

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st DECEMBER, 2021

IN THE MATTER OF:

+ **CRL.REV.P. 710/2018 & CRL.M.As. 30389/2018, 12577/2021,
14363-65/2021**

COL RAMNESH PAL SINGH

..... Petitioner

Through Petitioner – in person

versus

SUGANDHI AGGARWAL

..... Respondent

Through Respondent – in person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition is a criminal revision petition filed by the Revisionist Petitioner, an Indian Army colonel, with a prayer to set aside the order dated 30.5.2018 passed by Ld. Family Court Tis Hazari in MT No. 78/2018 wherein the Court passed an order under Section 125 Cr.P.C directing the Petitioner to pay a monthly maintenance of Rs.33,500/- to the Respondent herein.

2. Before delving into the merits of the case it would be important to advert to the material facts of the case.

a) The marriage of the Petitioner was solemnized on 22.12.2002 according to Sikh rites and rituals in accordance with the Hindu Marriage Act, 1955. Out of the wedlock, they have two Children-

Suhani Singh aged 10 years and Shabad Singh aged 7 years old.

- b) The Revisionist Petitioner has been posted across the territory of India as a result of his service in the Army. The Revisionist Petitioner and the Respondent were peacefully married and residing happily together until 2015 where the Petitioner alleges that he found that the Respondent was in an adulterous relationship with one of the petitioner's senior in the army, who was married and close with the family as well.
- c) In July 2015, it is stated that the Petitioner found out that the Respondent was in an amorous relationship with the superior/family friend of the Petitioner. The Petitioner admittedly checked the Respondent's phone and discovered on her WhatsApp, certain chats which were lascivious in nature, with the Petitioner's superior which was recorded by him to confront the Respondent on her actions.
- d) It is stated that on 8.8.2015, the Petitioner hosted a dinner party where he had invited both his and Respondent's respective parents and had invited his army superior/ paramour of the Respondent and his spouse. The Petitioner all the time at the party was wearing a body audio/tape recorder after the dinner party was over he started by giving a speech and where in the middle he spoke about the affair of Respondent No.2 and a family face-off ensued which lasted for 30 minutes.
- e) The entire communication of that dinner party was recorded and was transcribed and has been placed on record before this Court.
- f) Admittedly, after the dinner party the Petitioner made his

intentions very clear of wanting to separate from the Respondent and sever all marital ties with her. The Petitioner firmly stated before the families that he would have the custody of the children. It is stated that the Respondent tried to apologize numerous times but the same was not accepted by the Petitioner and all attempts of reconciliation made by Respondent had failed.

- g) The Respondent thereafter filed a slew of cases against the Petitioner claiming different reliefs from him. Given below are the cases that the Respondent has filed against the Petitioner.
- i. Maintenance Petition under Section 125 Cr.P.C.(MT-78 of 2018) filed before the Family Court, Tis Hazari which has cumulated in the present Revision Petition.
 - ii. Guardianship Petition (G.P. 45 of 2015) u/s 9 of the Guardianship & Wards Act, 1890 filed before the PDJ, Family Court, Tis Hazari.
 - iii. Guardianship Petition No. 5 of 2015 before the Family Court in Bikaner, Rajasthan.
 - iv. Transfer Petition (Civil) 602 of 2016 before the Hon'ble Supreme Court of India.
 - v. Domestic Violence case criminal complaint No. 197/01/2015.
 - vi. Civil Suit No. 9987 of 2016 before the District Judge, Tis Hazari.
 - vii. HMA No. 97 of 2016 before the Family Court, Tis Hazari.

- h) It is stated that on 13.08.2015, the petitioner made a written representation to Brigadier Ajay Vij. CDR 79 Mountain Brigade against his superior who was allegedly in an amorous relationship with the Respondent and appropriate proceedings before the Armed Forces Tribunal had been initiated under Section 45 of the Army Act 1950.
- i) Simultaneous proceedings at different locations have been going on between the parties.
- j) In the petition for maintenance, the learned Family Court vide order dated 10.04.2017 has granted Rs. 9000/- per month as ad interim maintenance to the respondent herein which was directed to be deposited in the bank account of the respondent herein on 7th day of each English Calendar month from the date of the order. The Ld. Principal Judge, Tis Hazari on 30.05.2018 in the proceedings initiated under Section 125 Cr.P.C has passed an order directing the Revisionist Petitioner to pay a sum of Rs. 35,300/- per month as interim maintenance to the respondent herein w.e.f. 01.01.2017 till the final disposal of the case and retrospective maintenance of the amount of Rs. 9,000/- p.m. as directed by the learned Family Court vide order dated 10.04.2017, from the date of filing of the Maintenance Petition (2015) till December 2016.
- k) The petitioner has approached this Court challenging the order of maintenance.
- l) Material on record indicates that the said chats have been deemed adulterous in the proceedings initiated by the petitioner

herein under the Guardianship & Wards Court, Tis Hazari Court while granting custody of the children to the Petitioner.

m) In the Guardianship Petition filed by the respondent herein, the learned Principal District Judge, Tis Hazari Courts, *vide* order dated 22.8.2020 has stated reasons for not giving custody of the children to the Respondent herein.

n) During the pendency of the present petition before this Court, the parties herein were referred to Delhi High Court Mediation Committee *vide* order dated 15.10.2018. The Mediation failed.

3. Heard both parties. The Petitioner and Respondent both appeared and argued in person before this Court.

4. The Revisionist Petitioner submitted that there are glaring inconsistencies that were in the order as a result of suppression of facts made by the respondent herein. He contends that the respondent is disqualified from being given maintenance as she was in an adulterous relationship and was living in adultery with an army senior of the Petitioner. He submits that the Respondent and her paramour were having an affair behind his back and the paramour was known to the couple as a family friend from the time they had gotten married in 2002. He submits on this ground itself the sub-section (4) of Section 125 CrPC is attracted which states that a person living in adultery would not be eligible for claiming maintenance from her separated spouse.

5. The petitioner then submitted that the Respondent is disqualified from receiving maintenance on the ground that she was employed as a teacher previously and was making a living. It is submitted that the respondent has an earning capacity and can maintain herself without the financial support of

the Petitioner as sanctioned by law. He contended that the Maintenance Petition has been wrongly decided by the family court ignoring the Army Order 02/2001 which governs the Petitioner's case and Clause 4 of that order lays down the Procedure for Processing Maintenance Cases. The submission of the Petitioner is that since the Respondent's maintenance claim is to be decided in accordance with the Army Order, the same would be decided by the Army officials of the Armed Tribunal and the jurisdiction exercised by the Family Court is wrong and improper. Therefore, the entire proceedings before the family Court is null & void, and the claim of maintenance by the Respondent should be decided by the appropriate forum in the Army.

6. The Petitioner lastly submitted that the respondent has submitted an overly inflated Income Affidavit before the Family Court. He states that she has suppressed the fact that she is capable of earning, that she was previously teaching in three different schools and that she has been living at the residence of her parents, therefore she doesn't need an accommodation or rental. The Petitioner relies on the order dated 22.8.2020 passed in GP- 75 of 2015 by the Ld. PDJ, Tis Hazari and observations therein to show that the conduct of the Respondent was adulterous and unbecoming of having the custody of the children permanently.

7. The Petitioner in support of his contentions and submissions has placed reliance on many judgments on the proposition that living in adultery bars a woman from claiming maintenance from the husband. He has placed reliance the following cases:-

- i. Bhushan Kumar Meen v. Mansi Meen, (2010) 15 SCC 372
- ii. Reema Salkan v. Sumer Salkan, (2019) 12 SCC 303

iii. Rupali Gupta v. Rajat Gupta, **234(2016) DLT 693**

iv. Damanreet Kaur v. Indermeet Juneja, **(2012) SCC Online Del 2811**

8. On the other hand, the Respondent would submit that the Petitioner had deserted the Respondent without giving her a reason. She submits that she was in a loveless marriage for resorted to initiate divorce, custody and maintenance proceedings against him. She submitted that there is no infirmity in the impugned order granting maintenance of Rs.35,300/- and the revision petition is without any merits. She submitted that the Petitioner is under an obligation imposed by CrPC to maintain her and he cannot escape his responsibility even though their marriage has fallen apart. She submits that the Petitioner has been an uncaring spouse who neglected her and the children throughout the marriage and when she decided to live separately the Petitioner foisted the wild charge of adultery to avoid paying maintenance to her. She submitted that she was working as a teacher in a school in New Delhi only for a short period and the salary she was receiving not enough to sustain herself and live as per the same standard as she lived during her marriage. She submitted that the Petitioner has filed a false and incorrect ITR and fake claims of paying EMI on a housing loan without documentary evidence to substantiate the assertions. She submits that the Petitioner and his family are more than financially able to give the maintenance as they receive sufficient rental income from properties in New Delhi, Noida and Mohali.

9. The Respondent submitted that the Petitioner has misled the Family Court, Tis Hazari submitting false, fake, fabricated and trumped up chats, screenshots as evidence in the Guardianship Petition and got the custody of

the children through fraud. She submitted that one single incident adultery would not disqualify a person from getting maintenance under Section 125 CrPC. She, lastly placed reliance on a number of case laws to state that the Petitioner is bound to pay maintenance to the respondent under Section 125 CrPC. She relied on the following judgments-

- i. Ravendra Singh v. Kapsi Bai, (2 1991 DMC 422)
- ii. Chandrakant Gangaram Gawade v. Sulochana Chandrakant Gawde, (1997) Cri LJ 520 (Bom.)
- iii. Chatubhuj v. Sitabai, (Criminal SLP No. 4379 of 2006)

10. A perusal of the impugned order shows that the Trial Court while fixing the interim maintenance has directed the petitioner herein to pay a sum of Rs.35,300/- per month to the respondent herein w.e.f. 01.01.2017 and Rs.9,000/- per month w.e.f. date of filing of the petition till December, 2016. The order of the learned Trial Court giving the basis of the calculation is as under:

“For the purpose of calculation, it would be fair to club the individual income and allot shares to all the concerned parties. There is no other dependent of the petitioner except his two children and the respondent in question. Accordingly, allotting two units each to adult member, one unit each to the minor children and one extra unit to the petitioner who is maintaining a separate household. The petitioner would be entitled for $2+1+1+1=5$ units while respondent would be entitled to two units.

Petitioner salary after statutory deductions is equal to Rs.138310/-per month and respondent's salary is equal to Rs. 6,000/- i.e. joint family income is equal to Rs.144310/- . According, the respondent share would be $Rs.20615.7 \times 2 / 7=41220.5 - 6,000/- =35220.5$ (rounded to Rs 35300/-).

Accordingly, the application U/s 125 (1) Cr.P.C. is allowed and petitioner is directed to pay an amount of Rs 35300/- per month to the respondent w.e.f. 01.01.2017 till the disposal of the case and maintenance @ Rs, 9,000/- per month w.e.f. date of filing of the petition till December, 2016.”

11. The material on record discloses that the children are with the petitioner herein from 2015 and, therefore, the respondent is not entitled to two shares. The respondent is, therefore, entitled to only one share which comes to Rs.20,615.7/- less Rs.6,000/- which is the salary of the respondent herein per month. Therefore, the learned Trial Court ought to have granted only Rs.14,615/- per month as interim maintenance to the respondent herein.

12. The contention of the petitioner that he is covered by the Army Order 02/2001 and therefore the order passed by the learned Trial Court, fixing maintenance is contrary to the Army Order 02/2001 does not hold water.

13. The purpose of Section 125 Cr.P.C has been laid down by the Supreme Court in several judgments. The object of Section 125 Cr.P.C is to prevent vagrancy and destitution of a deserted wife by providing her for the food, clothing and shelter by a speedy remedy. The object of Section 125 Cr.P.C is to bring down the agony and financial suffering of a women who left her matrimonial home so that some arrangements could be made to enable her to sustain herself and her child (refer: Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, and Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353).

14. The provisions of Section 125 Cr.P.C are in addition to other provisions which provide for maintenance. However, the amount given under Section 125 Cr.P.C is always taken into account before fixing

maintenance in other proceedings like the proceedings under the Protection of Women from Domestic Violence Act, 2005, proceedings under Section 24 of the Hindu Marriage Act etc. It cannot be said that the Army Order would over-ride the provisions of Section 125 Cr.P.C and that the Army personnel are covered only by the Army Order and that Section 125 Cr.P.C would not apply to Army Personnel.

15. The fact that the respondent is capable of earning is also no ground to deny interim maintenance to the respondent herein. Many a times wives sacrifice their career only for the family.

16. The petitioner has also raised the contention that since the respondent is living in adultery she is not entitled to any maintenance under Section 125(4) Cr.P.C. The respondent has raised a very interesting argument stating that even if the case of the petitioner is accepted then also one incident of adultery cannot lead to a conclusion that the respondent is living in adultery.

17. The relevant portion of the judgment dated 22.08.2020, awarding custody of children to the petitioner herein, reads as under:

“15.18 Another very important aspect in deciding custody matters is the preference of the minor children. The undersigned had interacted with both the minor children namely SSU, aged about 12 years, and SSH, aged about 8 1/2 years, on 11.08.2020 in chamber. Both the children are quiet clear in their thinking and appear to be old enough to make an intelligent preference. The interaction was recorded in a memorandum of the substance of interaction. Both the minor children are aware of the facts and circumstances in which they are placed. They are able to understand and comprehend the matter and think of their own interest and welfare. Both the minor children have stated that presently they are living with their

father, paternal grandfather and paternal grandmother. They want to live permanently with their father as their father loves them more and takes care of them. They further stated that they are friendly with their father. They share everything with their father, grandfather and grandmother. They do not share everything with their mother. They further stated that except two to three days in a week their mother talk to them daily on telephone. They also stated that they like cantonment area and want to stay in cantonment area only. They also stated that they have not faced any problem in their schooling etc. while shifting, on transfer of their father, from one station to another. They also stated that they do not want to stay with their mother. However, their mother can meet them on weekends and during vacations. They can also stay overnight with their mother during vacations, but only for two to three days. As per Section 17 of the Act, if a minor child is old enough to form an intelligent preference, the court may consider that preference. It is well settled that in such case, the court has to consider the said preference.

15.19 *It is also pertinent to note that as per the respondent, the minor children are doing well in their education and co-curriculum activities while staying with him. He has produced copy of certificate/report card of Master SSH, RW1/13 (colly.). The same is not disputed. He has also produced printouts of 30 photographs of him, his children, his sister's children and parents, RW1/23 (colly.). There appears to be no doubt that the minor children are now well settled with the respondent. They are progressing well while living with the respondent. There is nothing on record to indicate that the interests and welfare of the minor children were in any manner affected during their stay with the respondent during the last about five years.*

15.20 *In view of the aforesaid discussion and from the matters before this court, it is clear that the petitioner has been in a secretive and amorous extra-marital relation with CGA. The same was the cause of separation of the petitioner and the respondent. Such conduct cannot be conducive to the interest and welfare of the minor children. As earlier observed, the petitioner has also not been a truthful witness. It is well settled that moral and ethical aspects are equally, if not more, important than other factors for the welfare of the minor children. Further, presently, the petitioner is not having any independent income /financial stability. Admittedly, the petitioner has also earlier twice attempted suicide. On the other hand, it appears that the respondent would be able to provide a financially stable life to the minor children. There is nothing on record to indicate that he has not been or cannot be a good father/parent. Further, and very importantly, the minor children have categorically shown their preference to live with the respondent/father and in a cantonment area. The minor children are well settled with the respondent. At this juncture, it would not be in their interest to unsettle them from their present environment. The issue of custody of children has to, be decided on the basis of the present circumstances.”*

18. A perusal of the abovementioned paras does not conclusively prove that the respondent has committed adultery or is living in adultery.
19. The issue as to whether the respondent is living in adultery or not can be decided only after evidence is lead by both the parties.
20. At the time of fixing interim maintenance this Court is not inclined to go into this question at this juncture.
21. Needless to state that if it is conclusively proved that the respondent was living in adultery and was not entitled to maintenance at all, the learned

Trial Court can pass appropriate order for return of the maintenance amount if it deems it fit and keeping in mind the object of Section 125 Cr.P.C is to prevent vagrancy and destitution of a deserted wife.

22. The revision petition is allowed in part. The petitioner is directed to pay a sum of Rs. 14,615/- per month as interim maintenance to the respondent herein w.e.f 01.01.2017. This Court is not inclined to disturb the portion of the impugned order which has directed the petitioner herein to pay a sum of Rs.9,000/- per month to the respondent herein w.e.f. date of filing of the petition till December, 2016.

23. Accordingly, the revision petition is allowed in part. All the pending applications are disposed of.

SUBRAMONIUM PRASAD, J

DECEMBER 21, 2021

Rahul

नात्यमेव जयते