

HIGH COURT OF JHARKHAND**Bench: Hon'ble Mrs. Justice Anubha Rawat Choudhary****Date of Decision: 10th May 2024**

Case No.: Cr. Rev. No. 473 of 2019

APPELLANT:**Vivek Rai ... Petitioner****VERSUS****RESPONDENT:****Sunita Rai.. Opposite Party****Legislation:**

Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Indian Evidence Act, 1872

Article 136 read with Article 142 of the Constitution of India

Order 11 and Order 10 of the Code of Civil Procedure, 1908 (CPC)

Section 340 of the Cr.P.C.

Subject: Criminal revision challenging the order of maintenance awarded to the wife, focusing on the determination of the quantum of maintenance and the necessity of true financial disclosures by both parties.

Headnotes:

Maintenance – Quantum Determination – True Disclosure of Income and Assets – Petitioner challenged the order directing him to pay maintenance to the respondent – Contention that the petitioner's unemployment and lack of documentary evidence regarding income were not considered – Court emphasized the requirement of true disclosure of income, assets, and liabilities by both parties as per Supreme Court guidelines in *Rajnish v. Neha* – Impugned order set aside to the extent of quantum of maintenance – Matter remitted for fresh determination based on affidavits of disclosure – Interim maintenance to continue at Rs. 10,000 per month until final disposal [Paras 1-14].

Legal Principles – Affidavit of Disclosure – Supreme Court guidelines in *Rajnish v. Neha* mandate filing of detailed affidavits by both parties in maintenance proceedings – Affidavits to cover financial status from the date of filing the original case to the date of filing affidavits – Misrepresentation or false statements may attract proceedings under Section 340 Cr.P.C. and contempt of court [Paras 8-10].

Procedure – Compliance with Supreme Court Guidelines – Trial courts must ensure adherence to the guidelines for fair determination of maintenance – Importance of responsible pleadings and disclosure in matrimonial disputes stressed – Directions issued for expeditious disposal of remitted matter [Paras 11-14].

Decision: Revision allowed – Impugned order dated 16.01.2019 set aside to the extent of quantum of maintenance – Parties directed to file affidavits of disclosure –

Interim maintenance to continue at Rs. 10,000 per month until final disposal [Paras 11-14].

Referred Cases:

- Rajnesh v. Neha (2021) 2 SCC 324
- Manish Jain v. Akanksha Jain, (2017) 15 SCC 801
- Shailja v. Khobbanna, (2018) 12 SCC 199
- Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715
- Chander Parkash v. Shila Rani, AIR 1968 Delhi 174
- Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705
- Bharat Hegde v. Saroj Hegde, (2007) SCC OnLine Del 622

Representing Advocates:

For the Petitioner: Mr. Yogesh Modi, Advocate

For the Respondents: Mr. Mukesh Kumar, Advocate

ORDER:

Heard the learned counsel for the parties.

2. This revision has been filed for setting aside the order dated 16.01.2019 passed by learned Principal Judge, Family Court, Bokaro in OMC No.38 of 2004, whereby the learned court has directed the petitioner to pay Rs.10,000/- per month to the opposite party as maintenance.

3. The marriage between the parties on 03.07.1998 is not in dispute. No child was born out of the wedlock. A case under Section 498A was filed by the opposite party No.2 against the petitioner.

4. The learned counsel for the petitioner submits that though the petitioner is well-educated, but the quantum of maintenance has not been properly fixed inasmuch as the fact that the petitioner went out of employment upon being arrested in a criminal case has not been considered. The learned counsel has further submitted that no documentary evidence was produced in support of the income of the petitioner before the learned court. He also submits that the learned court granted the order of maintenance on the ground that at the relevant point of time of marriage, the petitioner was working as an engineer.

5. The learned counsel, appearing on behalf of the opposite party, has submitted that the petitioner stands convicted as of now, and in spite

of the order of this Court, he has not surrendered in the case, and accordingly, his revision has been dismissed for non-filing of the surrender certificate. He has further submitted that though no documentary evidence was furnished, but oral evidence was adduced with regard to the income of the petitioner. He has also submitted that the petitioner also had income from rent, which was amounting to Rs.25,000/- and income from agriculture amounting to Rs.5,00,000/- per annum. The learned counsel submits that although the Opposite Party No. 2 is B.Sc (Hons.), but she has no source of livelihood.

6. After hearing the learned counsels for the parties and considering the facts and circumstances of this case, the only point for consideration is with regard to quantum of maintenance.

7. With regard to the income of the petitioner, there are serious disputes and it appears that though at the time of marriage, the petitioner had salaried income also as recorded in the impugned order amounting to Rs.35,000/- per month but the petitioner was dismissed on account of the criminal case filed against him. The records also show that there was oral evidence on behalf of the Opposite Party No.2 with regard to other sources of income of the petitioner, including, agricultural income and income from rent.

8. Considering the nature of the dispute with regard to quantum of maintenance, this Court is of the view that in view of the true disclosures with regard to income, assets and liabilities of both the parties is required to be brought on record. The judgment passed by the Hon'ble Supreme Court in the case of ***Rajnish Vs. Neha and Anr. reported in (2021) 2 SCC 324***, has laid down the modalities and the manner in which the quantum of maintenance is to be fixed and as to how the parties have to make true disclosure on affidavit before the concerned court in matrimonial matter relating to maintenance. The consequences of filing false affidavit have also been provided.

9. Some of the important observations and directions issued by the Hon'ble Supreme Court in the case of ***Rajnish v. Neha, (2021) 2 SCC 324*** ***which*** are relevant for the present case are as under: -

72. *Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:*

72.1. *(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;*

72.2. *(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;*

72.3. *(c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;*

72.4. *(d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.*

72.5. *(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.*

72.6. *(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income,*

assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. *(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.*

72.8. *(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.*

72.9. *(i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.*

72.10. *(j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.*

72.11. *(k) A professional Marriage Counsellor must be made available in every Family Court.*

III. Criteria for determining quantum of maintenance

77. *The objective of granting interim/permanent alimony is to ensure that the dependent 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.*

78. *The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent 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.*

79. *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.*

80. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent 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.*

81. *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.*

82. *Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Subsection (2) of Section 23 of the 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 claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.*

83. *Section 20(2) of the DV 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.*

84. *The Delhi High Court in Bharat Hegde v. Saroj Hegde laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)*

“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-applicant's 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 guesswork is not ruled out while estimating the income of the non- applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

85. *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

86. *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 retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.*

(b) Right to residence

87.

(c) Where wife is earning some income

90. *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:*

90.1. *In Shailja 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.*

90.2. *In Sunita Kachwaha 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.*

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale while relying upon the judgment in Sunita Kachwaha , 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.*

90.4. *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 Parkash v. Shila Rani . 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.*

90.5. *This Court in Shamima Farooqui v. Shahid Khan cited the judgment in Chander Parkash with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife. (d) Maintenance of minor children*

91. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the*

basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. *Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.*

(e) Serious disability or ill health

93. *Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.*

117. *Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.*

.....

(b) Payment of Interim Maintenance

129. *The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.*

(c) Criteria for determining the quantum of maintenance

130. *For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.*

(d) Date from which maintenance is to be awarded

131. *We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B — IV above.*

(e) Enforcement/Execution of orders of maintenance

.....
.....”

10. *As the actual income, assets and liabilities of both the parties*

have not been brought on record, this Court finds that the impugned order is fit to be set aside only to the extent it relates to the quantum of maintenance and the matter is required to be remitted back to the court concerned so that the parties may file their appropriate affidavit in terms of the aforesaid judgement of the Hon'ble Supreme Court and the quantum of maintenance be fixed. It is further observed that the parties would have to file their affidavits of disclosures right from the date of filing of the original maintenance case till the date of filing of the affidavits as it varied from time to time, which would give the true picture regarding the financial position and status of the respective parties.

11. Accordingly, the impugned order dated 16.01.2019 is hereby set aside. The parties are directed to appear before the learned court on 02.07.2024 at 11 a.m. with their respective affidavits regarding disclosures in terms of the aforesaid judgment.

12. The learned court shall make all endeavour to dispose of the matter finally latest by 30.09.2024.

13. It is further observed that the petitioner shall continue to pay the current maintenance amount of Rs. 10,000/- per month, as was fixed by the learned court in the impugned order by way of interim maintenance from this month till the disposal of the case. The amount of the maintenance so paid will be subject to final outcome of the case. So far as the payment of maintenance for the month of May 2024 is concerned, the same should be remitted in the account of the Opposite Party No. 2 by 10.06.2024 and so far as the subsequent months are concerned, the same is directed to be remitted in the account of the Opposite Party No. 2 prior to the last working day of the corresponding month.

14. This revision is accordingly disposed of.

15. Let a copy of this order be communicated to the court concerned through Fax.

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