

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF SEPTEMBER, 2023



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.2688 OF 2023 (GM - FC)

C/W

WRIT PETITION No.24296 OF 2022 (GM - FC)

IN WRIT PETITION No.2688 OF 2023

BETWEEN:

... PETITIONER

(BY SMT.JAYNA KOTHARI, SR.ADVOCATE FOR
SRI NAVEEN CHANDRA V., ADVOCATE)

AND:

... RESPONDENTS

(BY SRI K.SUMAN, SR.ADVOCATE FOR
SRI SIDDHARTH SUMAN, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO MODIFY THE IMPUGNED ORDER DTD 01.10.2022 IN IA NO.2 PASSED IN M.C.NO.5412/2021 BY THE HONBLE VTH ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU VIDE ANNEX-A WHICH GRANTS ONLY RS.75,000/- PER MONTH AND ENHANCING THE MONTHLY INTERIM MAINTENANCE PAYABLE FOR THE PETITIONER AND HER SON TO RS.2,00,000/- (RUPEES TWO LAKHS ONLY) AND ADDITIONAL THE FULL ANNUAL EDUCATION EXPENSES OF THE SON ADITYA AND LITIGATION EXPENSES OF THE PETITIONER OF RS.5,00,000/-.

IN WRIT PETITION No.24296 OF 2022

BETWEEN:

... PETITIONER

AND:

... RESPONDENTS

(BY SMT.JAYNA KOTHARI, SR.ADVOCATE FOR
SRI ROHAN KOTHARI, ADVOCATE FOR C/R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 01.10.22 PASSED BY THE COURT OF THE HONBLE V ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, IN M.C. NO. 5412/2021 ON I.A. NO. 2 FILED BY THE 1ST RESPONDENT (I.E. ANNEXURE-A) AND TO CONSEQUENTLY DISMISS I.A NO. 2 FILED

BY THE 1ST RESPONDENT IN M.C.5412/2021 IN THE COURT BELOW.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner in Writ Petition No.24296 of 2022 is the husband and the 1st respondent is his wife, who is petitioner in Writ Petition No.2688 of 2023. Therefore, both these petitions are preferred by the husband and the wife against one solitary order dated 1st October, 2022 passed in M.C.No.5412 of 2021 by the V Additional Principal Judge, Family Court, Bengaluru. Writ Petition No.24296 of 2022 is filed seeking quashment of the order granting maintenance and the other by the wife seeking enhancement of maintenance.

2. Facts in brief are as follows:-

The petitioner and the 1st respondent in Writ Petition No.24296 of 2022 got married on 11-02-2001 and from the wedlock have a child, who is currently 21 years, born on

03-11-2002. In the year 2010 the husband starts several businesses including the one in the name and style of Maverick Turf Technologies Private Limited, and the wife is a 50% shareholder in the said company. Ten years pass by and the relationship between the husband and the wife flounders. The fixed deposits that were kept in the name of the wife are said to have been asked to be transferred to the account of the husband. The transfer was to the tune of ₹1.64 crores. Between 2010 and 2020 the wife had started a business of readymade garments in the name and style of 'Asmi Collections'. The businesses thus were independent – one by the wife and the other by the husband. In the husband's companies, the wife had certain share holdings. Both the husband and the wife resided in a particular premises. The husband is said to have executed a gift deed, registering the house, in favour of the wife, where the wife is currently staying.

3. It is the case of the wife that the house was originally belonging to her father, which was allotted to him, on a purchase as he was the Hon'ble Judge of the High Court of Karnataka. The house was transferred to the name of the wife by the owner of the

property on 08-05-2007. This was later transferred by the wife in the name of the husband and he re-transferred it on 05-04-2021. By then the value of the house was close to ₹7/- crores. The averment in the petition filed by the husband is that the wife has allegedly driven him out of the house. The averment of the wife in the petition filed by her is that the husband has deserted her and the son. After deserting the wife and the son, the wife is said to have been threatened by the husband, asking her to resign from her post as Director of various companies, started by the husband, including the one that is mentioned hereinabove. After coming out of the said companies, the wife starts a Company called 'A-Jeet Skills' for Youth Private Limited partnering with her sister. Then, begins the saga of legal proceedings between the husband and the wife.

4. The wife registers a complaint against the husband which becomes a crime in Crime No.125 of 2021 for offences punishable under Sections 498A, 403, 406, 420, 506 of the IPC and Section 66 of the Information Technology Act, 2008. Another petition is filed by the wife seeking annulment of marriage under Section 13(1)(i) &

(ia) of the Hindu Marriage Act before the Family Court in M.C.No.5412 of 2021. The wife also filed an application under Section 24 of the Hindu Marriage Act seeking interim maintenance at ₹2,00,000/- per month and education expenses for their son including litigation expenses at ₹5,00,000/-. The husband then files a complaint against the wife on behalf of the Company alleging offences punishable under Sections 419 and 420 of the IPC. This becomes a crime, in Crime No.69 of 2022 and a proceeding seeking annulment of marriage.

5. The case at hand does not concern any of the criminal laws that are set in motion. It concerns proceedings under the Hindu Marriage Act, 1955 ('the Act' for short) particularly with regard to an application filed seeking interim maintenance. As observed hereinabove, interim maintenance is sought by the wife. The concerned Court directs filing of assets and liability statements by both the husband and the wife. Wife files an affidavit in the month of June, 2022 and the husband files his assets and liabilities statement on 08-07-2022, as is required in terms of the judgment of the Apex Court in the case of **RAJNESH v. NEHA AND**

ANOTHER¹. The concerned Court on 1-10-2022 passes a detailed order granting maintenance to the wife at ₹75,000/- per month towards her maintenance and educational expenses of her son from the date of filing of the application. It is challenging the said order dated 01-10-2022 Writ Petition No.24296 of 2022 is preferred by the husband. This Court had passed slew of orders and the one that is passed on 04-01-2023 in Writ Petition No.24296 of 2022 reads as follows:

"Heard learned Senior counsel Sri.K.Suman appearing for the petitioner and Ms.Jayna Kothari, learned Senior counsel representing the respondent-wife.

The petitioner calls in question an order dated 01.10.2022 passed in M.C.No.5412/2021 by which the concerned court grants interim maintenance of Rs.75,000/- P.M. to be paid to the wife by the petitioner-husband. The contention of the learned Senior counsel is that petitioner is not in a position to pay the said amount and the concerned court has blissfully ignored the affidavit filed by the petitioner and therefore seeks interference with the order dated 01.10.2022.

The learned Senior counsel representing the respondent would seek to place on record affidavit filed by the petitioner-husband which would depict that the total expenditure of petitioner in a month is Rs.10,37,500/- and therefore the Court passes an order directing interim maintenance of Rs.75,000/- which is not exorbitant in the teeth of the income of the petitioner, is the emphatic submission of the learned Senior counsel for the respondent.

¹(2021)2 SCC 324

Learned Senior counsel further submits that the order is dated 01.10.2022 and the application was filed on 22.10.2021 and now the arrears is to the tune of Rs.12 lakhs and not a rupee has been paid to the wife by the husband. Therefore, the petitioner shall before the next date of hearing pay 50% of the amount that is in arrears to the wife and then make further submissions in the matter.

List the matter on 17.01.2023 for further submissions."

(Emphasis supplied)

Another order passed on 17-01-2023 reads as follows:

"The learned counsel appearing for the petitioner would submit that copy of the objections is served on him on 16.01.2023 and would seek ten days time to file rejoinder and make his submissions after going through the said objections.

The learned counsel further submits that in terms of the order passed by this Court dated 04.01.2023, the amount of Rs.5,62,000/- has been paid to the respondent - wife, which is acknowledged by the learned counsel appearing for the respondent.

The petitioner shall pay the monthly maintenance as is ordered in the terms of the order dated 01.10.2022 which shall remain subject to the result of the petition.

Admittedly, the petitioner is still in arrears of the maintenance that is to be paid. Therefore, the petitioner shall pay Rs.2,50,000/- by 30.01.2023.

List the matter on 30.01.2023."

It appears that both these orders were called in question by the husband before the Apex Court in a Special Leave Petition only to be turned down. Therefore, the matter is heard finally.

6. Heard Sri K.Suman, learned senior counsel appearing for the petitioner-husband in W.P.No.24296 of 2022 and respondent No.1 in Writ Petition No.2688 of 2023 and Smt. Jayna Kothari, learned senior counsel appearing for petitioner-wife in Writ Petition No.2688 of 2023 and respondent No.1 in W.P.No.24296 of 2022.

7. Learned senior counsel representing the husband would contend with vehemence that there are several proceedings pending against each other. Insofar as grant of maintenance is concerned, the learned senior counsel would submit that grant of ₹75,000/- itself is on the higher side, as the petitioner has no capacity to pay the said amount, as his Company is in debt, and his total expenditure in a month is ₹10,37,500/- and he is left with no money to pay any maintenance. He would further contend that the wife herself has started her own business and is in a position to maintain herself. Therefore, there would not be any need for the

wife to seek maintenance at the hands of the husband. He would contend that the vacant site did belong to his father-in-law, a Judge of the High Court but the construction is made by the petitioner and he has gifted entire property which is worth ₹7/- crores today, to the wife. He would submit that what more the wife needs is ununderstandable.

8. On the other hand, the learned senior counsel representing the wife would contend that the concerned Court has grossly erred in granting maintenance of meager sum of ₹75,000/-. It is her submission that maintenance will have to be awarded to maintain the lifestyle that the husband had given to the wife when she used to live with him. ₹75,000/- that the Court has ordered is inclusive of both her maintenance and education expenses of the child who is now 20 years old and pursuing his education. She would therefore, contend that the amount of ₹75,000/- be enhanced as sought in the prayer. It is her further contention that every month the husband spends ₹12/- lakhs for himself and has a fleet of cars that he is maintaining. He is willing to maintain cars and not wife and his son.

She would, therefore, pray for dismissal of the petition filed by the husband and allowing of the petition filed by the wife.

9. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

10. The afore-narrated factum of relationship between the parties is not in dispute; they are all a matter of record. Floundering of relationship is also a matter of record. Plethora of proceedings are pending against each other – both civil and criminal, is again a matter of record. The present proceedings concern an offshoot of an order passed in M.C.No.5412 of 2021 seeking interim maintenance and education expenses by the wife, in an application filed under Section 24 of the Act. The concerned Court by its order dated 01-10-2022 grants a sum of ₹75,000/- to be the maintenance after perusing the affidavits so filed by the husband and the wife. The reason rendered for passing the said order is as follows:

"13. On perusal of both affidavits which have been filed regarding assets and liabilities disclose that, both the petitioner

and respondent No.1 are qualified persons and respondent No.1 in his affidavit mentioned the income is ₹1,46,521/- and his expenditure is mentioned as ₹10,37,500/-. The expenses of the respondent is more than his income, it show his luxurious life. It is admitted fact that site was allotted to father of the petitioner and it was gifted to the petitioner and she transfers the same to the respondent No.1, in turn now he transferred to the petitioner and the petitioner is residing in the said house. The respondent No.1 has produced photographs to show the house of the petitioner and her saree business. She has also admitted in her assets and liabilities regarding business, but she stated that it was invested by her mother and business is standing in the name of her sister. Mere business of selling the saree in the home is not the full income of the petitioner. The petitioner in her pleadings and as well as affidavit clearly stated she is also not depending upon the pension of her mother and her son is also studying and she required maintenance amount from the 1st respondent for herself and her son, what they have enjoyed and lead their life with respondent No.1, now also they have expected that life, because respondent No.1 is forced to resign from the companies and now he is holding 5 companies and his monthly expenditure is more than ₹10,00,000/- for himself only without family. The expenditure mentioned by the respondent is sufficient to hold that the respondent alone required more than ₹10,00,000/- per month for his expenses.

14. The present petition is filed by the petitioner for divorce on the ground of cruelty and adultery. The respondent No.1 in his objections clearly stated that he has transferred property in the name of petitioner and there is talk regarding mutual consent itself shows that there is no hopes of reunion of petitioner and respondent No.1 to lead the marital life. Admittedly, the petitioner has transferred ₹1,64,24,000/- to the company account, which is run by the respondent No.1. She was forced to resign to all the companies is admitted fact. The petitioner is residing in her house which is gifted by her father. The respondent No.1 in his affidavit of asset s and liabilities at para-32 stating that his son is 20 years old and he is major and he is willing to pay ₹20,000/- per month from company. The petitioner in her affidavit clearly stated that the academic fee if ₹2,00,000/- and accommodation fee is ₹1,00,000/- per year and college fee is ₹25,000/- per year. Apart from this, his son is

required amount for his expenses and amount is required to the petitioner and her son for their day-to-day life as well as to maintain their house. The respondent No.1 in para-56 shown the liability regarding payment of loan amount and he is paying ₹19,980/- per month and he has to pay ₹3.59 crores to the companies and per month he is paying ₹7,72,818/- EMI to the HDFC Bank, it is business loan and installment is ₹7,92,978/- per month. When the respondent No.1 is capable to pay ₹7,92,798/- per month to the Bank as a installment, he has to capable to pay the maintenance amount to the petitioner and her son. Moreover, till their separation they have enjoyed the life and petitioner is also had a car and two wheeler and she has to maintain those vehicles as well as her house and education of the son. In Bengaluru city more than ₹50,000/- per month is required to the person, who enjoyed such a life by holding companies and enjoyable life. Therefore, considering all the documents on record, it is just and proper to award ₹75,000/- per month (Rupees Seventy Five Thousand only) to the petitioner for her maintenance and education of the son. Accordingly, I answer point No.1 in **Partly affirmative**.

15. **Point No.2:** For the reasons stated above, I proceed to pass the following:

ORDER

I.A.No.2 filed by the petitioner/wife is hereby partly allowed.

Accordingly, the respondent No.1 is directed to pay ₹75,000/- per month to the petitioner towards maintenance and education expenses of her son from the date of filing application till the disposal of the main petition on or before 5th day of every succeeding month.

The respondent No.1 is further directed to pay the arrears of maintenance from the date of the application till to-day within 3 months."

(Emphasis added)

On perusal of affidavits and assets and liabilities statements of both the husband and the wife, the concerned Court grants aforesaid maintenance at ₹75,000/-. To arrive at the said conclusion the concerned Court records that the husband has filed an affidavit indicating his income at ₹1,46,521/- per month and expenditure at ₹10,37,500/-. It records that the wife was forced to resign from the Company and is in the business of selling sarees from the house. It also records that the wife has transferred ₹1,64,24,000/- to the Company account which is owned by the husband. Certain other recordings are noticed and the aforesaid amount is arrived at. The husband raises a challenge to it. The crux of the challenge is that, the finding is erroneous and contrary to the judgment of the Apex Court in the case of **RAJNESH** (*supra*) and objects to the observation of the concerned Court that the wife was forced to resign being a matter of record. The contention is that an installment of ₹7,92,978/- is to be paid every month by the husband.

11. To consider the prayer of either the husband that the amount is exorbitant or that of the wife that the amount is meager,

it is necessary to notice the statement of income of the husband as filed before the concerned Court. The companies that the husband owns are as follows:

"MANUFACTURING OF SPORTS, FLOORINGS AND EQUIPMENTS.

- 1. Maverick Turf Corporation LLP (Partner, 50% Shareholder until Mar 2021).**
- 2. Maverick Turf Technologies Private Limited (Director, 50% shareholder until Mar 2021, company operational from Sept 2020 with Loss of Rs 756188/- for FY 20-21).**
- 3. Maverick Turf Equipments LLP (Partner, 50% shareholder until Mar 2021, company incorporated in Sept 2020 with Loss of Rs 538891/- for FY 20-21).**
- 4. Maverick Plastics Pvt. Ltd. (Director, 50% Shareholder until Mar 2021, company incorporated on Mar 2021 with Loss of Rs 746261/- for FY 20-21)**
- 5. Maverick Corporation (Proprietor and operational only from Sept. 2021)."**

(Emphasis added)

The list of movables that the husband owns is as follows:

"Cars – Skoda car, Mercedes Benz, Two-wheeler and Plastic Injecting Molding Machine. All are hypothecated to Bank and EMI's paid from companies accounts."

(Emphasis added)

The loan that is projected by the husband to be payable as EMI at ₹7,72,818/- is a repayment to be made for business loan which would start from 06-06-2022. The business loan of ₹2.43 crores was obtained by the husband on 01-06-2022. Therefore, no fault can be found with the aggrandizement of business by taking loan from financial institutions. At the same time, it should not be forgotten that he has a wife and a son who has grown and is pursuing his education to be maintained as well. The wife in turn has also filed her assets and liabilities statement and the Bank statement. Up to March 2022 the earning of the wife per month is ₹47,736/- while the expenditure of the husband per month even according to his indication is ₹11/- lakhs. If the husband can maintain fleet of cars and claim that a loan amount of ₹7,72,000/- goes for the business purpose towards a loan that is taken after initiation of several proceedings by the wife against the husband, in the considered view of this Court, it would not absolve the husband to maintain the wife and the son.

12. No doubt it is settled principle of law that a qualified wife should necessarily work and maintain herself. The wife is accordingly doing some business that she has started from the house. Whether that would suffice in contrast to what the husband is living and in contrast to what life the wife and the son have lived along with the husband is what is required to be noticed and on such consideration, whether interference with the order of the concerned Court calls for and whether the wife would become entitled to enhancement of maintenance, is what is required to be considered.

13. The concept of grant of maintenance has been the subject matter of plethora of proceedings before the Apex Court. Maintenance to be paid to the wife is trite, that it is not maintenance for mere existence; it is for a living. Living would be in consonance with the varying cost of living or cost of expenses.

14. Now, what is to be noticed is. whether the wife would be entitled to any enhancement of maintenance. The Apex Court in the

case of **SHAMIMA FAROOQUI v. SHAHID KHAN**² has held as follows:

"...."

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital 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. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite

² (2015) 5 SCC 705

having sufficient means neglects or refuses to maintain the wife. 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.

15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* [(1997) 7 SCC 7] has held as follows : (SCC p. 12, para 8)

"8. ... 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* [(2008) 2 SCC 316: (2008) 1 SCC (Civ) 547: (2008) 1 SCC (Cri) 356] , it has been ruled that: (SCC p. 320, para 6)

"6. ... 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 *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70: 1978 SCC (Cri) 508] falls within the 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 [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

17. *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.*

18. *In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)*

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 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, for 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."

(Emphasis supplied)

The Apex Court holds that sustenance of a woman does not and cannot mean mere survival. A woman, who is constrained to leave the matrimonial house, should not be allowed to feel that she has fallen from the grace and move hither and thither arranging for sustenance. The Apex Court holds that the quantum of

maintenance should be *qua* the life she was leading with her husband. In a later judgment the Apex Court in the case of **REEMA SALKAN v. SUMER SINGH SALKAN**³ has held as follows:

"....

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 : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del paras 80-84)*

"80. The respondent during the cross-examination has admitted that he too is BCom, MA (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 CrPC, 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in Para 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

³ (2019) 12 SCC 303

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 rites and customs on 24-3-2002 and since then the petitioner was living with her parents from 10-8-2002 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 Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] by this Court is relevant and reproduced as under : (SCC OnLine Del para 7).**

'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 Bhuwan Mohan Singh v. Meena [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200 : AIR 2014 SC 2875] , is relevant : (SCC p. 357, para 2)

'2. 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 whereunder 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.'

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

(emphasis in original)

14. *The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply-affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.*

15. *The only question is : whether the quantum of maintenance amount determined by the High Court is just and proper. The discussion in respect of this question can be traced only to para 85 of the impugned judgment which reads thus : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del)*

"85. *So far the quantum of maintenance is concerned, nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however, the husband is legally bound to maintain his wife as per the status of a respectable family to which he belongs. The husband being able-bodied along with high qualification BCom, MA (Eco) and MBA from Kentucky University, USA could earn at least minimum of Rs 18,332 as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs 9000 per month from 9-12-2010 onwards till further orders."*

16. *The principle invoked by the High Court for determination of monthly maintenance amount payable to the appellant on the basis of notional minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable. We are of the considered opinion that regard must be had to the living standard of the respondent and his family, his past conduct in successfully protracting the disposal of the maintenance petition filed in the year 2003, until 2015; coupled with the fact that a specious and unsubstantiated plea has been taken by him that he is unemployed from 2010, despite the fact that he is highly qualified and an able-bodied person; his monthly income while working in Canada in the year 2010 was over Rs 1,77,364; and that this Court in Reema Salkan v. Sumer Singh*

Salkan [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 312] has prima facie found that the cause of justice would be subserved if the appellant is granted an interim maintenance of Rs 20,000 per month commencing from 1-11-2014. At this distance of time, keeping in mind the spiraling inflation rate and high cost of living index today, to do complete justice between the parties, we are inclined to direct that the respondent shall pay a sum of Rs 20,000 per month to the appellant towards the maintenance amount with effect from January 2010 and at the rate of Rs 25,000 per month with effect from 1-6-2018 until further orders. We order accordingly.

17. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms."

(Emphasis supplied)

Here again, the Apex Court directs that the quantum of maintenance should be determined on the basis of manifold factors, more particularly, the spiraling inflation rate, and high cost of living index of the day, as also the husband being able-bodied man and his earning is enough and more to take care of the wife and child as the case would be.

15. The Apex Court, in the aforesaid judgments, has directed consideration of enhancement of maintenance on a case to case

basis. Due regard should be had to certain relevant factors like social status of the parties and the kind of life that the wife and son were living while they were all staying together. It is not luxury life style that can be demanded by the wife. When the husband is or has been in the realm of luxury lifestyle, the wife and the son, in the considered view of the Court, cannot be left in the lurch. If the husband has been living a good life, the wife cannot be asked to lead a life which is lower the life than that of the husband that too taking care of the needs of herself and education of her son. There is no warrant to interfere with the awarding of a sum of ₹75,000/- as maintenance by the concerned Court in terms of its order dated 01-10-2022. Hence, Writ Petition filed by the husband in Writ Petition No.24296 of 2022 is to be rejected.

16. On the bedrock of the aforesaid principles that are laid down by the Apex Court, if the case at hand, is considered qua the assets and liabilities statement of both the husband and the wife, it would become a case for enhancement of maintenance; not to the extent that the wife seeks in the petition, but to a certain extent, as the qualification of the wife cannot be brushed aside. Her plea that

she has no avocation would not mean that she is incapable of getting an avocation and added to that she has sustained herself all along. Therefore, I deem it appropriate to grant enhancement of maintenance owing to the aforesaid facts, assets and liabilities statements of parties *qua* their qualification, from ₹75,000/- to ₹1,50,000/- per month and litigation and educational expenses of the son from the date of filing the application before the concerned Court.

17. Considering the aforesaid facts and bearing in mind the observations of the Apex Court what would unmistakably emerge is that the husband is undoubtedly doing well for himself with five Companies in his kitty, and documents are produced which would demonstrate that the Companies are doing well and the loan that is projected is taken only after initiation of proceedings for grant of maintenance by the wife.

18. If the facts in the case at hand are considered on the bedrock of the principles laid down by the Apex Court in the afore-quoted judgment, the wife would become entitled to enhancement of maintenance not to the extent of enhancement sought at

₹2,00,000/- per month, but is entitled to enhancement by ₹75,000/- over and above what is granted by the concerned Court. Therefore, the wife and the son would be entitled to maintenance at ₹1,50,000/- per month from the date of filing of the application before the concerned Court. Apart from the above, the enhancement of maintenance, the wife would also be entitled to educational expenses of the child and litigation expenses which have been completely ignored by the concerned Court to the extent of what is demanded before the concerned Court or as is prayed for in the petition filed seeking enhancement.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.24296 of 2022 is rejected.
- (ii) Writ Petition No.2688 of 2023 is allowed in part and the order dated 1-10-2022 passed by the V Additional Principal Judge, Family Court, Bengaluru in M.C.No.5412 of 2021 stands modified.

- (iii) The husband/respondent No.1 in W.P.No.2688 of 2023 is directed to pay monthly maintenance at ₹1,50,000/- to the petitioner/wife from the date of filing of the application before the concerned Court.
- (iv) Over and above enhancement of maintenance as above, respondent No.1 is directed to pay litigation expenses incurred by the wife and educational expenses of the child as demanded before the concerned Court or as is prayed for in the petition seeking enhancement of maintenance.

**Sd/-
JUDGE**

bkp
CT: MJ