

Supreme Court of India

Bhushan Kumar Meen vs Mansi Meen @ Harpreet Kaur on 28 April, 2009

Author:J.

Bench: Altamas Kabir, Cyriac Joseph

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 879 OF 2009

[Arising out of SLP(CrL.) No.7503 of 2008]

BHUSHAN KUMAR MEEN

... Appellant(s)

Versus

MANSI MEEN @ HARPREET KAUR

... Respondent(s)

WITH

SLP(CrL.)No.7924 of 2008

ORDER

Leave is granted in SLP(C) No.7503 of 2008.

This appeal is directed against the judgment and order dated 1 st July, 2008, passed by the Punjab & Haryana High Court in CrL.Misc.No.14793-M of 2008, whereby the appellant's application under Section 482 of the Code of Criminal Procedure for quashing the orders dated 25th July, 2007 and 6th November, 2007 passed by the courts below granting Rs.10,000/- per month, as interim maintenance to the respondent-wife, was dismissed.

Taking into consideration the evidence adduced, the learned Additional Chief Judicial Magistrate, Patiala, before whom the proceedings under Section 125 of the Criminal Procedure Code, filed by the respondent-wife is pending, directed the appellant-husband to pay the said sum of Rs.10,000/- by way of interim maintenance to the respondent-wife during the pendency of the proceeding. The said order was affirmed both by the Sessions Court as well as the High Court.

Before us, the appellant-husband, who is appearing in person, has shown that his salary certificate had been produced before the Magistrate, from which it appears that he was drawing approximately Rs.34,900/- per month towards his salary, out of which various deductions were being made, including a deduction of Rs.21,329/- towards the home loan which he had obtained, leaving in his

hand as takeaway salary a sum of about Rs.9000/-.

The appellant has submitted that in that view of the matter, the amount as awarded by the Magistrate to the respondent-wife was not justifiable.

The appellant-husband has also taken another point regarding the maintainability of the application under Section 125 Cr.P.C. on account of the ability of the respondent-wife to maintain herself.

On behalf of the respondent-wife, it has been urged that having regard to the net salary, which the appellant is entitled to take home, the amount as assessed by way of interim maintenance by the Magistrate and as upheld by the Sessions Judge as well as the High Court, could not be said to be excessive and that the fact that the appellant had taken the home loan which has been adjusted against the salary, is no consideration for altering the said amount, as had been granted by the learned Sessions Judge.

As far as the second point taken by the appellant is concerned, it was submitted that the same required evidence and had to be ultimately decided by the Magistrate while deciding the application under Section 125 Cr.P.C..

Having heard learned counsel for the respective parties, and considering the reality of the situation to the effect that the appellant is receiving a sum of about Rs.9000/- in hand after deduction of various amounts, including the instalments towards repayment of the home loan, we are of the view that the amount as awarded by way of interim maintenance is on the high side. At the same time, we cannot also shut our eyes to the fact that at present the respondent-wife is not employed or at least there is nothing on record to indicate she is employed in any gainful work. However, having regard to the qualifications that she possesses, there is no reason why she ought not to be in a position to also maintain herself in the future.

Accordingly, we modify the order passed by the learned Magistrate, granting Rs.10,000/- per month to the respondent-wife by way of interim maintenance and direct that the appellant-husband shall pay to the respondent-wife a sum of Rs.5000/- per month, instead of Rs.10,000/-, and all other terms and conditions, as indicated by the learned Magistrate, will continue to operate.

We are informed that there are huge arrears, which are yet to be paid by the appellant-husband to the respondent-wife. The learned Magistrate shall recalculate the amount of arrears on the basis of the order passed today and the appellant-husband shall within three months of the re-assessment of the amount, pay the sum to the respondent-wife, if necessary, in three installments, to be decided by the learned Magistrate.

We make it clear that we have not gone into the question as to what would be the amount payable by way of maintenance per month to the respondent-wife and this is only an interim arrangement till the matter is finally disposed of by the learned Magistrate. We also keep open the second question raised by the husband-wife regarding the applicability of Section 125 Cr.P.C. as far as the respondent-wife is concerned.

Since the matter has been pending for a long time and evidence has been recorded to some extent, we direct the learned Magistrate to dispose of the pending proceedings within six months from the date of communication of this order.

The other Special Leave Petition, being No.7924 of 2008, be delinked from the appeal arising out of SLP(C)No.7503 of 2008, being disposed of by this order, and be listed separately for final disposal after the summer vacation.

The order of attachment of the salary of the appellant, which had been stayed in these proceedings, shall continue till the final disposal of the matter by the learned Magistrate. In the event, the appellant defaults in making the payment in terms of this order, the Magistrate will be at liberty to re-impose the order of attachment.

.....J.

(ALTAMAS KABIR)J.

(CYRIAC JOSEPH) New Delhi, April 28, 2009.