

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No(s).246-247/2020
(@ SLP (Cr1.)Nos. 1248-1249/2020 [Diary No(s). 1000/2019]

RAKESH MALHOTRA

Appellant(s)

VERSUS

KRISHNA MALHOTRA

Respondent(s)

O R D E R

Delay condoned.

Leave granted.

These appeals arise out of the Judgment and Final Order dated 14.12.2017 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Revision No.807/2014 and also out of the Order dated 02.05.2018 in Misc. Cr1. Case No.4414 of 2018.

In the present case, in matrimonial proceedings initiated by the respondent-wife seeking dissolution of marriage under Section 13(1)(i-a) & (i-b) Hindu Marriage Act, 1955 [“the Act” for short] , decree for dissolution was passed by the Court of First Additional District Judge, Vidisha (M.P.) in Case No.87-A/2011 to the following effect:

“ (a) Marriage solemnized between petitioner Rakesh Malhotra and respondent Smt. Krishna Malhotra on 21.09.1999 is declared dissolved after expiry of limitation period. After expiry of limitation period of appeal, petitioner and respondent would not remain husband and wife any more.

(b) In compliance of the order dated 23.01.2012 passed by the Hon'ble M.P. High Court, Gwalior Bench in Writ Petition No.6762/11 Rakesh Malhotra versus Smt. Krishna, in case amount of maintenance allowance payable during pendency of the case is due, petitioner would pay the same within the period of one month.

(c) In case respondent Smt. Krishna Malhotra does not go for second marriage, petitioner would pay Rs.13,750/- per month to respondent by 05th of each month throughout her life."

The aforesaid decree passed on 20.02.2013 is presently subject matter of challenge before the High Court in First Appeal No.109/2013. Said appeal is still pending consideration before the High Court.

It must be stated that sometime in 2005, application seeking maintenance under Section 125 Code of Criminal Procedure ["the Code", for short] was preferred by the respondent-wife, which was dismissed by the concerned Court vide order dated 30.06.2014. The challenge was raised by the respondent-wife against such rejection by way of Criminal Revision No.807/2014. Said revision was allowed by the High Court by its order dated 14.12.2017 which is presently under appeal. While considering the claim made by the respondent-wife, the High Court observed as under:-

"8.5 So far as the question of quantum of maintenance is concerned, the respondent has stated in his evidence that his gross monthly income is Rs.44,000/-, out of which an amount of Rs.24,000/- is being deducted and his take home salary is Rs.20,000/-. The respondent has not placed his salary slip on record to show that under which head the amount of Rs.24,000/- is being deducted. Voluntary deduction under different heads and compulsory/statutory deduction are two different things. For determining the take home salary, voluntary deductions cannot be taken into consideration because in some of the cases like loan or finance it can be said that the husband has already taken his salary in advance in the form of loan, which he is now repaying in the form of loan deductions, however, the compulsory deductions are beyond the control of an employee. Since in the present case the respondent has not

placed his salary slip on record, therefore, an adverse inference has to be drawn against him and it has to be presumed that out of total deduction amount of Rs.24,000/-, most of the deductions must be the voluntary deductions. Furthermore, as the applicant has already been awarded an amount of Rs.13,750/- per month by way of permanent alimony and that part of the judgment has not been stayed by this Court, therefore, taking into consideration the amount of Rs.13,750/-, which has been awarded to the applicant by way of permanent alimony and considering the status of the parties, price index, price of goods of daily needs, inflation rate etc. , it is directed that the applicant shall be entitled for a further amount of Rs.5,000/- per month. The said amount shall be payable by the respondent/husband from 30.06.2014, i.e. the date on which the application filed by the applicant was rejected by the court below."

In these appeals challenging the decision of the High Court, notice was issued to the respondent. However, no appearance was entered on behalf of the respondent-wife and as such Ms. Fauzia Shakil, learned advocate was requested to assist the Court as amicus curiae which request she graciously accepted.

We heard Mr. Abhay Gupta, learned advocate in support of the appeals and Ms. Fauzia Shakil, amicus curiae.

The basic issue that arises for consideration is whether after grant of permanent alimony under Section 25 of the Act, a prayer can be made before the Magistrate under Section 125 of the Code for maintenance over and above what has been granted by the Court while exercising power under Section 25 of the Act. At this juncture, Section 25 of the Act may be extracted as under:-

"25 Permanent alimony and maintenance .

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall ⁵⁵ [***] pay to the applicant for

her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant ⁵⁶ [, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the 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 the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, ⁵⁷ [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just]."

Section 25(1) of the Act empowers the Court, while passing any decree, to consider the status of the parties and whether any arrangement needs to be made in favour of the wife or the husband; and by way of permanent alimony, an order granting maintenance can also be passed by the Court.

At the stage of passing a decree for dissolution of marriage, the Court thus considers not only the earning capacity of the respective parties, the status of the parties as well as various other issues. The determination so made by the Court has an element of permanency involved in the matter. However, the Parliament has designedly kept a window open in the form of sub-sections (2) and (3) in that, in case there be any change in

circumstances, the aggrieved party can approach the Court under sub-section (2) or (3) and ask for variation/ modification.

Since the basic order was passed by the concerned Court under Section 25(1), by very nature, the order of modification/variation can also be passed by the concerned Court exercising power under Section 25(2) or 25(3) of the Act.

In the present case, the matter that was considered by the High Court was one which was filed in the year 2005 when the matrimonial dispute between the parties was yet to be adjudicated upon while the decree for dissolution and direction for permanent alimony came to be passed in the year 2013 against which the First Appeal is pending in the High Court.

We have been apprised that certain applications have been preferred by the appellant-husband seeking variation/modification in the sum of permanent alimony submitting, inter alia, that after passing of the order, the appellant has retired from Army and as such is not getting emoluments at the same rate.

Ms. Shakil, amicus curiae invited our attention to some decisions including the decision of this Court in Sudeep Chaudhary vs. Radha Chaudhary [(1997) 11 SCC 286]. This decision was relied upon by the High Court while passing the order under appeal. In Sudeep Chaudhary, the initial order was passed by the Magistrate under Section 125 of the Code and subsequently in proceedings under the Act, interim maintenance was granted while exercising power under Section 24. It was in the context of these facts, this Court observed that despite the award of maintenance under Section 125 of

the Code, the wife was competent to maintain the proceedings under Section 24 of the Act. But the present case is completely to the contrary.

Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequittor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.

In the circumstances, we allow these appeals, set aside the view taken by the High Court and direct that the application preferred under Section 125 of the Code shall be treated and considered as one preferred under Section 25(2) of the Act.

Since the matter pertains to grant of maintenance, we request the High Court to consider disposing of First Appeal No.109/2013 alongwith all pending applications as early as possible and preferably within six months from today.

Before we part, we must record that by way of order dated 13.12.2019, we had directed the respondent-husband to file an

affidavit giving details about the amounts that he had made over to the respondent-wife by way of maintenance as awarded by order dated 20.02.2013. In pursuance of said directions, an affidavit has been filed by the appellant on 03.02.2020 indicating that till now he has deposited Rs.11,44,916/- in respondent-wife's account, in terms of order dated 20.02.2013.

Finally, we must express our sincere gratitude for the assistance rendered by Ms Fauzia Shakil, learned amicus curiae.

These appeals are allowed in aforesaid terms. No costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(VINEET SARAN)

New Delhi
February 7, 2020

ITEM NO.32

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 1000/2019

(Arising out of impugned final judgment and order dated 14-12-2017 in CRLR No. 807/2014 02-05-2018 in MCRLC No. 4414/2018 passed by the High Court Of M.p At Gwalior)

RAKESH MALHOTRA

Petitioner(s)

VERSUS

KRISHNA MALHOTRA

Respondent(s)

(IA No. 6591/2019 - CONDONATION OF DELAY IN FILING
IA No. 6592/2019 - EXEMPTION FROM FILING O.T.)

Date : 07-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. Abhay Gupta, Adv.
Mr. Tanuj Dogra, Adv.
Ms. Archana Sharma, Adv.
Mr. Madan Mohan, Adv.
Mr. Praveen Swarup, AOR

For Respondent(s) Ms. Fauzia Shakil, AOR (AC)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order

Pending applications, if any, also stands disposed of.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)