

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL. REV. P. 515/2018

Reserved on : 05.02.2020

Decision on : 24.02.2020

IN THE MATTER OF:

ANITA Petitioner

Through: Ms. Richa Dhawan, Standing
Counsel with Mr. Anuj
Chaturvedi, Advocate

versus

AMIT Respondent

Through: Ms. Radha Yadav and Mr. Shiva
Rao, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition is directed against the order dated 04.01.2018 passed by the Principal Judge, Family Court, Karkardooma Courts, Delhi whereby the petitioner's application seeking maintenance under Section 125 Cr.P.C. was dismissed.

2. Learned counsel for the petitioner contended that the Family Court wrongly came to the conclusion that the petitioner's testimony in absence of any documentary evidence was unreliable. It was further contended that the Family Court erred in not recording a finding with respect to the income of the respondent and the maintenance sought by the petitioner.

3. Learned counsel for the respondent, on the other hand, supported the impugned order and further submitted that the petitioner has passed Central Teacher Eligibility Test (CTET) exam and is now capable of earning. It is further stated that the petitioner is more qualified than the respondent and can maintain herself.

4. I have heard learned counsels for the parties and gone through the case records.

5. As per the maintenance petition, the petitioner's marriage with the respondent was solemnized on 18.11.2011. The respondent used to demand a *Santro* car despite the fact that one motorcycle was given in the dowry along with an amount of Rs. 4 lacs in cash. The petitioner got pregnant in the month of July, 2013 and during her pregnancy, she was physically assaulted by the respondent and his family members, resulting in a miscarriage. The respondent and his family demanded dowry and physically assaulted her on various occasions. On 08.10.2013, the petitioner was beaten and thrown out of the matrimonial home. A complaint dated 02.04.2014, made to CAW Cell, was also placed on record. It was stated that the petitioner had to live separately as the respondent had deserted her and she had no other source of income.

6. The Family Court disbelieved the testimony of the petitioner on the ground that no documentary evidence was placed on record in support of her allegations. It was held that there was no cross-examination of the respondent on his claim that the petitioner had left the matrimonial home voluntarily. It was also held that the reliance placed by the respondent on the ultrasound examination report of the petitioner

dated 26.08.2013, which did not suggest any pregnancy, remained unchallenged and unrebutted.

7. It is well settled by catena of judicial precedents that the provisions of Section 125 of the Criminal Procedure Code are for the welfare of the neglected wives, children and parents and that provisions should be construed liberally.

8. In the present case, the petitioner examined herself as PW-1. She stated that although for earlier acts of beating, no police complaint was filed but for the physical assault committed upon her on 08.10.2013, she filed a police complaint dated 02.04.2014 before the CAW Cell. It was further stated that after the aforesaid assault, she was thrown out of the matrimonial home due to which she started living at her parental house. The petitioner placed on record the aforementioned complaint filed with the CAW cell.

9. The respondent examined himself as RW-1 and deposed that the petitioner used to off and on leave the matrimonial home for going to her parental home and denied that there was any dowry demand or demand of *Santro* car. He placed on record the petitioner's ultrasound report of Sandhya Clinic & Ultrasound Centre and a report of Acopic Diagnostic & Ultrasound Centre where it was not mentioned that she was pregnant.

10. The entire thrust of the impugned order passed by the Family Court is that the petitioner did not cross-examine the respondent with respect to the ultrasound report, that she left the matrimonial home along with her brother and did not return despite repeated requests made by the

respondent. The Family Court disbelieved the testimony of the petitioner that she had a sufficient cause to live separately from the respondent.

11. The Family Court failed to take into account the petitioner's claim that she was forced to leave the matrimonial home on account of dowry demands and physical assault. The petitioner's testimony was supported by her complaint to the CAW Cell which was proved on record. Merely because the ultrasound report did not suggest the pregnancy of the petitioner, her entire complaint with respect to dowry harassment and physical assault is not wiped out.

12. The reliance placed by learned counsel for the respondent on the decision in Poonam v Mahender Kumar reported as **2009 SCC OnLine P&H 11719** is entirely misplaced as in the captioned case, the wife did not join the company of the husband even after an order was passed in a petition filed by the husband for restitution of conjugal rights. The petitioner left not only the company of her husband but also left her two sons.

13. So far as contention of the learned counsel for the respondent with respect to lack of averment in the maintenance petition that the petitioner was unable to maintain herself is concerned, I find that in her petition, it was specifically averred that she has no source of income and does not possess any movable or immovable property. It was also averred that she was totally dependent on her father. It was further averred that the respondent being employed as a Graphic Designer has sufficient means to maintain her. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for

maintenance under Section 125 Code of Criminal Procedure. [Refer: Chaturbhuj v. Sita Bai reported as (2008) 2 SCC 316 and Vinny Parmvir Parmar v. Parmvir Parmar reported as (2011)13SCC112]. I also deem it profitable to reproduce the observations of Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as (2014) 16 SCC 715 as follows :-

“6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

7. Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department.

Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

14. Coming to the contention raised by the learned counsel for the respondent that whether the petitioner is to be denied maintenance only on account of the fact that she was capable of earning, was decided by this Court in Arun Vats v. Pallavi Sharma, reported as **2019 SCC OnLine Del 11817** and Niharika Yadav v. Manish Kumar Yadav in Crl. Rev. Petition 755/201, decided on 18.12.2019 where, while relying upon the decision rendered in the case of Shalija v. Khobbana reported as **(2018) 12 SCC 199**, it was held that 'capable of earning' and 'actual earning' are entirely two different things. Merely because the wife is 'capable of earning' is not a sufficient reason to deny her the maintenance. It was also stated that the petitioner has qualified CTET test and is now more qualified to earn. In Swapan Kumar Banerjee v. The State of West Bengal and Ors, reported as **2019 SCC OnLine SC 1263**, the Supreme Court observed as follows:

“11. The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs. 13,16,585/- per year

and on that basis Rs. 10,000/- per month has been awarded as monthly maintenance to the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.”

15. In the opinion of this Court, the findings recorded by the Family Court are without appreciating the petitioner’s testimony and supporting document on record. The petitioner having qualified CTET is not a proof that she has started earning. Accordingly, the impugned order is set aside and the matter is remanded back to the Family Court for fresh consideration.

16. List the maintenance petition before the Family Court on 11.03.2020. A copy of this order be also communicated to the concerned Family Court.

17. With the above directions, the petition is disposed of.

MANOJ KUMAR OHRI, J

FEBRUARY 24, 2020

na