completely silent with regard to the aspect of as to why the percentage is reduced from 30% to 15%.

16. The Supreme Court in *Reema Salkan vs. Sumer Singh Salkan* in Crl.A.No.1220/2018 in judgment dated 25.09.2018 relying on the earlier judgment of the Supreme Court in *Bhuvan Mohan Singh vs. Meena*: (2015) 6 SCC 353 held that “*the concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is*

the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

17. In the present case, respondent has not impugned the judgment and as such, the right to receive maintenance of the petitioner is not in question. The only issue is with regard to the quantum.

18. As noticed above, the impugned judgment is silent with regard to the rationale as to why 30% has been reduced to 15% and further as to why only 15% of the gross salary has been allowed when it is a settled formula that maintenance is to be apportioned with two parts for the husband and one part for the wife, when there is no other dependent member.

19. In view of the above, I am of the view that the impugned order to the extent that it awards maintenance at 15% of the gross salary after deduction of minimum statutory legal deductions is not sustainable. The order is, accordingly, modified to the extent that petitioner is held entitled to 30% of the gross income of the

respondent after the minimum statutory deductions.

20. Accordingly, Director General CISF, is directed to deduct 30% of the gross income of the respondent, after making minimum statutory deductions, and pay the same directly to the petitioner towards the future monthly maintenance amount.

21. Further, it is clarified that this direction shall remain effective till the lifetime of the petitioner or till she gets remarried, whichever is earlier. The remarriage, if any, by petitioner shall be notified to the employer of the respondent.

22. On superannuation or Voluntary Retirement of the respondent, the computation of the monthly maintenance shall be made in proportional manner in the aforesaid fashion.

23. In addition, further deduction of 15% of the gross income of the respondent, after making minimum statutory deductions, shall be made and paid to the petitioner to clear the arrears from the date of the impugned judgment, i.e., 29.04.2015 till date. Said additional 15% deduction shall be made and paid to the petitioner for a period of 48 months.

24. Since the additional deduction is towards arrears of maintenance, same is not subject to the restriction contained in Para 21 hereinabove. Further, in case of superannuation or voluntary retirement of the respondent prior to the expiry of the period of 48

months, the entire arrears shall be deducted from the retirement benefits and paid to the petitioner.

25. Petition is allowed in the above terms.

26. Copy of the Order be forwarded to Director General CISF, HQ CISF, 13 CGO Complex, Lodhi Road, New Delhi for compliance.

27. Order *Dasti* under signatures of the Court Master.

MAY 29, 2019
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SANJEEV SACHDEVA, J

