



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE A V SSHA SAI
CRIMINAL PETITION NO: 3908 OF 2013

Between:

1. VEJENDLA SUGUNAMMA, GUNTUR & ANR., W/o. Irmeiah,
R/o Sripuram Village, Kollipara Mandal, Guntur District.

...PETITIONER(S)

AND:

1. VEJENDLA IRMEIAH, GUNTUR, REP PP.,& ANR., S/o. Andraiah,
R/o. Vejendla Village, Chebrolu Mandal, Guntur district.
2. The State of Andhra Pradesh, rept. by the Public Prosecutor,
High Court of A.P., Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): SUBBA RAO POSANI

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL PETITION No.3908 OF 2013
AND
CRIMINAL REVISION CASE No.835 of 2013

COMMON ORDER:

Since these two cases pertain to the same subject matter and are inter-related, this Court deems it appropriate to dispose of these two cases by way of this common order.

2. Criminal Petition No.3908 of 2013 is filed assailing the order dated 23.01.2013 passed by the Court of the XI Additional District and Sessions Judge (Fast Tract Court), Guntur at Tenali (for short, 'the Additional Sessions Judge') in Criminal Revision Petition No.69 of 2012 and the order dated 27.03.2012 passed by the Court of the II Additional Judicial Magistrate of First Class, Tenali (for short, 'the Magistrate') in CrI.M.P. No.3786 of 2011 in M.C. No.17 of 1998, and consequently, the petitioners herein, who are wife and daughter of 1st respondent herein, are claiming a sum of Rs.8,000/- each towards their maintenance.

3. In Criminal Revision Case No.835 of 2013, the revision petitioner, who is wife of 1st respondent herein, is challenging the order dated 23.01.2013 passed by the learned Additional Sessions Judge in Criminal Revision Petition No.54 of 2012, modifying the order dated 27.03.2012 passed by the learned Magistrate in CrI.M.P. No.3786 of 2011 in M.C. No.17 of 1998.



4. Petitioners 1 and 2 in Criminal Petition No.3908 of 2013 filed M.C. No.17 of 1998 before the learned Magistrate against the 1st respondent herein, seeking maintenance, and the learned Magistrate granted maintenance @ Rs.300/- per month to 1st petitioner and Rs.200/- per month to 2nd petitioner. In the year 2006, the petitioners filed CrI.M.P. No.921 of 2006 in the said Maintenance Case, under sub-section (3) of Section 127 of the Code of Criminal Procedure, 1973 (CrPC), seeking enhancement of the maintenance amounts granted in their favour earlier. Vide order dated 17.06.2009, the learned Magistrate enhanced the maintenance amount to Rs.1,500/- per month each to the petitioners. Subsequently, they filed CrI.M.P. No.3786 of 2011 in the Maintenance Case, seeking further enhancement of the maintenance from Rs.1,500/- per month to Rs.8,000/- each per month. The learned Magistrate, vide order dated 27.03.2012, enhanced the maintenance amount to Rs.2,500/- per month to 1st petitioner and Rs.3,000/- per month to 2nd petitioner. Assailing the abovesaid order dated 27.03.2012 passed by the learned Magistrate, 1st respondent herein filed Criminal Revision Petition No.54 of 2012 before the learned Additional Sessions Judge questioning the enhancement granted in favour of his wife and daughter, whereas the petitioners herein filed Criminal Revision Petition 69 of 2012 before the learned Additional Sessions Judge questioning the adequacy of the enhancement. Vide separate orders, both dated 23.01.2013, the learned Additional Sessions Judge partly allowed Criminal Revision



Petition No.54 of 2012, confirming the enhancement of maintenance from Rs.1,500/- to Rs.3,000/- per month granted in favour of 2nd petitioner herein (daughter), while reversing the enhancement of maintenance from Rs.1,500/- to Rs.2,500/- per month granted in favour of 1st petitioner (wife). In Criminal Revision Petition No.69 of 2012, with the same operative portion, the revision petition was partly allowed. In the above back ground, the present two cases came to be filed before this Court, obviously seeking the relief of enhancement of maintenance to Rs.8,000/- per month each to the petitioners, as sought in CrI.M.P. No.3786 of 2011.

5. Heard Sri Posani Venkateswarlu, learned counsel representing Sri Posani Subba Rao, learned counsel for the petitioners, and the learned Special Assistant Public Prosecutor Sri S.V.Sainath, for the State, and there is no representation on behalf of 1st respondent, apart from perusing the material available on record.

6. According to the learned counsel for the petitioners, the orders passed by the learned Additional Sessions Judge to the extent the same went against the petitioners, are highly arbitrary, erroneous, contrary to law and the material available on record, besides being opposed to the very spirit and object of the provisions of Chapter IX of CrPC and the Hindu Adoptions and Maintenance Act, 1956. It is the further submission of the learned counsel, in elaboration, that the findings recorded by the learned Additional Sessions Judge, touching the capacity of



the wife to earn and income from the property owned by her, are neither sustainable nor tenable. It is also the submission of the learned counsel that the income which the petitioners are getting from Ac.0.50 cents of dry land, is not sufficient for their sustenance, and wife of 1st respondent, though a graduate in Education (Social Sciences studies), could not secure any employment and she is not a working lady and there is no demand for the subject of Social Studies. It is also the submission of the learned counsel that no material could be placed on record by 1st respondent to demonstrate that 1st petitioner is a working woman. It is also the submission of the learned counsel that the second petitioner, who is daughter of 1st respondent, has completed M.B.B.S. course and she is also not earning anything. It is further maintained by the learned counsel that 1st respondent is now working as Travelling Ticket Examiner (TTE) in South Central Railway and is earning not less than Rs.1,00,000/- per month as salary. In support of his submissions and contentions, the learned counsel places reliance on the following judgments of the Hon'ble Apex Court.

- (i) in *Rajnish v. Nehan & another*¹;
- (ii) in *Reema Salkan v. Sumer Singh Salkan*²;
- (iii) in *Sunita Kachwaha & others v. Anil Kachwaha*³; and
- (iv) in *Jagdish Jugtawat v. Manjulata & others*⁴;

¹ 2020 SCC Online SC 903

² (2019) 12 Supreme Court Cases 303

³ (2014) 16 Supreme Court Cases 715

⁴ (2002) 5 Supreme Court Cases 422



7. Per contra, the learned Special Assistant Public Prosecutor, while opposing the present cases, vehemently contends that since the learned Additional Sessions Judge assigned cogent and convincing reasons for arriving at the conclusions, the orders passed by the learned Additional Sessions Judge do not warrant any interference of this Court either under Section 482 CrPC or Sections 397 and 401 of CrPC. It is also his submission that having regard to the facts and circumstances of the case, the quantification arrived at, by the learned Additional Sessions Judge cannot be faulted.

8. A perusal of the orders passed by the learned Additional Sessions Judge, in vivid and clear terms, demonstrates that principally, on two grounds, the learned Additional Sessions Judge passed the order under challenge. They are – (i) 1st petitioner (wife), being a Graduate in Education, has capacity to earn; and (ii) 1st petitioner (wife) has Ac.0.50 cents of land and getting income out of the said property.

9. So far as the ground No.1 is concerned, it is required to be noted that in order to dispel the version of 1st respondent herein that his wife (1st petitioner herein) was working in Bhasyam Public School, Guntur and earning Rs.10,000/- per month, one Mr. P.Sivaramakrishna was examined as R.W.2, who categorically deposed that 1st petitioner herein was not working in Bhasyam Public School, Guntur. The learned Additional Sessions Judge recorded a finding that 1st petitioner



is a qualified B.Ed. teacher and she could definitely earn money unless incapacitated by any infirmity or disease. It is absolutely not in controversy that 1st petitioner herein possesses qualification of Bachelor of Education in Social Studies. Admittedly, the said course is not a course of much demand in the educational institutions. It is also noteworthy that there is no evidence adduced on behalf of 1st respondent herein to show that 1st petitioner is working in any educational institution and earning Rs.10,000/- per month.

10. In this context, it may be appropriate to refer to the judgments of the Hon'ble Apex Court cited by the learned counsel for the petitioner. In *Rajnish v. Neha & another* case (1 supra), the Hon'ble Apex Court at paragraph No.8 held as under:

“III. Criteria for determining quantum of maintenance

(i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for



nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

In *Manish Jain v Akanksha Jain*, this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to



penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimants property and any income derived from such property, (v) income from claimants own earning or from any other source.

(iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and / or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde*, laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicants liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non- when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act.

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.



(a) Age and employment of parties

In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence

Section 17 of the D.V. Act grants an aggrieved woman the right to live in the shared household. Section 2(s) defines shared household to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

The right of a woman to reside in a shared household defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja v Sneha Ahuja* held that shared household referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or casual living at different places would not constitute a shared household. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a shared household. Section



2(s) read with Sections 17 and 19 of the D.V. Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

Section 19 (1)(f) of the D.V. Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the Civil Appeal No. 2483 / 2020 decided vide Judgment dated 15.10.2020. respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(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 Rajnesh vs Neha*, 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*. 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.”

In the abovesaid judgment, the Hon’ble Apex Court also referred to the earlier judgment in *Sunita Kachwaha & others v. Anil Kachwaha* (3 supra), wherein, while repelling the contention of the husband that since his wife had sufficient income, she would not require financial assistance from the husband, the Hon’ble Apex Court held that merely because the wife was earning some income, it should not be a ground to reject her claim for maintenance.

Having regard to the law declared by the Hon’ble Apex Court in the above referred judgment, the finding recorded by the learned Additional Sessions Judge, touching the capacity of the wife to maintain herself, cannot stand for judicial scrutiny.



11. Coming to ground No.2 i.e. owning of Ac.0.50 cents of dry land by 1st petitioner, it is required to be noted that the said small extent of land, as informed by the learned counsel for the petitioner, is situated in Siripuram village of Sattenapalli area of Guntur district. According to the learned counsel for the petitioner, basically, the said lands are dry lands and fetch yield of only 6 bags of paddy per annum. Even assuming that 1st petitioner herein owned the said extent of land, in the considered opinion of this Court, income from the said land alone would not be sufficient for sustenance of the petitioners herein. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in *Reema Salkan v. Sumer Singh Salkan* (2 supra), wherein the Hon'ble Apex Court, at paragraph No.13, held thus:

13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able-bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

“80. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.



81. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

82. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in *Chander Prakash v. Shrimati Shila Rani*, AIR 1968 Del 174 by this Court is relevant and reproduced as under:

"7.....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 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, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."



83. The husband being an able-bodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in *Bhuvan Mohan Singh v. Meena*, AIR 2014 SC 2875, is relevant:

"3..Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short the Code) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. 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.
(emphasis applied)*

84. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification.”

12. According to the learned counsel for the petitioners, 1st respondent herein is presently working as Travelling Ticket Examiner in South Central Railway and is earning not less than Rs.1,00,000/- per month. According to the above referred judgment, wife is also entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. To extend the benefit of the said law declared by the Hon'ble Apex Court, the quantum of maintenance granted by the courts below would not be sufficient to the petitioners.

13. Another significant aspect, which needs mention in this context, is that pending these proceedings, daughter of 1st respondent herein attained majority and has completed M.B.B.S. very recently, according to the learned counsel for the petitioners. The Hon'ble Apex Court, in *Jagdish Jugtawat v. Manjulata & others* (4 supra), held at paragraph No. 4 as under:

“Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20 (3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20 (3)



of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid we are of the view that on facts and in the circumstances of the case, no interference with the impugned judgment/order of the High Court is called for.”

Therefore, simply because petitioner No.2 attained majority pending the present proceedings under Chapter IX CrPC, the relief in favour of petitioner No.2 also cannot be denied.

14. Therefore, having regard to the facts and circumstances of the case and keeping in view the financial status of 1st respondent and the plight of the petitioners herein, this Court deems it appropriate to fix amounts of maintenance payable to petitioners 1 and 2, who are wife and daughter of 1st respondent herein, at Rs.8,000/- each per month. It is made clear that 2nd petitioner-daughter is entitled to maintenance till she gets married or employed. The enhanced amount is payable from the date of filing the present cases before this Court.

15. Accordingly, the Criminal Petition and the Criminal Revision Petition are allowed.

Miscellaneous petitions, if any, pending in the cases shall stand closed.

15.04.2021
DRK

A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL PETITION No.3908 OF 2013
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15.4.2021

DRK