Gaurav Lohiya Vs. Smt. Nidhi Lohiya and Another.
02/05/2017

Shri A.R.Shivhare, counsel for the applicant.

Smt. Sudha Sharma, counsel for the respondents.

This revision under Section 397 and 401 of Cr.P.C has been filed against the order dated 14.7.2015 passed by Additional Principal Judge Family Court Gwalior in Case No.259 of 2009 by which, the application filed by the respondents under Section 125 of Cr.P.C has been allowed and the applicant has been directed to pay the maintenance at the rate of Rs.15,000/- per month to each of the respondents from the date of the filing of the application i.e. dated 3.6.2009.

The necessary facts for the disposal of the present criminal revision in short are that the respondents had filed an application under Section 125 of Cr.P.C before the Family Court, Gwalior alleging that she was married with the applicant on 20.11.2003 as per Hindu rites and rituals. It was further submitted that the respondent no.2 has been born out of the wedlock. It was pleaded that the father of the respondent no.1 had given more than sufficient dowry at the time of marriage but the applicant and his family members were not satisfied with the dowry given at the time of marriage and they started treating the respondent no.1 with cruelty. When illegal demands of the applicant and his family members were not fulfilled, then the applicant and his family members started making false complaint against the respondent no.1 and her father and after inquiry, applicant withdrew the complaint filed by him against her in laws. In the meanwhile, the respondent no.1 became pregnant and

subsequently gave birth to a girl child and because of that, cruelty and the harassment of the respondent no.1 at the hands of the applicant and his family members was increased and they started blaming respondent no.1 of giving birth to a girl child. However, the respondent no.1 continued to stay with the applicant inspite of the continuous harassment at the hands of the applicant and his family members. When the applicant and his family members realized that the respondent no.1 will not leave her matrimonial house inspite of all sorts of cruelty, then on 2.11.2008 the applicant and his family members left the respondent no.1 in her parents' house in the presence of her father and others and from thereafter, the respondent no.1 is residing in her parents home without having any source of income. It was further stated that the applicant has not cared to take care of the respondents from 2.11.2008. He is working on the post of a Scientist in Defence Electrical Reserach Laboratory, Hyderabad and is getting basic pay of Rs.48,000/- per month and accordingly, it was prayed that considering the social status of the parties, an amount of Rs.16,000/- to each of the respondents may be granted by way of maintenance.

The applicant by way of filing reply to the application filed under Section 125 of Cr.P.C denied the allegations except that the marriage of the applicant was performed with respondent no.1 on 2.11.2008 and the respondent no.2 is his daughter. The applicant denied the fact that the respondent no.1 was ever harassed or treated with cruelty because of non-fulfillment of demand of dowry. Demand of dowry was denied by the applicant.

It was further denied that false complaints were made by the applicant. It was contended that as the behaviour of the respondent no.1 towards the applicant's family was not good, therefore, a complaint was made to the police expressing apprehension of false implication. On 15.3.2005, an agreement was entered into between the applicant and father of the respondent no.1. On 15.12.2008, the respondent no.1 put a condition that she would accompany the applicant only if he accepts all her demands and ultimately because of the mal-treatment by the respondent no.1, the applicant made a complaint to the Sr.Officers on 31.10.2008. The applicant had demanded security but since no offence was registered by that time, therefore, no action was taken on the said complaint. It was further denied that the birth of the respondent no.2 had further annoyed the applicant. The applicant further submitted that the respondent no.1 with an intention to spoil the career of the applicant sent letters on 4.11.2008 and 20.11.2008 to the Scientific Advisor of the Defence Minister making false allegations with an intention to get him dismissed from the job. In fact, all facilities were provided to the respondent no.1 at Hyderabad and she had also submitted an application for her registration for doing Ph.D in Management. It was further denied that the applicant is getting Rs.48,000/- per month by way of basic pay. On the contrary, it was submitted that his monthly take home salary is Rs.5962/-. In additional submissions, it was submitted by the applicant that the intention of the respondent no.1 was to establish his independent identity and as she was required to spend a lot of time to study at home,

therefore, the applicant had taken the responsibility of the house on his shoulders. In the year 2004 and 2006, the respondent no.1 appeared in the examination for admission and registration of Ph.D and she was declared successful in the year 2006. She gave birth to respondent no.2 in 2007. After marriage, they had gone to different places. It was further submitted that the applicant had purchased a Luxury Car after taking loan from the department. Father of the respondent no.1 was suspended on the allegation of corruption and ultimately, he was punished and as the parents of the respondent no.1 were facing financial crunch, therefore, the applicant had provided financial help to them. As from the month of August, 2007, the applicant was required to pay the instalment for repayment of loan, therefore, he became unable to give financial help to the family of the respondent no.1. Therefore, false allegations have been made. It was further submitted that in fact, the respondent no.1 was not residing at Hyderabad regularly and very frequently, she was coming to Gwalior as a result of which, not only she suffered an accident at Gwalior but her ornaments were also stolen during travel between Hyderabad and Gwalior. The respondent no.1 used to give money as well as her ornaments to her parents without information to the applicant or his family members etc.

The statements of witnesses were recorded and they were cross-examined in the trial Court. The parties in their evidence have admitted that certain complaints. were made by them against each other. The respondent no.1 has also stated that she filed an application under

Protection of Women from Domestic Violence Act and has also filed a complaint for offence under Section 498A of IPC.

Although, the applicant has expressed his ignorance about the direction given by the Court under the Protection of Women from Domestic Violence Act but he has stated that a revision has been filed by him before the High Court against the order passed under Protection of Women from Domestic Violence Act. The applicant has also admitted that on 15.12.2008, he was called at the Police Station on the complaint of respondent no.1. The respondent no.1 has also admitted that the applicant had made a complaint against her and her father mentioning therein that he is being threatened by them. The applicant had stated that in the month of November, 2008 and January, 2009, the respondent no.1 had made a complaint to his department that the applicant is involved in corruption and on the basis of that, a departmental action was taken against him but neither any document pertaining to the departmental action nor the copy of the complaint allegedly made by the respondent no.1 has been produced by the applicant. The applicant also stated that he is not ready and willing to keep the respondent no.1 because, he has lost his confidence in her. He further admitted that he has filed a petition for grant of divorce.

From the evidence which has been led by the parties, it is clear that the applicant has not made any attempt to take the respondent no.1 back with him. Neither any application under Section 9 of the Hindu Marriage Act was filed nor he complied with the order

passed under Protection of Women from Domestic Violence Act. The evidence which has been given by the parties clearly shows bad blood between them. It is also clear from the record that against the order dated 12.11.2009 passed by Principal Judge, Family Court, the applicant had filed a Cr.Revision No.988 of 2009. The reconciliation proceedings were instituted and Mediator was appointed and the mediator after considering conduct of the applicant had given the following report :

> "That on 8.2.2012, the Ld. counsel for revisionist hand over to me one photo-copy of the typed matter in which, no explanation is given to his last absence and also not mentioned any factor to settle his dispute in future by way of compromise. There is also not a single reason to explain his absence in mediation-proceeding. In this the Revisionist simply prayed for adjourned the date for more than a month without giving any speaking and explained satisfactory reason either in-person or on his department, it is also not clear that he had done any efforts for his appearance before the MEDIATION-PROCEEDING & his department did not permit him, so on DEFFERENT EXCUSSES & FRUVLESS GROUNDS the mediation proceedings cannot be linger on for long time. Hon'ble Court has order on 9.9.2011 and after passing the period of SIX MONTHS nothing seems to be possible due to reluctant attitude of the Revisionist Gaurav Lohiya it is better to close the proceedings.
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> It is evenced from the above said facts and circumstances, the due to MELIOUS AND RELUCTANT ATTITUDE of the Revisionist Gaurav Lohiya mediation proceeding become FAILED.
>
> Therefore, the matter is sent back to the Hon'ble Court for further-proceedings"

Thus, it is clear from the report of the Mediator also that the applicant is reluctant in keeping the respondent no.1 with him.

Considering the facts and circumstances of the case, this court is of the view that it cannot be said that the respondent no.1 is residing separately from the

applicant without any reasonable reason.

So far as the question of quantum of maintenance amount is concerned, the respondent no.1 has produced salary certificate of the applicant which is Ex.P/1C in which, the salary of the applicant for the month of February, 2010 has been shown to be Rs.53,181/-. According to the said certificate, an amount of Rs.30,000/- is being deducted towards the GPF whereas, amounts of Rs.120/-, 325, 200 and 1065/- are being deducted towards the CGEGIS, CGHS, Professional Tax and Scooter loan. According to this salary certificate, an amount of Rs.31,716/- is deducted. Accordingly, net pay after pay bill deductions is Rs.21,471/- only. If the salary certificate is considered in it's proper perspective, then it would be clear that the amount of Rs.30,000/- is being deducted under the GPF head which cannot be said to be a mandatory deduction. For ascertaining the take home salary, only mandatory deductions can be taken into consideration. Any deduction which is being made because of voluntary act of the applicant cannot be considered. The applicant has contributed Rs.30,000/- per month in his GPF Account. Deduction towards GPF amount cannot be said to be a mandatory deduction as the amount so deducted is based on the sweet will of the employee and he is not under compulsion to get a particular amount deducted towards GPF per month. As the amount of GPF deducted from the salary of the applicant is based on the consent given by the employee concerned, this deduction of Rs.30,000/- towards GPF account cannot be taken as compulsory deduction and therefore, for considering the take home salary, the said

amount cannot be deducted from the monthly salary of the applicant. So far as repayment of loan is concerned, the repayment can also not be termed as a mandatory deduction. The loan is nothing but taking salary in advance either in cash form or in the form of kind (for purchasing something). If the applicant had utilized his future salary in purchasing something, then, the repayment of the instalment of the said amount cannot be said to be a mandatory deduction because, the applicant himself is responsible for the deduction of the loan amount and therefore, merely an amount of Rs.1065/- is being deducted from his salary under the head of vehicle loan, it cannot be said that the said amount is liable to be deducted from his salary while calculating the take home salary. Thus, considering the fact that GPF amount as well as the loan repayment amount cannot be considered for ascertaining take home salary. Other deductions made from the salary of the applicant towards CGEGIS, CGHS, P.TAX and Scooter Loan come to Rs.645/-. Thus, if the amount of Rs.645/- is deducted from the monthly salary of the applicant i.e. Rs.53,181/-, then, monthly take home salary of the applicant would be Rs.52,536/-. Thus, in the month of February, 2010, the take home salary of the applicant was Rs.52,536/-.

It is further contended by the counsel for the applicant that his parents had filed an application under Section 125 of Cr.P.C against him and by order dated 14.3.2014, he has been directed to pay monthly maintenance at the rate of Rs.10,000/- per month to each of them. Therefore, the said amount is also liable to

be deducted from his take home salary.

The order dated 14.3.2014 has been placed on record as Ex.D/2. It appears from the said order that an exparte order was passed and the applicant did not appear before the court even after service of notice. There is nothing on record to show that the applicant had ever filed any application under Section 126 of Cr.P.C for setting aside the said exparte order. There is also nothing on record to show that the applicant had ever made payment of any amount to his parents in compliance of the order dated 14.3.2014. Thus, it is clear that this exparte order Ex.D/1 was obtained by the applicant with an intention to show as additional liabilities. Under these circumstances, the order dated 14.3.2014 cannot be taken into consideration while considering the take home salary of the applicant.

It is well established principle of law that the woman is entitled to enjoy the same status which she would have otherwise enjoyed in her matrimonial house. The applicant is a Scientist and belongs to a upper strata of the society and therefore, the respondents will be entitled to enjoy the same status which they would have otherwise enjoyed in her matrimonial house. Similarly, so far as respondent no.2 is concerned, she is also entitled for the same status which she would have otherwise enjoyed in her father's house. The respondent no.2 is also entitled for the same status of education and same status of livelihood which she would have enjoyed in her father's house. Therefore, it cannot be said that the respondent no.2 is required to study in a lowest fee paid school. Under these circumstances, if the trial court has

granted amount of Rs.15,000/- to each of the respondents by way of maintenance per month, then, it cannot be said that the same is on the higher side.

It is further contended by the counsel for the applicant that there is no reason for the court below to award maintenance amount from the date of the application. So far as the respondent no.2 is concerned, undisputedly, she came to this world in the year 2008 and just after few months of her birth, she has been residing in her maternal parents house. She has never enjoyed the company of her father and she has been deprived of the love and affection of her parents because of the conduct of the applicant. Further, it cannot be said that the respondent no.2 who was just aged about one year on the date of filing of the application was in any manner responsible for the delay in the disposal of the application filed under Section 125 of Cr.P.C. Unfortunately, the application filed under Section 125 of Cr.P.C remained pending for six long years and without there being any fault on the part of the respondent no.2 she cannot be deprived of the maintenance amount from the date of the application. Accordingly, this court is of the view that the trial court did not commit any mistake by granting maintenance to the respondent no.2 from the date of the application.

So far as respondent no.1 is concerned, from the record it appears that application for grant of maintenance under Section 125 of Cr.P.C was filed on 3.6.2009 and on 8.7.2009, the applicant appeared and the matter was sent for reconciliation. On 15.10.2009, the applicant filed his reply to the application under

Section 125 of Cr.P.C as well as for interim maintenance. From the order sheet dated 12.11.2009 it appears that the court below awarded Rs.5,000/- per month to the respondent no.1 and Rs.3000/- to the respondent no.2 by way of interim maintenance. Being aggrieved by the order dated 12.11.2009, the applicant filed a criminal revision before this Court and the record of the trial court was sent to this Court. It appears that the record of the court below was returned back on 25.3.2011. On 28.3.2011, applicant made a prayer that he has already paid some of the maintenance amount and the remaining amount has been invested in NSC etc. Accordingly, the trial court directed the parties to produce details of the interim maintenance amount paid by the applicant. On 1.4.2011, said details was submitted by the respondent no.1. On 9.5.2011 this court held that the interim maintenance amount was to be paid to the respondents and it was not required to be invested in Kisan Vikas Patra or RD Account. Accordingly, the applicant was directed to pay interim maintenance amount. The case was thereafter fixed for evidence of the parties and on certain dates because of the ill health of the respondent no.1, she could not appear for evidence. Subsequently, her examination-in-chief was recorded on 7.11.2012 and the matter was adjourned to 7.12.2012 for her cross-examination and for remaining evidence. On 7.12.2012, the respondent no.1 appeared before the court at 11.30 AM and the applicant appeared before the Court at 1.00 PM and prayed that his counsel is not present. At that time, the respondent no.1 expressed that her child is about to come back from the school, therefore, she has

to back. Accordingly, the case was adjourned on payment of cost.

On 5.3.2013, counsel for the applicant expressed his inability to cross-examine the respondent no.1 and on the said date, last opportunity was granted to the applicant to cross-examine the respondent no.1 on the payment of cost. Again on 7.5.2013, counsel for the applicant refused to cross-examine respondent no.1 and the matter was adjourned on payment of cost. On 30.7.2013, again applicant refused to cross-examine respondent no.1 and the matter was adjourned on payment of cost. On 28.9.2013, the respondent no.1 was present but the applicant refused to cross-examine her and the matter was adjourned to 21.11.2013. On 21.11.2013, the respondent no.1 was present but the applicant expressed that the attempts for reconciliation may be made and therefore, the matter was adjourned and ultimately, on 6.1.2014, remaining examination-in-chief of the respondent no.1 was concluded but the counsel for the applicant refused to cross-examine the respondent no.1 on the ground that he is urgently required to go to the High Court. On 12.5.2014, the applicant was present but as the Presiding Officer was on leave, therefore, the matter was adjourned and ultimately, the respondent no.1 could be cross-examined by the applicant on 27.5.2014 and the case was adjourned to 2.7.2014. On 2.7.2014, right of the respondent no.1 to examine remaining witnesses was closed and the matter was taken up on 3.7.2014. On 3.7.2014, an application was filed by the respondent no.1 that the order dated 2.7.2014 may be recalled and she

may be permitted to examine other witnesses. The said application was allowed on payment of cost of Rs.250/- and the matter was adjourned to 16.7.2014. On 16.7.2014, the witness of the respondent no.1 namely O.P.Gupta was present but he could not be examined. Ultimately, the case was adjourned to 19.7.2014. On 19.7.2014, the respondent no.1 closed her evidence. The matter was adjourned to 8.8.2014 for examination of the applicant. On 8.8.2014, the matter was taken up at the request of counsel for the applicant and the case was adjourned to 22.9.2014. On 22.9.2014, 2011.2014, 23.1.2015, 23.2.2015, 16.3.2015, 30.3.3015 and 16.4.2015, the matter was adjourned for the examination of the applicant. On 11.5.2015, the applicant was examined and cross-examined and the case was adjourned to 25.5.2015 for examination of the remaining witnesses of the applicant. Thereafter, the matter was adjourned to 25.5.2015 and 15.6.2015. The case was adjourned on payment of cost of Rs.300/-. On 6.7.2015, again, the applicant sought time to examine his witnesses but as lot of opportunities were already given to the applicant, therefore, adjournment was refused and his evidence was closed and the matter was fixed for final arguments on 9.7.2015. Thereafter, on 14.7.2015, the judgment was passed by the trial court.

Thus, from the order sheets, it is clear that in fact, it is the applicant who is responsible for the delay of the disposal of the application filed under Section 125 of Cr.P.C. The remedy provided under Section 125 of Cr.P.C is the speedy remedy and if the matter was prolonged for Six years, then it would result in loss of faith in the

judiciary and it would be against the mandate of the law behind Section 125 of Cr.P.C.

Under these circumstances, this court is of the view that the trial court did not commit any mistake in directing for payment of maintenance amount from the date of the application to the respondent no.1 also. However, it is made clear that the interim maintenance amount which was paid by the applicant to the respondents during pendency of the application filed under section 125 of Cr.P.C is liable to be adjusted in the arrears of the maintenance.

Accordingly, this application fails and is hereby **dismissed**. The interim order dated 23.8.2016 passed by this Court is hereby vacated.

(G.S.Ahluwalia)
Judge.

Rks.