

(2013) 02 DEL CK 0183

In the Delhi High Court

Case No : Criminal M.C. 75 of 2012 and Criminal M.C. 2227 of 2012

Lalit Bhola

APPELLANT

Vs

Nidhi Bhola and Another
 Nidhi Bhola and Another Vs
Lalit Bhola

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 340
Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 24

Citation : (2013) CriLJ 1959 : (2013) 2 DMC 271 : (2013) 2 ILR Delhi 1067

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : K.C. Bajaj with Mr. P.K. Shukla, in CrI.M.C. 75/2012 and Mr. Puneet Maheshwari in CrI.M.C. 2227/2012, for the Appellant; Puneet Maheshwari, Advocate in CrI.M.C. 75/2012 and Mr. K.C. Bajaj with Mr. P.K. Shukla, Advocates in CrI.M.C. 2227/2012, for the Respondent

Judgement

G.P. Mittal, J.—These two Petitions arise out of an order dated 09.12.2011 passed in C.R. No. 43/2011 by the learned Additional Sessions Judge("ASJ") whereby an interim maintenance of Rs. 12,000/- granted in favour of Nidhi Bhola and Rs. 5,000/- granted in favour of Baby Jhalak was reduced to Rs. 9,500/- and Rs. 3,000/- respectively. Petitioner in CrI. M.C. 75/2012 is the husband Lalit Bhola whereas Petitioners in CrI. M.C. 2227/2012 are Nidhi Bhola and Baby Jhalak, that is, wife and the daughter of the of the Petitioner. For the sake of convenience, the parties shall be referred to as husband, wife and the child. In CrI. M.C. 75/2012, the husband alleges that the overall maintenance of Rs. 12,500/- is excessive and arbitrary whereas the wife and the child in CrI. M.C. 2227/2012 say that the maintenance awarded is on the lower side.

2. Lalit Bhola got married to Nidhi Bhola on 19.04.2007. A child Jhalak was born to Nidhi out of the wedlock on 10.11.2008. The parties could not pull on together and allegations of cruelty and demand of dowry, etc. were levelled against the

husband by the wife which is not very material for disposal of these Petitions. Suffice it to say that on 30.09.2010, an application u/s 125 of the Code of Criminal Procedure (Cr.P.C.) was filed by the wife and the child seeking maintenance of Rs. 25,000/- per month from the husband on the ground that he was having a monthly income of Rs. 47,000/-. In addition to the income earned by the husband, he was also beneficiary of FDRs of Rs. 18-20 Lakhs left by his mother, that is, by husband's deceased mother. The wife claimed that in addition to income from salary, the husband also had rental income from a property in Naveen Shahdara.

3. The husband denied his income to be Rs. 47,000/- per month. He stated that he was appointed as an executive with M/s. I. Energizer at a total monthly salary of Rs. 21,515/-. On account of the harassment and the complaint made by the wife, the husband's services were terminated by his employer. He, therefore, had to seek an employment with M/s. Ken Computer Education at a salary of Rs. 9,100/- per month. While disposing of the application for grant of interim maintenance u/s 125 Cr.P.C., the learned Metropolitan Magistrate("M.M.") accepted the husband's income from M/s. I. Energizer to be Rs. 47,000/- per month. The learned M.M. held that the husband possessed all the amenities to life at his house, such as motorbike, AC, Fridge, TV, Electronic gadgets, etc. He was earning interest on the FDRs of Rs. 18-20 Lakhs left by his mother. The learned M.M. disbelieved the husband's version that he was getting a salary of just about Rs. 10,000/- per month from Ken Computers. The learned M.M. observed that the husband's income cannot be presumed to be less than Rs. 45,000/- to Rs. 50,000/- per month. Accordingly, the Trial Court awarded a maintenance of Rs. 12,000/- in favour of the wife and Rs. 5,000/- per month in favour of the child.

4. In the Revision Petition, the learned ASJ in the face of the salary statement which existed on record, assessed the Petitioner's gross salary to be Rs. 21,515/-. The Revisional Court observed that it was difficult to hold that he(the husband) was getting a salary of Rs. 32,000/- or perks worth of Rs. 15,000/-. The learned ASJ further held that the husband had not produced any document to show that the property of Naveen Shahdara was not in his name. The Revisional Court further observed that the Petitioner also had income from interest on the FDs left by the mother of the husband. Taking all the facts into consideration, the learned ASJ reduced the interim maintenance payable to the wife to Rs. 9,500/- and to the child to Rs. 3,000/-.

5. While awarding maintenance u/s 125 Cr.P.C. or maintenance pendente lite u/s 24 of the Hindu Marriage Act or the maintenance u/s 18 of the Hindu Adoption or Maintenance Act, Courts are not only guided by the income of the husband in determining the amount of monthly maintenance. The Higher Courts have held that several factors including the status of the parties, liabilities, if any, of the husband and number of persons to be maintained by the husband would be some of the factors to be taken into consideration. In Alok Kumar Jain Vs.

Purnima Jain, , a co-ordinate Bench of this Court while examining grant of maintenance, pendente lite, observed as under:

10. Law u/s 24 of the Hindu Marriage Act is well crystallized. From the judicial precedents, factors which can be culled out as required to be kept in mind while awarding interim maintenance are as under

- (i) Status of the parties,
- (ii) Reasonable wants of the claimant,
- (iii) The income and property of the claimant,
- (iv) Number of persons to be maintained by the husband,
- (v) Liabilities, if any, of the husband,
- (vi) The amount required by the wife to live a similar life style as she enjoyed in the matrimonial home keeping in view food, clothing, shelter, educational and medical needs of the wife and the children, if any, residing with the wife and
- (vii) Payment capacity of the husband.

11. Further, where it is noted that the respective spouses have not come out with a truthful version of their income, some guesswork has to be resorted to by the Court while forming an opinion as to what could possibly be the income of the 2 spouses. This guesswork has to be based on the status of the family, the place where they are residing and the past expenses on the children, if any.

6. In Dev Dutt Singh Vs. Smt. Rajni Gandhi, , the learned Single Judge of this Court (Avadh Behari Rohtagi, J.) observed that there cannot be any mathematical formula for award of the maintenance amount such as 1/3rd or any other proportion of the husband's income. It was held that the law has to operate in a flexible and elastic manner to do complete justice between the parties. The factors to be taken into consideration were laid down in paras 12 to 15 of the judgment, which are extracted hereunder:

12. The substance of these judgments is this. Each case must be determined according to its own circumstances. No two cases are alike. These cases do not lay down any proposition of law. On the facts of the particular case the Court adjudicated what allowance will be reasonable to award "having regard to the petitioner's own income and the income of the respondent". If the present case illustrates anything it is this that rigid adherence to "one-third" rule may not always be just. Section 24 is not a code of rigid and inflexible rules, arbitrarily ordained, and to be blindly obeyed. It leaves everything to the Judge's discretion. It does not enact any mathematical formulae of one-third or any other proportion. It gives wide power, flexible and elastic, to do justice in a given case.

13. In most cases the standard of living of one or both of the parties will have to suffer because there will be two households to support instead of one. When this occurs, the Court clearly has to decide what the priorities are to be and where

the inevitable loss should fall. Generally speaking, wife is the financially dependent spouse. She is potentially likely to suffer greater financial loss from the dissolution of marriage than the husband. For her support the Court has to award a reasonable amount. The cases decided under the Act should not be followed slavishly. In the words of Shearman L.J.:

It would be unfortunate if the very flexible and wide-ranging powers conferred upon the Court should be cut down or forced into this or that line of decisions by the Courts. (*Chamberlain v. Chamberlain*, (1974) 1 All ER 33, 38 CA).

14. What is the right figure of periodical payment is essentially a practical decision on the facts. The ultimate evaluation is left to the adjudicator. On the statutory hypothesis it is an indefensible position to hold that the wife in the present case is not entitled to anything because she is already earning Rs. 1,270/- per month which comes to one-third of the husband's income.

15. What is a proper proportion of the husband's income to be given to the wife as maintenance pendente lite is a question to be determined in the light of all the circumstances of a particular case; the very flexible and wide-ranging powers vested in the Court make it possible to do justice.

7. Although, there is no strict formula to award a particular percentage of the husband's income towards maintenance of the wife, normally the Courts have been taking 1/3rd of the husband's income towards maintenance of the wife. This may be increased or decreased keeping in view the circumstances of each case, like the number of persons to be maintained by the husband and other liabilities. In *Sh. Sudhir Diwan Vs. Smt. Tripta Diwan and Another*, , 1/3rd of the husband's income was awarded towards the wife's maintenance. In *Jagdish Prasad Sharma Vs. Sangeeta Sharma*, , a maintenance of Rs. 225/- per month was awarded in favour of the wife on the husband's income of Rs. 602/- per month.

8. Turning to the facts of the instant case, the husband's income is claimed to be from three sources. First, the salary, second rental income from the property in Naveen Shahdara and third, income by way of interest from the FDs left by the mother of the husband. Admittedly, the marriage between the parties took place on 19.04.2007. The husband was appointed as a senior executive with M/s. I. Energizer on a monthly salary of Rs. 21,515/-. In the absence of any document produced by the wife to controvert the averments, the learned ASJ was right in holding the income from salary to be Rs. 21,515/- per month only. Although, the monthly income in the year 2010 was claimed by the husband to be Rs. 9,100/- per month, it is, however, difficult to believe that a person who was getting a salary of Rs. 21,515/- would leave the job to get a salary of Rs. 9,100/- per month. In any case, the employment with M/s. Ken Computers Education loses any significance in view of the fact that during the pendency of this Petition, an application u/s 340 Cr.P.C. was moved by the Petitioner claiming that the husband had joined Genpact India and was getting a very high salary. Although,

the husband initially denied his employment with Genpact India but a salary certificate was produced to show that he was getting a gross income of Rs. 24,384/-. The wife has not produced any document to belie this salary slip for the month of July, 2012. Thus, the husband's salary cannot be taken to be above Rs. 24,384/- per month.

9. As far as the rental income is concerned, the husband has placed on record the property tax receipts in respect of the property No. 1586/17C, (C-10) Naveen Shahdara, Delhi-32. On behalf of the wife, it was urged that the property No. 1586/17C, Naveen Shahdara, Delhi-32 and C-10 Naveen Shahdara are different and that he was getting rent from property NO. C-10, Naveen Shahdara. This is not correct as both the numbers have been mentioned on the house tax receipt. The house tax receipt (Annexure P-8) goes to show that the old number of the property 1586/17C, Naveen Shahdara, Delhi-32 was C-10, Naveen Shahdara. The property is admittedly owned by Bal Ram Bhola, the husband's father. For the purpose of assessing the income of the husband, the learned ASJ rightly declined to take into account the rent received by the father on the basis of rent receipts issued in favour of the tenant by the father.

10. Some documents were filed to prove that certain FDs were left by mother of the husband, but it cannot be the exclusive property of the husband. Admittedly, the mother was survived by her husband, one son and four daughters. Thus, the income of the husband at the most could be a few thousand from interest on FDs (pertaining to his share) in addition to the salary of Rs. 24,384/- per month. The rental income of the father cannot be taken into consideration for award of maintenance to the wife. Father has got other responsibilities, including four daughters who are given customary gifts even after their marriage. The maintenance of Rs. 12,500/- (Rs. 9,500/- for the wife and Rs. 3,000/- for the child) is approximately 50% of the husband's income from the salary which seems to be just and reasonable as it is only an interim maintenance. The exact income of the husband from the FDs shall be the subject matter of the trial.

11. The interim maintenance awarded can neither be said to be excessive nor on the lower side. Broadly, it appears to be just and reasonable.

12. Both the Petitions, therefore, have to fail; the same are accordingly dismissed. Pending Applications stand disposed of.