

(2003) 09 DEL CK 0123
In the Delhi High Court
Case No : CW. 7589 of 2002

Capt. Suneel

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Army Act, 1950 — Section 90
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2003) 6 AD 553 : AIR 2004 Delhi 95 : (2003) 107 DLT 224 : (2003) 2 DMC 671 : (2003) 70 DRJ 669

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : V.S. Mann, for the Appellant; Vimal Wadhawan, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—The petitioner was married to Ms. Purnima, respondent No. 3, in the year 1995. After some time, strains developed in their marital relations. In the year 2001, the petitioner filed a petition against the respondent No. 3 for dissolution of his marriage with her by a decree of divorce. On the other hand, on a complaint by respondent No. 3, a case u/s 406/498-A IPC was registered against the petitioner and his parents. On 7th of June, 2001, the respondent No. 3 made an application to the Army Commander, Headquarters(Northern Command) for grant of maintenance allowance. A show-cause notice was issued to the petitioner and in pursuance thereof, the petitioner submitted his reply thereto. The Army Commander, eventually, on 29th of October, 2001, made an order on the said application of respondent No. 3 sanctioning deduction @ 22% from the pay and allowances of the petitioner. Aggrieved by this order, the petitioner filed instant writ petition.

2. The stand of the petitioner is that he never neglected to maintain the respondent No. 3 and, as a matter of fact, he had made sufficient provision for

the same by depositing a sum of Rs. 2 lacs in fixed deposits, out of which she has fraudulently withdrawn Rs. 1 lac on 22nd of June, 2001, immediately after submission of her application for maintenance. In addition, she is alleged to be having an income of about Rs. 5, 000/- per month. It is pleaded that the respondent No. 3 instead of making an application for maintenance u/s 125 Cr.P.C. or u/s 24 of the Hindu Marriage Act in the proceedings for divorce, made an application to the Army Commander, Headquarters(Northern Command) for grant of maintenance allowance and the General Officer Commanding-in-Chief(respondent No. 2) passed the impugned order for deduction @ 22% from the pay and allowances of the petitioner without considering the merit of claim and recommendations of the Commanders in chain of command.

3. The respondent No. 3 in her counter-affidavit denied that the petitioner has made any provision for her maintenance by way of fixed deposits or that she herself was having an income of Rs. 5, 000/- per month.

4. The respondents 1 & 2 in their counter-affidavit sought to justify the impugned order.

5. We have heard parties' counsel.

6. The fact that the respondent No. 3 is living separate from the petitioner is not in dispute. Further, the petitioner does not disown his liability of maintaining the respondent No. 3 by making sufficient provision on that account. The petitioner claims to have made fixed deposits of Rs. 2 lacs for the benefit of the respondent No. 3 which, according to him, coupled with her alleged income of Rs. 5, 000/- per month, is sufficient for her maintenance. These facts have, however, been denied by the respondent No. 3. Fixed Deposit of a sum of Rs. 75, 000/- in her name with a Financial Company is, of course, admitted by the respondent No. 3 but with a rider that the same was actually got deposited by the petitioner rather with an intent to save income tax and not for her benefit. According to her, she is not deriving any benefit out of that deposit. Being questions of fact, in the face of denial on the part of respondent No. 3, as aforementioned, the same need to be proved by adducing necessary evidence. No such exercise can, however, be undertaken in the course of these proceedings.

7. The solitary contention of the learned counsel for the petitioner, while questioning the deductions from the pay and allowances of the petitioner on account of maintenance allowance in pursuance of impugned order, is that the same was being made @ Rs. 6, 228/- per month, which accounted for 42.6% of petitioner's pay and allowances, contrary to the terms of impugned order sanctioning the deductions @ 22% only, with a condition that in no case, such deductions were to exceed 33% p.m. of the petitioner's pay and allowances.

8. Section 90(i) of the Army Act makes provision for deductions from pay and allowances of an officer of any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate/illegitimate child. In terms of Rule 193 of the Army Rules, the

prescribed officer for the purposes of clause (i) of Section 90 is the Chief of the Army Staff or the officer commanding the Army. To give effect to the aforesaid provision, an Army Order 23/94 sets out a detailed procedure to be observed by the competent authorities before ordering for deduction of any amount from the pay and allowances of an officer on account of maintenance to his wife or to his legitimate/illegitimate child. Noticing that all personnel subject to the Army Act, are legally and morally bound to maintain their wives and children, the said Army Order prescribes the procedure for grant of maintenance allowance after detailed examination of a complaint from the wife or from or on behalf of the child. It provides that the powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure, 1973 (Section 125 of Cr.P.C.) or for that matter even u/s 24 of the Hindu Marriage Act, 1954. This answers the plea set forth by the petitioner that the respondent No. 3 instead of seeking grant of maintenance by filing an application u/s 125 Cr.P.C. or u/s 24 of the Hindu Marriage Act, preferred to approach the Army authorities for the same. In view of the aforesaid statutory provision contained in the Army Act and the Rules framed there under, the respondent No. 3 was, thus, not debarred from claiming maintenance for herself by making an application to the Army authorities. The Army Order 23/94, before making any order for deduction from the pay and allowances of a particular officer, requires the competent authority to satisfy itself that the petitioner is legally wedded wife of the officer concerned, that the officer is neglecting to maintain her, and that she is unable to maintain herself. The detailed procedure, prescribed by way of this Army Order, ensures that each case, for deduction from the pay and allowances of an officer for maintenance of wife or his legitimate/illegitimate child, is processed on its merits on the basis of well recognised legal parameters, which the courts normally follow, while granting maintenance allowance to the wife or child of an Army person. This army order also ensures that on account of deduction for maintenance allowance to the wife or child, the officer concerned is not put to undue financial hardship, by providing a ceiling in regard to such deductions. In case of deduction from the pay and allowances of an army person in respect of his wife, the same is not to be at a rate higher than 22% of his pay and allowances and in no case, the amount of maintenance allowance sanctioned to the wife and/or child of an army person is to exceed 33% of his pay and allowances.

9. In the present case, the impugned order sanctioned the deduction from the pay and allowances of the petitioner to the extent of 22% per month only, as prescribed in the Army Order 23/94. Since the maintenance allowance at the aforesaid rate was granted to the respondent No. 3 with effect from 7th June, 2001, which was the date of her application, recovery of arrears along with monthly maintenance allowance was ordered to be effected by deduction from the pay and allowances of the petitioner in equal monthly Installments. While ordering so, however, it was specifically provided that such recovery in equal monthly Installments was not to exceed 33% of the pay and allowances of the

petitioner. The deduction @ 22% from the pay and allowances of the petitioner worked out to Rs. 3, 477/- per month. This is so stated by respondent No. 3 in her counter-affidavit, which is not specifically denied by the petitioner in corresponding paragraph of his rejoinder to the counter-affidavit of respondent No. 3. It appears that the recovery by deductions from the pay and allowances of the petitioner over and above this amount was effected to clear the arrears of the maintenance allowance in terms of the impugned order. A monthly deduction on this count is stated to have been effected @ Rs. 6, 228/- per month, which clearly exceeded 33% of the pay and allowances of the petitioner and, in the process, it resulted in over-payment to the respondent No. 3. The respondents appear to have realised this mistake and, consequently, in order to compensate the petitioner for over-payment to respondent No. 3, further deductions from pay and allowances of the petitioner were directed to be made vide letter dated 24.2.2003(Annexure.R-7) at a reduced rate of Rs. 2, 671/- per month only as against Rs. 3, 477/- per month till the amount paid in excess stood liquidated. The respondents, thus, rectified the mistake committed earlier in deducting the amount from the pay and allowances of the petitioner in excess of 33%, contrary to the impugned order. As on date, no grievance on account of deduction from his pay and allowances in excess of 33% per month survives as the same has already been taken due care of by the respondents.

10. Regarding non-observance of due procedure, as provided in Army Order 23/94, for awarding maintenance, no deficiency could be brought out in the course of his oral submissions by the learned counsel for the petitioner, nor there is any mention in this regard in the grounds challenging the impugned order.

11. No valid ground rendering the impugned order unsustainable in law being made out, no interference therewith is called for.

12. Being without merit, the petition fails and the same is dismissed accordingly.