

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.16949 OF 2021 (GM - FC)

BETWEEN:

VINEETHA THOMAS

... PETITIONER

(BY SRI VINEETHA THOMS, PARTY-IN-PERSON
PETITIONER)

AND:

SQD.LDR.DR.PRAVEEN KUMAR BORUSHETTY

... RESPONDENT

(NOTICE TO RESPONDENT IS HELD SUFFICIENT
VIDE ORDER DATED 24/08/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER VIDE DTD.12.9.2019 VIDE ANENXUER-G IN MC NO.1256/2012 ON IA NO.VI PASSED BY THE LEARNED FAMILY COURT AT BENGLAURU AND SET ASIDE THE IMPUGNED ORDER AS IT IS ERRONEOUS AND HIGHLY ILLEGAL AND ENHANCE THE INTERIM ORDER FOR MAINTENANCE FROM RS.10,000/- TO RS.25,000/- FROM THE DATE OF APPLICATION.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 12-09-2019 passed on I.A.No.VII, by the II Additional Principal Judge Family Court, Bengaluru in M.C.No.1256 of 2012 c/w. M.C.No.824 of 2012.

2. Heard the petitioner who appeared in-person. The respondent though served by all modes, has neither appeared nor represented.

3. The facts that lead the petitioner to this Court, in the subject petition, as borne out from the pleadings, are as follows:

The petitioner gets married to the respondent on 12.11.2010 and got their marriage registered under the Special Marriage Act, 1954 ('the Act' for short). On their relationship turning sore, the parties are before the Family Court. The petitioner-wife has filed M.C.No.824 of 2012, seeking restitution of conjugal rights and the respondent-husband has filed M.C.No.1256 of 2012, seeking annulment of marriage. The issue in the *lis* does not concern merits of those proceedings. In the pending proceeding, the petitioner initially filed an application seeking maintenance at the hands of the husband. The same comes to be allowed by the Court by grant of maintenance at Rs.10,000/- per month. Challenging the said order, with regard to the quantum of maintenance granted, the respondent - husband preferred a petition before this Court in Writ Petition No.32994 of 2016, which

had by then came to be dismissed. After about three years of filing of the application and grant of maintenance, the petitioner comes up with another application in I.A.VII seeking enhancement of maintenance under Section 37 of the Act, on the ground that there has been changed circumstances and cost of living has also increased. The learned Judge declines to accept the application on the ground that the petitioner has not pleaded any changed circumstances, which has forced her to seek enhancement of maintenance or modification of the earlier order and has not produced any documentary evidence to show that she is in need of money in addition to the maintenance already granted to her. Merely because the husband earns well, it is not a right for the wife to claim more maintenance, is the reason rendered by the concerned Court to decline acceptance of the application. The rejection of the application is what drives the petitioner to this Court in the subject petition.

4. The petitioner appearing in-person would vehemently contend that the respondent-husband is an Anesthesiologist and a retired Squadron Leader and, therefore, his earning is above Rs.1.5 lakhs to Rs.2/- lakhs per month; that the maintenance that is awarded in the year 2012 was Rs.10,000/- per month and in view of rise in cost of living and the petitioner having no earnings of her own, as she is still at nascent stage of Law practice, she is seeking enhancement of maintenance.

5. With regard to service of notice upon the husband, this Court has passed several orders in an effort to get the respondent - husband served. When ordinarily he could not be served, paper publication was also taken out in terms of order dated 25-07-2022. Even then, the respondent did not appear and the service of notice on him is held sufficient on 24-08-2022. In view of his absence throughout, the petitioner in-person is heard.

6. I have given my anxious consideration to the submissions made by the petitioner and perused the material on record.

7. The marriage between the petitioner and the respondent is not in dispute, neither its subsistence as on date. Two years after marriage, the petitioner - wife institutes M.C.No.824 of 2012 seeking restitution of conjugal rights and in the same breath, the respondent - husband institutes M.C.No.1256 of 2012 seeking annulment of marriage. As observed hereinabove, the issue in the *lis* does not concern merits of matrimonial petitions pending before the concerned Court.

8. The petitioner files an application before the concerned Court seeking maintenance at an earlier point in time, which was allowed by granting at Rs.10,000/- per month in terms of the order of the concerned Court dated 26-03-2016. The maintenance was awarded from the date of application. The said order came to be challenged by the husband before this Court by filing Writ Petition No.32994

of 2016 *qua* quantum of maintenance, which comes to be dismissed. The said dismissal becomes final. After three years of the said dismissal, the wife again files an application in I.A.No.VII seeking enhancement of maintenance under Section 37(2) of the Act. Section 37 (2) of the Act, reads as follows:

"37. Permanent alimony and maintenance.—

(1)

(2) If the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just."

(Emphasis supplied)

The afore-quoted provision permits the wife to approach the Court seeking enhancement of maintenance on changed circumstances and if the Court is satisfied, it may vary, modify or rescind the earlier order of grant of maintenance. The concerned Court after noticing the pleadings of the petitioner records that there is no change in circumstance narrated by the petitioner to grant

enhancement of maintenance. The reasons rendered read as follows:

"12. On going through the IA, the petitioner has not pleaded about any changed circumstance which has forced her to seek enhancement/modification of maintenance. So also, the petitioner/wife has also not produced any documentary evidence to show that she is in need of maintenance in addition to the maintenance awarded to her earlier. Merely because now the respondent/husband is earning well, which is not entitling the petitioner/wife to seek maintenance from him. Hence, the decisions relied by the petitioner/wife are not applicable to the case on hand with due respect to it. Therefore, the petitioner/wife has failed to satisfy the court that the earlier order of maintenance has to be modified by enhancing the maintenance from Rs.10,000/- p.m. to Rs.25,000/- p.m. Accordingly, I answered point No.1 in the "Negative".

It is this order that is called in question in the subject petition. The petitioner seeks enhancement of maintenance to Rs.25,000/- from Rs.10,000/- per month, which was granted on 26.03.2016. Though the application was filed three years after the grant of maintenance of Rs.10,000/- p.m., today we are at the end of 2022 and beginning of 2023. It is therefore, the maintenance that is granted is close to six years ago. The changed circumstance need

not be that the wife should narrate every circumstance of her living, manner of living or the explicit details for enhanced maintenance. It is permissible for the Court to grant enhancement of maintenance on changed circumstances. The changed circumstances in the case would be passage of time and cost of living *inter alia*. Therefore, the reason so rendered by the concerned Court that there is no circumstance narrated for grant of enhancement of maintenance, is unsustainable. Whether the wife would be entitled to maintenance in a similar manner, if she had lived in the house of her husband is what is to be noticed. The Apex Court in the case of **REEMA SALKAN v. SUMER SINGH SALKAN**¹, 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*

¹ (2019) 12 SCC 303

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 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 *Bhuvan Mohan Singh v. Meena* [*Bhuvan 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)

The Apex Court holds that Section 125 of the Cr.P.C. was conceived to ameliorate agony, anguish, financial suffering of a woman and, therefore, maintenance should be awarded on a rational basis. At this distance of time,

keeping in mind the spiraling inflation rate and high cost of living, an order should be passed granting such maintenance.

9. In the light of the judgment rendered by the Apex Court (*supra*), it cannot be said that the petitioner was not entitled for enhancement in maintenance. The earning of the husband was not in dispute, as the Court records that merely because the husband earns Rs.1.5 lakhs to Rs.2.00 lakhs a month, enhancement of maintenance cannot be granted. Therefore, the reason rendered by the concerned Court is on the face of it, is erroneous. In the light of the judgment of the Apex Court and the facts obtaining in the case at hand, I deem it appropriate to enhance the maintenance to the wife from Rs.10,000/- to Rs.20,000/- a month, from the date of filing of the application before the concerned Court.

10. It is noticed that two petitions – one for annulment of marriage filed by the husband and the other for conjugal rights filed by the wife, are pending

consideration before the concerned Court for the last 10 years. There can be no justification for keeping the matter for 10 long years. Therefore, the concerned Court shall make every endeavour to conclude the proceedings as expeditiously as possible and at any rate within 3 months, is a direction that needs to be given in the case at hand.

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

ORDER

- (i) The Writ petition is allowed.
- (ii) The order dated 12.09.2019 passed on I.A.VII by the II Additional Principal Judge, Family Court, Bengaluru, stands quashed
- (iii) The application I.A.VII filed by the petitioner seeking enhancement of maintenance is allowed. The petitioner is entitled to maintenance at Rs.20,000/- per month from the date of the application.
- (iv) The II Additional Principal Judge, Family Court, Bengaluru shall conclude the proceedings in M.C.Nos.824 of 2012 and 1256 of 2012, within

three months from the date of receipt of a copy of this order, if not earlier.

- (v) It is needless to observe that the parties to the *lis* shall co-operate for the conclusion of proceedings.
- (vi) The concerned Court would be free to pass appropriate orders, in the event the parties would further seek to drag on the proceedings. The Court is further free to regulate the procedure for such speedy disposal.

**Sd/-
JUDGE**

nvj
CT: MJ