THE LANDMARK CALLED 'RAJNESH VERSUS NEHA'

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INTRODUCTION

There come a few judgments that have the potential to change the course of the legal history of a country. India has been fortunate enough to have them – "Keshavananda Bharti" being the most celebrated one and with reason. Similarly, when it comes to maintenance proceedings related to matrimonial disputes, this judgment has certainly changed the course of how maintenance proceedings were before this judgment and how they are now, and needless to mention the change is certainly for the better.

Although the facts were based on regular maintenance disputes between the parties, the Court took this opportunity to adjudicate upon some very pressing legal issues related to the Maintenance and also pronounce some extremely impactful and valuable directions to straighten those issues and related practical problems that generally arise in such litigation proceedings. More so the ambiguity in provisions, practical difficulties in the provision of maintenance at an appropriate time, and the needs of the rapidly changing social and marital fabric of the country could not have given a louder silent scream for such intervention by the Apex Court. In this article, we are going to discuss and analyze the whole case focusing on the issues and their adjudication by the Court along with the directions pronounced thereto.

FACTS, ARGUMENTS, AND VERDICT

Although the directions and adjudications are the main heroes of this Judgment and therefore the whole point of focus in this article, however for the sake of getting a better grasp on the background, here are the facts and arguments of parties, briefly discussed[1]. The Family Court of Nagpur had ordered an amount of 15000/- per month to be paid by the present appellant to his wife (the present respondent) as an amount of interim maintenance and an amount of INR 5000/- per month for two years and later INR 10,000/- per month for their son, who was living with his mother, till the further orders of the court. Aggrieved by such order, the present appellant (Husband) challenged the same before the Bombay High Court Nagpur bench. The Bombay High Court confirmed the order of the Family Court, Nagpur.

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[1] Rajnesh v Neha (Cri. Appeal no. 730 of 2020) Retrieved from https://indiankanoon.org/doc/117541087/

The appellant thus had filed this appeal before the Apex Court being aggrieved by the said order of the High Court of Bombay, Nagpur Bench confirming the order of the Family court, Nagpur. The appellant therefore further challenged the same "interim maintenance order" before the hon'ble Apex Court. The husband contended before the Supreme Court that he was then **unemployed** and was not in a position to pay maintenance to the respondent. Moreover, he did not own any immovable property. He also submitted that the family court that ordered the abovementioned amount of interim maintenance against him was not based on the sound construction of his tax returns for the year 2006. And that he was then exploring new business projects which would enable him to sustain his family better in the future, but at that time, he was certainly not in a situation to sustain his family.

The respondent (wife) contended that the husband had invested in various real estate-related and other projects and was **concealing** the same fact from the court. He was diverting the income coming to him from such investment to his parents. Apart from this, the husband was also in illegal possession of the wife's "Stree-Dhan" and was refusing to return the same to her. Despite orders being passed by the Apex Court and also despite the proceedings under the Domestic violence act, the husband is **not complying** with the orders passed thereto. Moreover, due to these circumstances, there was a serious trust deficit between the parties and hence no prospect of reconciliation.

The Court decided this dispute as follows[2]:

- The Apex Court further confirmed the order of the Family Court Nagpur, which was herein before confirmed by the High Court of Bombay, at Nagpur.
- The appellant-husband was ordered to pay the arrears @ INR 15000/- per month within twelve weeks and continue to comply with the interim maintenance order passed by the Family Court, Nagpur, till the proceedings u/s 125 Cr.P.C. are pending before it.
- The Court mentioned that in case the appellant fails to make the said payment, appropriate proceedings under section 128 of the Cr.P.C. shall be instituted against it in the Family Court Nagpur to ensure such compliance, or any other appropriate proceedings as per the law.
- Lastly, as the proceedings were pending for over 7 years, the Family Court was directed to dispose of the proceedings **within six months** of the date of this judgment.

[2] Rajnesh v Neha (n 1)

(*The directions pronounced by the Court shall be discussed later on.)

ISSUES & POINTS OF CONSIDERATION

The Court framed the following issues that it felt should be adjudicated upon to set the legal position in the maintenance jurisdiction in matrimonial disputes in India straight from then on[3]:

- Issue of overlapping jurisdictions of the various maintenance provisions in the Indian legal system.
- Ambiguity in the award of the maintenance amount: Should it be from the date of the order or the date of the application or from some other date?
- Issue of permanent alimony: For how long shall the permanent alimony be awarded and what shall be the factors to be considered while deciding its quantum?
- What should be the criteria for determining the Quantum of maintenance?
- Existence of striking off the defense as a remedy: Whether the defense can be struck down on non-payment of maintenance by the respondent?

Apart from the adjudication in the abovementioned issues, Court also gave directions on two other points, which are as follows:

- Payment of interim maintenance.
- Enforcement of the Maintenance Orders

DISCUSSION

Overlapping Jurisdiction:

The Court mentioned that there were various statutes in the Indian legal system where the provisions for providing the relief of maintenance exist. They are Sections 36 and 37, Special Marriage Act 1954 (“SMA”), Section 125 of the Criminal Procedural code, 1973 (“CrPC”), Protection of women from domestic violence act, 2005 (“D.V. Act”), Section 24, 25 of the Hindu Marriage Act, 1955(“HMA”), Section 18 of Hindu Adoptions and Maintenance Act, 1965(“HAMA”). The Court recognized that maintenance can be claimed in either of these or simultaneously through more than one of these statutes as they are independent of each other i.e. they were created for different objects and purposes and the nature of the remedy they

[3] Rajnesh v Neha (n 1)

provide is also slightly different from each other at times. For example – a Hindu wife can claim maintenance from her husband under HAMA and also under the HMA in case she is also claiming relief under section 9 or 13 of the HMA.

The Apex Court itself has considered this overlapping issue in Nanak Chand v Chandra Kishore Aggarwal and Ors.[4] and held that there was no inconsistency between CrPC and HAMA and said in para 4 that "Both can stand together"[5]. Various other High Courts have also in various judgments stood by this opinion of the apex court. However, the court still recognized that even though one can't be stopped from asking for relief under such different statutes as the reliefs these acts provide are distinct in nature from the other, the simultaneous operation of such acts leads "to a multiplicity of proceedings and conflicting orders"[6]. And this overlapping of jurisdictions leads the husband to comply with successive maintenance orders passed under different statutes. Thus, this process needed to be streamlined. Court gave further such examples of overlapping under various other statutes as mentioned above and the judgments related to them of various high courts. For the sake of keeping things concise here, we are not going to discuss all of them and will move to the next step in the court's line of reasoning/adjudication of the issue.

The Court then arrived at the discussion that whether in such a case of overlapping jurisdictions, should the amounts awarded under separate statutes be adjusted with each other or not. Hence court mentioned Section 26(3) of the DV Act which provided that in case any relief is obtained by a woman under any other statute, she shall inform about the same to the magistrate hearing under the DV Act. The Court mentioned some high court judgments here which although provided that the adjustment or set off of the maintenance amounts can't be done between the proceedings under two different statutes as they are independent of each other. However, the apex court mentioned a Bombay High Court judgment in "Vishal v Aparna and Anr."[7] specifically mentioning that "the Bombay High Court has in a well-reasoned judgment in Vishal v Aparna and Anr. has taken the correct view"[8]. This "correct view" came while the Bombay High Court was adjudicating upon a dispute where the aggrieved had filed for relief under Crpc as well as DV Act.

[4] Nanak Chand v Chandra Kishore Aggarwal (1969) 3 SCC 802
[5] Nanak Chand v Chandra Kishore Aggarwal (n 1)
[6] Rajnesh V Neha
[7] Vishal v Aparna and Anr. 2018 SCC OnLine Bom 1207.
[8] Rajnesh v Neha (n 3)

The said High Court held that the object of informing the Magistrate of the other obtained relief under Section 26(3) was that the Magistrate should not ignore the maintenance awarded in any other proceeding while determining the actual requirement of the grant in the present proceeding over and after the previous award. Similarly, judgments from other High Courts were cited by the Apex Court which advocated the set-off and adjustment between maintenance amounts awarded under other such statutes as well. In one of its judgments in Sudeep Chaudhary v Radha Chaudhary[9], Court ordered adjustment in maintenance amounts awarded under the wife's respective maintenance applications under Section 125 CrPC and HMA.

Finally, the court gave directions on the issue of overlapping jurisdictions. It pronounced:

"While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding and the orders passed therein so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding"[10].

ANALYSIS

Court did set straight the issue of overlapping jurisdictions between various statutes in force in our country that provides for the relief of maintenance to the aggrieved. The court clarified that even though the aggrieved had the right to approach various statutes for the relief of maintenance at the same time, this courtesy cannot be used to subvert the interests of the respondent/other party and penalize them by ordering them to pay multiple maintenance amounts for the same cause of action.

This idea materialized as the court directed that the amounts of maintenance awarded in multiple proceedings can be adjusted with each other and the party securing a maintenance

[9] Sudeep Chaudhary v Radha Chaudhary (1997) 11 SCC 286.
[10] Rajnesh v Neha (n 1)

award had the liability to disclose the same in front of the subsequent forum so that the adjustment/set-off can always be adjudicated upon objectively by the respective forum/court.

Naturally, such loopholes, in the form of overlapping jurisdictions in this case, created ambiguity in the law and left it at the mercy of the interpretation of the particular Family Courts or Magistrates to decide whether to award multiple maintenance amounts or adjust them against each other. I believe that it is safe to say that mostly the courts awarded multiple maintenance amounts and hardly have they gone for adjustments. Even when we talk about the high courts, there was a serious divide between their respective opinions vis-à-vis the adjustment/set-off among more than one maintenance amount.

This ambiguity in law has led to a sense of frustration in the people who become respondents in these maintenance cases and also has given rise to several unnecessary litigations, most of them accrediting their inception to a cruel intention just to punish the other spouse. And needless to say, the payments done by the respondents under various maintenance proceedings against them have led to an unfair financial burden on them and undue riches for the other party/spouse.

This in my opinion is a very balanced direction on the issue and the approach of the court is yet a very practical and logical one rather than an unnecessarily emotional one, which in the efforts of over-compensating the applicant for the suffering caused to him/her, would otherwise mostly become an unnecessarily punitive treatment to the respondent, to say the least.

PAYMENT OF INTERIM MAINTENANCE

The Apex Court took cognizance of the huge delays that take place in the disposal of the Interim maintenance applications by the courts. For example, even though there has been inserted through respective amendments in 2001 in S.125 CrPC and S.24 HMA, a strict time limit of *60 days* from the date of service of notice to the contesting party *for the disposal of Interim Maintenance applications,* the Court observed that these applications remain pending for years. These huge delays defeat the whole purpose of the discussed interim relief.

The common reasons noted by the court for such delay were:

- Enormous time is taken in completion of pleadings in the interim stage itself,
- Parties taking repeated adjournments,

- Increased workload on family courts etc.

Secondly, when it comes to the proper adjudication of interim applications, there are altogether different sets of challenges before the court. As the grant of the interim amount is made by the courts depending on guesswork, with only the help of the pleadings filed by the parties before it, as evidence is yet to be taken, these pleadings need to be sufficient and accurate. But the court noted that the parties mostly make filings that are far from sufficient and accurate; they submit scanty materials mostly and provide incorrect information hiding the crucial information as well. All this hampers the court's ability to make "an objective assessment for the grant of interim maintenance"[11]. Therefore, the Court found the need to streamline this whole process.

So, the Court held that the strict compliance of Sections 5, 6, and 9 of the Family Courts Act, 1984 must be done and accordingly the Family Courts must make an endeavor to settle the matrimonial disputes first (Section 9); for achieving the same -State Government shall, in consultation with High Court, make provisions for *Marriage Counsellors* to assist the Family Court (Section 6). And only when such a method of settlement fails, the dispute shall go to be heard on merits. Further, to solve the problem of insufficient and inaccurate filings, the Court directed that the party claiming maintenance must *mandatorily* along with their interim maintenance application and the related pleadings, also file an affidavit of disclosure of their assets and liabilities before the Court.

The court formulated further detailed guidelines in the said matter taking some reference from the "Kusum Sharma" series of judgments of the Delhi High Court. The 1st Kusum Sharma Judgment directed that "applications for maintenance under the HMA, HAMA, DV Act and the CrPC be accompanied with an affidavit of assets, income and expenditure as prescribed"[12]. The Second case "framed a format of affidavit of assets, income and expenditure to be filed by both parties at the threshold of a matrimonial litigation". This new procedural mandate was further extended to proceedings under the Special Marriage Act and Indian Divorce Act, 1869 as well[13]. In the third case, the Affidavit was modified and the mandate was extended further to the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956[14]. Finally, in the fifth case of the series, the court consolidated

[11] Rajnesh v Neha (n 1)
[12] Kusum Sharma v Mahinder Kumar Sharma (2014) 214 DLT 493
[13] Kusum Sharma V Mahinder Kumar Sharma (2015) 217 DLT 706
[14] Kusum Sharma V Mahinder Kumar Sharma (MANU/DE/2406/2017)

the formats of the affidavits from the previous judgments and directed the same be filed in the maintenance proceedings[15].

Thus, the Apex Court took the assistance of the National Legal Services Authority (NALSA) and various State Legal Services Authorities (SLSA); keeping in mind the diverse socio-economic background of various areas in our nation. The said organizations submitted their suggestions regarding the format of such an Affidavit of Disclosure, via a comprehensive report through NALSA before the Hon'ble Court on 17/02/2020.

The Court based on suggestions set out to make a simplified format for the whole country and as the socio-cultural background of the people living in urban areas was entirely different from that of people living in rural areas, separate enclosures 1 and 2 respectively for both categories were attached with the judgment. Also, it was brought to the court's notice that the State of Meghalaya had an extremely different set of customs and culture when compared to the other states of the country, so a different enclosure 3 was attached and made applicable to the state.

Hence the Court using its powers under Article 136 read with Article 142 of the Constitution of India framed guidelines for finalizing the said formats. These guidelines are as follows:

"(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, *including pending proceedings* before the concerned Family Court / District Court / Magistrate's Court, as the case may be, throughout the country;

(b) The applicant claiming maintenance will be required to file a concise application accompanied by the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of *four weeks*. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the *power to strike off the defense* of the respondent, if the conduct is found to be willful and contumacious in delaying the proceedings. On the failure to file the Affidavit within the prescribed time, the Family

[15] Kusum Sharma V Mahinder Kumar Sharma 2017-(2018) 246 DLT 1

Court may proceed to decide the application for maintenance on the basis of the Affidavit filed by the applicant and the pleadings on record;(d) The above format may be modified by the concerned Court if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek the permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC;

On the filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so;

The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit *an amended / supplementary affidavit*, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C. and for contempt of Court.

(i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual laborers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court / District Court / Magistrate's Court must endeavor to decide the interim application made by the claimant for securing the Interim Maintenance, by a reasoned order, *within a period of four to six months at the latest*, after the Affidavits of Disclosure have been filed before the court"[16].

[16] Rajnesh v Neha (n 1)

ANALYSIS

The Apex Court has taken this opportunity to create a right push in improving the slow and unsatisfactory interim maintenance filings and adjudication throughout the country by issuing some really clear and uplifting guidelines that need to be followed by each and every court of the country. Court has straightened the issues related to the filings and pleadings for the interim maintenance applications big time by standardizing the formats of affidavits of disclosure which are now also made mandatory to be filed by the parties, where the parties shall disclose all their details of assets and liabilities. This will help the courts to make an objective assessment of the interim maintenance that shall be awarded to the aggrieved party.

Moreover, these affidavits are simple and uniform when it comes to keeping clarity in such filings throughout the country but the court has also not been insensitive to the populations from various socio-economic backgrounds of the country while prescribing such formats, as three different disclosures have been used to decide such formats for different categories of people applying for maintenance.

Secondly, speeding up the whole maintenance proceedings that are aimed here by giving strict deadlines in the filing of applications as well as their disposal by the court, has also been the right push needed. Although it can be said that even tighter deadlines were already there in the statute, for example in Section 24 of HMA and section 125 of the CrPC, the deadline for disposal of the interim maintenance applications has been 60 days since 2001, and the Supreme Court through this judgment has allowed four to six months for disposal under any statute relating to maintenance in India, which is three times the previous deadline. So, a person who is ignorant of any practicality can happen to be sad by this direction of the court and would feel that this would delay the disposal of maintenance matters. But the practical situations as already mentioned by the court in the judgment i.e. such disposals even taking years in several cases, demand a more relaxed yet reasonable window for disposal of such applications.

So this window of four to six months is realistic which the courts can achieve if they will and plan for the same, unlike the previous 60 days deadline which was too much to manage, given the workload on courts. We have to understand here that only keeping unreal deadlines in the statutes would not serve a particular purpose as we have already seen. This is so because then breaking those deadlines becomes an unwritten law or a custom, which everyone follows even when they don't want to but can't help to, and in the end, nobody

cares about the deadline and the work becomes slower than ever. So, having these new realistic deadlines for disposal of the interim maintenance applications will motivate the courts to strive to achieve them with greater zeal and gradually disposal will happen quickly. This humane grant by the court will certainly motivate the courts to honor the same by honoring these new friendlier deadlines for disposal of the interim maintenance applications.

PERMANENT ALIMONY:

The court just plainly gave some reasoned directions with regard to permanent alimony without citing any judgments.

Firstly the Court opined that in contemporary society, many a times marriages don't last for a longer duration. Therefore, it would not be appropriate to award permanent alimony for the whole life of the spouse when the marriage had sustained for a brief period. Hence the duration of marriage shall be an important factor that shall be seen to determine the permanent alimony in a particular case.

Moreover, while awarding the permanent alimony, the financial status of the husband will be taken into account, and along with that the expenses for the children's marriage if they are in the wife's custody and the existence of any child support trust fund created by either of the spouses or the grand-parents of the child shall also be taken into account.

ANALYSIS

The Court took a sensitive approach especially towards the respondents when it comes to ordering permanent alimony for the petitioner as they realized that a lot of factors should mandatorily be considered while awarding the same and issued some directions, as they shall then become the law of the land unless overruled or changed. Directing that the duration for provision of alimony shall depend on the duration the marriage existed, is so in sync with the current society, especially the urban areas that it needed to be spelled out by the Apex Court itself if we want the Family Courts in India to follow the thought seriously. Moreover, while determining the child support, keeping in mind the various already existing trusts created for the welfare of the child by the family is also a necessary direction that was spelled out here.

So, the directions in this issue are balanced and thoughtful as they erase the chances of the successful attempts made by the petitioner many times to extract the maximum amount of money from the respondent in cases of failed marriages. More so, because such acts are done

by the petitioner, at times out of their own will and at times under the influence of a third person or even the lawyers they trust, just to punish the respondent out of sheer frustration and anger, also to use the failed marriage as an opportunity to gain riches, where the reason for the failure of marriage might not even be the respondent or respondent entirely.

However, the duration being one thing, the actual reason for the failure of marriage and the background of the wife should also be given extreme importance in the determination of permanent alimony. This is so because in case the wife comes from a background where people do not marry a divorced wife or she and her family are so traumatized by the said experience that they are not in a position to trust any other person/family for marriage again. Also, the mental or physical health of the wife can be seriously and permanently affected by such trauma or cruelty in some cases. Therefore regard should also be had to such scenarios and the possibility of awarding permanent alimony for life should not be ruled out in such exceptional cases.

QUANTUM OF MAINTENANCE

The core principle used by the Court in awarding the interim/permanent alimony was that the alimony should be awarded to provide financial support to the dependant spouse so that he/she can be saved from getting into "Vagrancy and destitution" on account of the failure of the marriage, and not to penalize the other spouse. The factors that shall have weightage in the determination of the quantum shall be –

1. Status of parties,

2. Reasonable needs of the wife and dependent children,

3. Educational and professional qualifications of the applicant,

4. Whether the wife's income is sufficient in maintaining her standard of living as she was having at her matrimonial home,

5. Whether the applicant was employed before marriage,

6. Whether the wife was required to sacrifice her employment to nurture the family or a child or to take care of some adult/senior members of the family and

7. Reasonable costs of litigation for a non-working wife[17].

Court also cited its judgment in "Manish Jain Versus Akanksha Jain"[18], mentioning that the financial status of the wife's parents is not relevant and it is enough for the claim that her income is not sufficient to maintain herself and the children. Even the argument by the husband that the wife being educated is able to maintain herself is not enough to avoid the maintenance claim.

On the other hand, by referring to the court's judgment in "Jasbir Kaur Sehgal Versus District Judge, Dehradun, and Ors."[19], the apex court emphasized that apart from the husband's income, etc., his liabilities like – expenses for the maintenance of his own self and the maintenance of his dependent family members whom he is liable to maintain and other liabilities in law, shall also be considered while determining the quantum of maintenance to be paid by him. Court further said that due regard to the standard of living of the husband, skyrocketing inflation rates and high costs of living should also be kept in mind. However, the court held that if the husband is able-bodied and has educational qualifications, then he can't avoid the maintenance claim arguing that he possessed no source of income at that point in time[20].

With regard to the last point in the last para, Court mentioned its other judgments and the Delhi High Court Judgment in "Chander Prakash Bodhraj v Shila Rani Chander"[21] to lay stress on the point and I quote the said judgment of Delhi High Court holding that "an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children and cannot contend that he is not in a position to earn sufficiently to maintain his family"[22]. The apex court further held that "the onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. And if the husband does not disclose his exact amount of income, an adverse inference shall be drawn against him." Court also referred to another judgment to further point out that "the obligation of the husband to maintain stands on a higher pedestal than the wife"[23].

[17] Manish Jain V Akanksha Jain (2017) 15 SCC 801
[18] Manish Jain V Akanksha Jain (n 17)
[19] Jusbir Kaul Sehgal V District judge Dehradun and Ors. (1997) 7 SCC 7
[20] Reema Salkan v Sumer Singh Salkan (2019) 12 SCC 303
[21] Chander Prakash Bodhraj v Shila Rani Chander (2018) 12 SCC 199
[22] Chander Prakash Bodhraj v Shila Rani Chander (n 21)
[23] Shamima Farooqui v Shahid Khan (2015) 5 SCC 705

In cases when the wife is already earning, this fact does not become a bar for her claiming maintenance from her husband. Court has mentioned the guidelines in this issue through various judgments and the crux was that even if the wife is earning she can get maintenance from her husband, in case the income she is getting is not enough for her to maintain her and her child's standard of living as she enjoyed in her matrimonial home. Court relied on Shailja and Anr. Versus Khobbanna[24], Sunita kachwaha and Ors. Versus Sunil Kachawaha and Ors.[25] and also Sanjay Damodar Kale Versus Kalyani Sanjay Kale[26].

For the maintenance of minor children, Court directed that not only the child's education but his/her whole vocational training, coaching classes, and extra-curricular activities shall be covered under the maintenance and the same shall normally be borne by the father. However, in case the wife is also earning, then these expenses can be shared by both parents proportionately. In case of Serious disability or death of any party, child or dependent requiring constant care and attention shall also be taken into consideration while deciding the quantum, Court further held.

Finally, the court recommended that the quantum should be such that it enables the wife to maintain herself in reasonable comfort and not be so extravagant as to drive the husband to destitution and not be so meager as to drive the wife to penury[27].

ANALYSIS

The Court came up with various factors that should be taken into consideration while determining the quantum of maintenance of the wife in a maintenance proceeding. Every detail has been kept in mind by the apex court while deciding the said factors, such that if all such information is accurately disclosed by the parties before the court, then the court shall be in an extremely superior position to gauge how much of an amount the wife needs as maintenance from her husband. So, I believe the criteria enumerated by the court in determining the quantum is wholesome and well thought of and deserves no further comment.

The court has while deciding the factors on which the quantum of maintenance depends, fully justified the test that they used for deciding the quantum i.e. "that it enables the wife to

[24]Shailja and Anr. Versus KhobbannaAIR 2017 SC 1174
[25] Sunita kachwaha and Ors. Versus Sunil kachawaha and Ors. (2014) 16 SCC 715
[26] Sanjay Damodar Kale Versus Kalyani Sanjay Kale 2020 SCC OnLine Bom 694
[27] Rajnesh v Neha (n 1)

maintain herself in reasonable comfort and not be so extravagant to drive the husband to destitution and not be so meager as to drive the wife to penury".

DATE FROM WHICH MAINTENANCE SHALL BE PAYABLE:

As HMA, HAMA, SMA and DV act are silent on the date of provision of the maintenance and only CrPC talks about the such date and even then it gives a discretion to the Court to provide it from the date of the order or date of application, there was a need for the guidelines in this area to set the course of action straight and repair the visible ambiguity in the law.

Realizing the same the apex court started considering various views on the issue, as follows:

First – It should be given from the date of application;

For the first view the reason was that as the whole purpose of maintenance was to save the wife from destitution and vagrancy, it would be only just to provide her the maintenance amount from the date she made the application. The court cited judgments of the Orissa High Court holding that as the proceedings take so long to complete, it would be unfair to the wife if she is kept waiting and therefore the maintenance should be given from the date of her application[28].

The Allahabad High Court's judgment in the case of "Ganga Prasad Srivastava Versus ADJ, Gonda and Ors." [29] was cited where the court clarified that the date of provisions of maintenance should be the date the application for maintenance was made in the Court while dealing with S.18. of HAMA. The Delhi High Court in Lavleshshukla[30] also stood by the same position.

Second – It should be given from the date of the order;

For the second view, some High Court judgments were mentioned that supported this view.

An MP High Court judgment "Krishna Jain Versus Dharam Raj Jain", as mentioned, held that "if it is considered that provision of maintenance from the date of order is the norm and provision from the date of application is an exception u/s 125, then it is putting something

[28]Susmita Mohanty v Rabindra Nath Sahu 1996 (1) OLR 361
[29] Ganga Prasad Srivastava Versus ADJ, Gonda and Ors. 2019 (6) ADJ 850
[30]Lavlesh Shukla v Rukmani (Crl.Rev.P. 851/2019)

extra to what legislature mentioned in the CrPC. Thus, whatever be the date of provision, the reason for the same shall also be mentioned in the order"[31].

Allahabad High Court in Bina Devi Versus State of U.P.[32] in the year 2010 held interestingly that the legislation in S.125 (2) CrPC is written such that reasons should be recorded if the maintenance is given from the date of the application. In case the order is silent then it implies that it is effective from the date of the order, for which there is no need to record any reasons. Delhi High Court also held the same interpretation of S.125 (2) CrPC to be true in a revision proceeding in 2019[33].

Third – It should be given from the date the summons got served to the respondent(s);

For the third view, Kerala High Court in S. Radha Kumari Versus K.M.K. Nair[34] relying on the view of the Calcutta High Court in Sameer Banerjee Versus Sujata Banerjee[35] while dealing with the maintenance proceedings under HMA came in support by holding that as there is no date mentioned in S.24 HMA for the provision of the maintenance. Therefore discretion can be exercised and maintenance can be awarded from the date of service of summons of the main divorce petition to the respondent. Orissa High Court in Gouri Das Versus Pradyumna Kumar Das[36] went one step ahead and held firmly that "whenever there is a maintenance petition and the applicant is also the petitioner in the related divorce petition, the maintenance amount shall be payable from the date of the serving of summons of the main divorce proceeding to the respondent".

So, high courts have subscribed to very distinct views on this issue.

After considering these extremely diverse views, the Court finally pronounced that Maintenance should be payable from the date of application. Court boldly held that even though Section 125(2) allows for discretion, "It would only be appropriate to award maintenance from the date of application since in the practical working of maintenance provisions; there is a significant delay in disposal of applications of interim maintenance for years on end". Court relied on its judgments in Shail Kumari Devi and Ors. Versus Krishnan

[31] Krishna Jain v Dharam Raj Jain 1993 (2) MPJR 63
[32] Bina Devi Versus State of U.P. and Ors. (2010) 69 ACC 19
[33] Lavlesh Shukla v Rukmani (n 30)
[34] S. Radha Kumari Versus K.M.K. Nair AIR 1983 Ker 139
[35] Samir Banerjee v Sujata Banerjee 70 CWN 633
[36] Gouri Das v Pradyumna Kumar Das AIR 2009 Ori 133

Bhagwan Pathak[37] and in Mohan Singh Versus Meena[38] the Court further held "Delay in adjudication was not only against human rights but also against the basic embodiment of dignity of an individual. The delay in the conduct of proceedings would require the grant of maintenance to date back to the date of application".

Moreover, the court also reasoned that if the maintenance is not made payable from the date of application and is allowed to be postponed till an uncertain adjudication date, an unemployed dependent spouse would not be even in a position to pay for the litigation and represent herself properly in the Court.

The Court relying on Badshah V Urmila Badsha Godse very beautifully mentioned that purposive interpretation must be given to Section 125(2) CrPC and the purpose here is to ensure "Social Justice to the marginalized sections of society"[39] (the separated dependent parents and their minor child were considered as marginalized sections).

ANALYSIS

The judgment of the Court was on the lines of Allahabad High Court in *Ganga Prasad* and Delhi High Court in *Lavlesh Shukla*[40], subscribing to the first view on the issue of the date of provision of maintenance. Relying on its judgments and finally explaining the reason beautifully in *Badshah*[41], the Court dug deep and used the purposive construction of S.125(2) of CrPC and used it to deviate from its literal meaning which would not allow for payment of maintenance from the date of application generally.

Therefore, using the purposive construction, Court went beyond the written text of the said provision and pronounced it afresh with the lens of the Social Justice that our preamble demands us to endeavor to ensure for the marginalized sections of India. And for the further part of the pronouncement, although it would be clear to any reasonable man but the Court still for the sake of clarity and to leave no stones unturned in joining the dots, also mentioned that "While dealing with the application of a destitute wife or hapless children or parents

[37]Shail Kumari Devi and Ors. Versus Krishnan Bhagwan Pathak (2008 9 SCC 632)
[38] Mohan Singh Versus Meena (2015 6 SCC 353)
[39] Badshah V Urmila Badsha Godse (2014) 1 SCC 188
[40]Lavlesh Shukla v Rukmani (n 30)
[41] Badshah V Urmila Badsha Godse (n 35)

under this provision (S 125(2) CrPC), the court is dealing with a marginalized section of the society"[42].

The Court through this pronouncement has very empathetically tried to mend the present adjudication system that is broken to a substantial limit, when it comes to the speedy disposal of cases. Although the apex court cannot be omnipresent to ensure that all the family courts, magistrate courts, etc. that are entertaining the maintenance proceedings/interim applications thereto working at their best to ensure a speedy disposal thereto or even go and check that the adjournments taken by the respondent are genuine or not, it being a guardian of the constitution and a watchdog of all the other courts of the Country. The Court can also not enter into the policy-making arena and create further vacancies to make the appointment of more judges to ensure the speedy disposal of cases. The Court cannot do all this no matter whether it is the need of the hour or not, but what the Court could do, it definitely did. The relief of making the maintenance payable (irrespective of the statute under which the application was made) from the date of application was an ointment to the already paining destitute spouses who turned out to be so due to the result of a failed marriage, mostly along with their minor child, who on top of the pain from his marriage and financial condition have to also endure the excruciating experience of prolonged adjudication of their interim maintenance applications knowing that such delay could be definitely avoided by little more willpower from the side of the judiciary.

ENFORCEMENT OF ORDERS OF MAINTENANCE:

Apart from delayed adjudication of maintenance matters, the Court also made a pronouncement related to yet another challenging issue i.e. the enforcement of the maintenance orders, as the court noted that even these applications remain pending for months and sometimes years as well.

Relying on the Bombay High Court in SushilaVireshChhawda V VireshNagsiChhawda[43] that held while dealing with HMA maintenance proceedings that "The direction of interim alimony and expenses of litigation under s/24 is one of urgency and it must be decided as soon as it is raised and the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds", the Supreme Court

[42] Ibid
[43] SushilaVireshChhawda V VireshNagsiChhawda (AIR 1996 Bom 94)

emphasized upon various remedies the person has for the execution of a particular maintenance order. They are:

"(a) Section 28A of the Hindu Marriage Act, 1956 read with Section 18 of the Family Courts Act, 1984and Order XXI Rule 94 of the CPC for executing an Order passed U/S 24 of the Hindu Marriage Act (before the Family Court);

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 of Cr.P.C. before the Magistrate's Court.

(d) Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC / Cr.P.C.

(e) Section 125(3) of the Cr. P.C provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier"[44].

ANALYSIS

Thus, the Court in this part, admitting the need for enforcement of the order for interim maintenance at the earliest, did not adjudicate upon any legal issue. Interestingly, it relied on a Bombay High Court Judgment to emphasize the same and has mentioned a few provisions in various statutes which can be used for the execution of the orders for interim maintenance that are already passed by the court and are not yet complied with by the other party.

This part I must say had an educational color to it as the Court has here just re-iterated the various provisions for execution that are available under the law. The utility of the same is felt by me as apart from the law students and junior advocates, even the laymen who happen to read this judgment or a related written peace anywhere would become aware of the various methods of execution of the interim maintenance order they have. Apart from being enlightening, this knowledge is also empowering for the readers, no matter who they are.

[44] Rajnesh v Neha (n 1)

STRIKING OFF THE DEFENSE

The Court has discussed this issue as the striking off of the defense is sometimes done by the courts when the respondent fails to make the payment towards interim maintenance for a long time. Therefore, the Court again considered the opinions of various learned High Courts on this issue that whether the defense can be struck off by the courts in such a situation or not. Some High Courts have opined in the negative mentioning that the legislation has nowhere mentioned that such a step can be taken and the only remedy in case of failure of payment of the interim maintenance amount is the execution of the related order. However, the Delhi and Punjab & Haryana High Courts have been loud and clear in their judgments that the defense can be struck off in such a situation. In Mohinder Verma V. Sapna, the High Court of Punjab & Haryana while dealing under section 24 of HMA held:-

"Where this amount is not paid to the applicant, then the very object and purpose of this provision stand defeated. No doubt, the remedy of execution of a decree or order passed by the matrimonial court is available under Section 28 A of the Act, but the same would not be a bar to striking off the defense of the spouse who violates the interim order of maintenance and litigation expenses passed by the said Court. In other words, the striking off of the defense of the spouse not honoring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28 A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time-consuming execution proceedings for realizing the amount. The Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defense of the erring spouse in the exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure"[45].

Also, the Delhi High Court has in Smt. Santosh Sehgal v. Shri Murari Lal Sehgal framed a similar issue for consideration. The reference was answered as follows:-

"We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him

[45] Mohinder Verma V. Sapna (AIR 1996 P&H 175)

in the matrimonial proceedings? We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favor of the husband has to be allowed. Hence the question referred to us for decision is answered in the affirmative"[46].

The apex Court itself has allowed the striking off of the defense in such cases in Kaushalya v. Mukesh Jain[47]. Finally, the Court held its opinion very briefly holding that striking off of the defense can be allowed in case the husband fails to pay the amount ordered as interim maintenance but only as "a last resort" and when such default by the husband is "willful and contumacious" particularly when the dependent is an unemployed wife or minor children. The Court also however added that contempt proceedings can also be initiated for such default.

ANALYSIS

The Court has allowed striking off the defense of a respondent in case of non-payment of interim maintenance amount. There is no category created here that the failure to pay should be of a certain nature or duration, non-payment simply can attract the defense to be struck off. However, even if the court has not condemned this option, it has also not prescribed the usage of the same by courts unless as a "last resort" and that too when the aggrieved is a dependent unemployed wife or a minor child or both, and the conduct of respondent is "willful and contumacious". So, this is more like an "ace" in the hands of courts which is kept as a reserve and has to be used only when there is no other option left, but it sure is allowed as it can completely turn the odds in the game.

The description is a little dramatic because Apex Court rightly saw what wonders can be achieved by using such a punitive action against the respondent who is willfully not paying interim maintenance to his wife etc. knowing fully that she might not even survive without this support. Moreover, it is sheer contempt of the court, which cannot be taken lightly, if the dignity of the judiciary has to be preserved. Although Court also suggested in the end that a contempt proceeding can be started in such a case, which certainly is another remedy here, allowing the striking of the defense is more like a symbolic step, even if we overlook the practical benefits of the same i.e. really quick disposal of the case.

[46] Smt. Santosh Sehgal v. Shri Murari Lal Sehgal (AIR 2007 Delhi 210)
[4747]Kaushalya v Mukesh Jain. 2019. Retreived from https://indiankanoon.org/doc/194803359/

This act is symbolic in the sense that it is inspired to some extent by the ideology of "eye for an eye". The Court here by allowing this has come out in the front and has boldly announced in a way that the disrespect of the law and disrespect of the Courts shall not be tolerated anymore. Period! And in a country like ours, with so much litigation going on which has created a mammoth-like pendency before our courts that are already under-staffed, there has to be no space for disrespect or willful non-compliance of the orders of the courts and huge delays in the disposal of cases due to such shameful reasons.

CONCLUDING REMARKS

The judgment covered so many issues that it will be exhausting to discuss them again in the end. That is why their separate analysis has been kept above along with the related reasoning of the Apex Court. Therefore, here I will be only giving a conclusive statement to this judgment and nothing more. This judgment was not only a judgment, it felt like a questionnaire where the highest court of India had answered a few extremely relevant legal questions related to matrimonial litigation. Not only that, they have along with such answers, given the related directions which it found should be useful to help the future litigation and shall aid in the pursuit of the needy ones to get the relief they deserve from the law.

The Court has passed so many useful directions here that I don't think shall go away soon and shall certainly stay and stay for good. A lot of things ranging from overlapping maintenance jurisdictions to the date from which the maintenance amount shall be awarded have been straightened out by the court. And the court patiently discussed all the relevant judgments of various high courts of India with all kinds of conflicting opinions and then in the end extracted from them the set of directions that hereby become the law of the land. Such detailed discussion I feel can hardly be shortsighted.

I hope and even have witnessed to some extent that the directions that came from this judgment have already started impacting the maintenance proceedings across the nation positively and powerfully. In the future too, this push in the form of directions in Rajnesh Versus Neha will be known as one of the major catalysts that completely transformed the maintenance litigation and adjudication in India. This is a kind of judgment that has the potential to be called a "Landmark" in not only the maintenance jurisprudence in India but also the matrimonial jurisprudence. This judgment set straight a lot of procedural issues as well as legal ambiguities related to the maintenance proceedings in the Courts of magistrates and Family Courts of the Country. Although the case at hand related to the maintenance

jurisprudence concerning section 125 of CrPC, the court took an interdisciplinary approach to the matter in order to provide a holistic solution to the problem rather than just pass directions limited to the usage of section 125 CrPC.

The court looked beyond the present provisions used by the parties and has framed the guidelines keeping in mind all the maintenance-related provisions from other statutes as well, keeping as the focal point, the kind of cases that resemble the present case at hand. Therefore, this holistic approach of the court taking not only section 125 Crpc for their perusal but mentioning and including the maintenance-related provisions from SMA, HAMA, HMA, and DV act along with other related/relevant statutes also, really broadened the practical range of the guidelines issued.

Moreover, some suggestive guidelines that were issued by the Court mentioning the various reliefs one can get under the Indian legal system when he or she is in desperate need of maintenance money also worked as empowering to whoever who has read, reads, or shall happen to read this judgment, be it, lawyers or common people. And not only one, but the court mentioned the address of multiple doors in the Indian maintenance jurisprudence that can be knocked by the needy to get the maintenance money and also explained clearly what legal remedy the decree holder/applicant has in case the judgment debtor/non-applicant does not follow the maintenance orders of a particular court. The mandate brought by the court of filing the simplified Affidavits of disclosure by both parties to a maintenance dispute has eased numerous practical as well as legal problems in the adjudication of such matters. This new mandate is such a big change that the whole utility of the same shall gradually be unraveled by none other than time itself.

I would say the judgment was significant in two ways. Firstly it straightened out a lot of legal ambiguities by issuing these guidelines and secondly it was educational in the sense that it makes people aware of the legal remedies a person has in the event of maintenance and what to do in case of non-compliance with the maintenance order. Although experienced legal professionals who specifically practice in such areas would know about all such remedies but laypeople and even law students, legal interns and junior advocates who have started initially will certainly benefit from reading these guidelines as it will increase their understanding regarding the maintenance disputes and the related options of reliefs available in law.

We have seen such biased laws and judgments made/pronounced in the very recent past of our country, where in the failed attempts to overcompensate the victim, mass injustice is legalized. Therefore, the court's balanced approach here must be appreciated.