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

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Reserved on: 30.05.2022

Pronounced on: 03.06.2022

+ **CRL.REV.P. 792/2018 & CRL.M.A. 14266/2021**

SARITA BAKSHI

..... Petitioner

Through: Mr. G.P. Thareja and
Mr. Rahul Singh, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Panna Lal Sharma, APP
for State with SI Vijay Dutt,
P.S. Laxmi Nagar.

Mr. Saurabh Kansal and
Ms. Ashu Chaudhary,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

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1. The present Revision Petition has been filed, challenging the order dated 04.07.2018, passed by the Principal Judge, Family Court, East District, Karkardooma Courts, Delhi wherein respondent no. 2 was directed to pay revised maintenance of Rs. 6,000/- (Rupees Six Thousand only) per month to the petitioner.

Facts of the Case

2. The brief facts leading to the present petition are as under:

a) The marriage of the petitioner/wife was solemnized with respondent no.2 as per Hindu rituals on 06.12.1992. Out of the wedlock, a son was born on 20.09.1993. Disputes arose between the petitioner and respondent no.2 herein, and subsequently the petitioner filed a petition under Section 125 of Code of Criminal Code, 1973 (Cr.P.C.) for grant of

maintenance. By virtue of order dated 14.10.1998 learned Metropolitan Magistrate (MM) directed respondent no.2/husband to pay maintenance in sum of Rs.450/- per month to petitioner and Rs.350/- per month to the son.

(b) On 24.09.2007, the petitioner filed an application under Section 127 Cr.P.C. before the Learned MM. An ex parte order was passed in the absence of respondent no. 2, wherein the learned MM enhanced the maintenance to Rs. 2200/- per month, for both the petitioner as well as the son. The ex parte order was challenged by respondent no.2 under Section 126 of Cr.P.C., however, the application was dismissed. The said order was challenged by respondent no. 2 vide order dated 13.5.2010 wherein the Learned Appellate Court remanded back the case to the learned MM with direction to decide the application on merit and till the said application was decided, interim maintenance was awarded as per order dated 24.09.2007.

(c) Consequently, both the parties were heard afresh on application under Section 127 of Cr.P.C. and by judgment dated 20.01.2011, the application was allowed. The learned MM granted maintenance of Rs. 2,200/- per month to petitioner/wife and Rs.2,000/- per month to the son from the date of filing of petition till the date of order. Commencing from the date of the order, enhanced maintenance of Rs.3,000/-

per month to the petitioner/wife and Rs.2,500/- per month to the son was awarded.

(d) Since there was increase in the income of respondent no.2 in February 2018, the petitioner/wife filed another application u/s 127 Cr.P.C., praying for enhancement of maintenance vide the impugned order dated 04.07.2018 respondent no.2 was directed to pay maintenance of Rs.6,000/- per month to the petitioner from the date of the impugned order during her lifetime or till she gets remarried. The impugned order dated 04.07.2018 reads as under:-

“...14. Apart from vague allegations of the respondent, which have been denied by the petitioner No.1, there is no evidence to show that petitioner No.1 is working anywhere or there has been change in circumstances on this aspect since the earlier orders were passed under sections 125 Cr. P.C. and 127 Cr.P.C. Thus the petitioner No.1 would remain eligible for the maintenance. The respondent has not been able to discharge the burden to show that the petitioner No.1 is having any other income. Even assuming for the sake of the argument, that petitioner No.2 is working in a Mall as alleged by the respondent, that fact would have no bearing on the liability of the respondent to maintain petitioner No.1. Petitioners have also not been able to show that the respondent has any income salary from Delhi Jal Board.

15. The present petition was filed in July 2014. The respondent is working as a Pump Driver (E&M) with Delhi Jal Board. Recent salary slip (Ex.RW1/2) of the respondent for the month of February 2018 is

on record which shows that the respondent is in receipt of following emoluments per month:-

1.	Basic salary	35300
2.	Grade Pay	0
3.	Dearness Allowance	1765
4.	House rent allowance	8472
5.	Transport Allowance (non Taxable)	800
6.	Transport Allowance (Taxable)	2980
7.	Washing Allowance	90
	Total	49407

This salary slip of the respondent also records the deductions which are as follows: -

1.	Misc. Recovery (Same Head)	0
2.	Group Saving Linked Insurance Scheme	226
3.	DJBEHS	250
4.	GPF	5000
5.	Death Relief Fund	100
6.	Income Tax Deduction	8726
7.	GPF Loan	5150
	Total	19452

In the circumstances, carry home salary of the respondent is shown as Rs. 29,955/-.

16. The deduction towards GPF loan referred in the pay slip is in the context of a loan of Rs. 1,03,000/- taken by the respondent. This loan has apparently been taken by the respondent recently as no such loan is mentioned in the salary slips of the respondent for the months of April to June, 2015 which are also on record, in addition the respondent is getting deducted an amount of Rs.5000/- per months towards GPF. Having regard to the totality of

the facts and circumstances, the net carry home income of the respondent after making allowance for reasonable deductions towards income tax, GPF etc is assessed at Rs.35,000/- per month.

17. After the petitioner No.2 attained the age of majority, there would be four dependents on this income of the respondent: the respondent himself, petitioner No.1, the subsequent wife of the respondent and the daughter born from the subsequent wedlock to the respondent. Hence, as per the normal practice on the subject and the judgment of Hon'ble Delhi High Court in Anurita Vohra vs. Sandeep Vohra 110 (2004) DLT 546, this income would have to be divided in five shares. Two shares would be retained by the respondent being the earning member and one share each would go to the remaining dependents. However, perusal of record would show that the respondent is the only son of his parents and he has liability to maintain his father who is 79 years of age and a divorcee sister. In this view of the matter, the respondent is directed to pay Rs.6000/- per month from the date of this order during her life time or till she gets remarried...”

(e) It is this order dated 04.07.2018 that is under challenge in the instant revision petition.

Submissions of learned counsels

3. It is stated by the Ld. Counsel for the petitioner that respondent no.2 has been directed to pay maintenance from the date of the order, however, as per mandate of law, as laid down in the case of ***Rajnesh Vs. Neha; (2021) 2 SCC 324***, he should have been directed to pay maintenance from the date of filing of the maintenance petition. It is also stated that the maintenance order should have been passed on the

basis of Annual Return filed before the Income Tax Authorities by respondent no.2.

4. Learned Counsel for respondent no.2 stated that the learned Trial Court could not have given maintenance from the year 2011 since it is an application for enhancement of the maintenance already granted, and the enhanced maintenance could be granted only from the date, on which the salary of the respondent was enhanced.

Section 125 Cr.P.C.

(i) Objective

5. To decide the merits of this case, it is imperative to understand the objective that is to be fulfilled by way of Section 125. Section 125 reads as below:

“...125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 66[* *], as such*

Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

67[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.—For the purposes of this Chapter,—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

68[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's 69[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an 70[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order... ”

6. Objective of Section 125 Cr.P.C. can be understood from catena of judgments of the Hon'ble Supreme Court. The purpose of the provision is to safeguard the wife from financial suffering due to lack of money. The aim is to ensure that the wife does not undergo financial hardship and is rather able to enjoy the same status and comfort as enjoyed by her husband. Further, the objective behind granting maintenance is not to punish a person but rather support the relations who have a moral right to be supported. Thus, a benevolent end is envisaged to be achieved. Another objective of Section 125 is, to compel those who are bound in law and by moral duty, to support those who are unable to support themselves. A similar view has been taken in the case of *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.* 1979 Cri LJ 3 where it was held that if a provision falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India, 1950 the endeavour shall be to protect and ensure social justice towards women and children.

7. It is to be noted that maintenance is neither *alms* nor *lottery*. The most important precondition for Section 125 to become operative is the condition that the wife is unable to maintain herself and that the husband has neglected or refused to maintain his wife.

(ii) Law

8. In *Bhagwan v. Kamla Devi* 1975 CriLJ 40, it was observed that the wife should be in a position to maintain a standard of living

which is consistent with the status of her marital family, neither luxurious nor penurious in comparison.

9. In ***Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386***, the Apex Court observed the object of Section 125 Cr.P.C. that:

“...19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments...”

10. A Division Bench of the Apex Court laid down the objective of Section 125 Cr.P.C in the case of ***Chaturbhuj vs. Sita Bai 2008 CriLJ 727***. It was held by the Apex Court as below:

“...The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow.

*Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.**

MANU/SC/0067/1978 : 1979CriLJ3 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. MANU/SC/0193/2005 : 2005 CriLJ 2141..."

Section 127 Cr.P.C.

(i) Objective

11. Another important aspect of the case before this bench is further governed by the provisions of Section 127 of Cr.P.C. which reads as follows:

"... 127. Alteration in allowance.—73[(1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under Section 125 should be

cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to 74[maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a 75[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under Section 125, the civil

court shall take into account the sum which has been paid to, or recovered by, such person 76[as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.”

12. An application under Section 125 acts as the prequel to an application under Section 127. Only once an application has been filed under Section 125 and a maintenance amount has been granted, can an application under Section 127 be claimed for alteration of the maintenance so awarded. It is worthwhile to mention that Section 127 has no independent standing without Section 125.

13. The objective is to ensure that fair share according to changed income or changed circumstances is granted to the wife. In case the income of husband has increased or decreased, the amount of maintenance has to be modified accordingly. It is to ensure that if income has decreased, the husband is not put to any hardship. In case the income has increased, it ensures that wife receives fair share according to increased income of husband. Similarly, income of wife can also be considered if it accrues after grant of maintenance under Section 125 Cr.P.C. The assessment and apportionment of the maintenance has to be done as per the Judgment of ***Rajnish Vs. Neha; (2021) 2 SCC 324*** while deciding maintenance under Section 125 Cr.P.C.

(ii) Law

14. It is clear from a plain reading of sub-section (1) of Section 127 Cr.P.C. that it is a provision for increase or decrease of

maintenance as granted under Section 125, consequent upon any change in the circumstances of the parties concerned at the time of filing of application for alteration/modification of the original order of maintenance. It means that it must be shown by the party concerned that there has been a *change in the circumstances* of either the husband or of the wife.

15. Section 127 is dependent upon Section 125 and for an order to be passed under Section 127, as discussed above, it has to flow from the original order passed under Section 125.

Change in circumstance in context of Section 127 of Cr.P.C.

16. The term '*change in circumstances*' as referred to in Section 127(1) not only include a change in the financial circumstances of the husband but may also include other circumstantial changes in the husband or wife's life which may have taken place since the time maintenance was first awarded. The quantum of maintenance fixed by a court does not become unalterable in perpetuity. The same may be altered and is subject to increase or reduction by the courts, pursuant to an alteration in the circumstances of either party. Thus, Rise in the income of the husband can, therefore, be a valid change of circumstances falling within the ambit of Section 127 sub-section (1) of Cr.P.C.

17. In furtherance, it is vital to mention that the circumstances contemplated under Section 127 (1) include the financial and other circumstances of not only the husband but also will extend to the

change in financial and other circumstances of the wife. It may therefore be concluded that increase in the income of the husband becomes a significant criterion to alter maintenance for the wife.

18. Further change of circumstances may not only be in terms of financial capability but also added financial burden on the petitioner. It may also be in terms of sufficient income accruing to the wife to maintain herself or both of them being relieved of a financial burden.

Dependency/Dependent

19. The term “dependency” has been explained in the Oxford Learners dictionary as *“the state of relying on someone or something for something, especially when this is not normal or necessary”*. Further, Black’s law dictionary explains the term as *“A relation between two persons, where one is sustained by another or looks to or relies on aid of another for support or for reasonable necessities consistent with dependent's position in life.”* and the term ‘dependent’ has been explained as *“One who derives support from another”*. These definitions are to be read in light of Indian culture which champions togetherness amongst family members. The affection shared by family members culminates into bonds and family members are the strongest support system of each other. In particular, the relationship between a brother and a sister has a deep sense of care towards one another. Festivals, norms and traditions in India are an affirmation and recognition of care, affection and responsibility of siblings towards each other.

Findings

20. In the present case, respondent no. 2 has a dependent father, who is 79 years of age, and a divorced sister. There is no skepticism about the fact that the sister receives maintenance from her husband, but the brother, as discussed above, cannot be a mute spectator to her misery if and when she needs his help. Some provision needs to be made in his list of expenditure to support her sibling.

21. Furthermore, it is the duty of the son/daughter to take care of his/her parents during the golden days of their life. The father of Respondent no. 2 is a non-earning member of the family who should enjoy his old age seeing his family happy. Thus, to make sure that the son is able to fulfil the wishes and wants of the father during his golden years, it becomes vital to consider some amount as expenditure for looking after and well-being of his father while determining the amount of maintenance. Relationships cannot be caged in a mathematical formula alone in every case. Each case has to be decided in view of its special and peculiar circumstances which may warrant indulgence of the Court. No doubt in cases involving grant of maintenance calculation has to be made in terms of financial capacity, the same needs to be done keeping in mind all family circumstances.

22. In the present case, the learned counsel for the petitioner contends that a divorced sister cannot be held to be dependent on the petitioner. In my opinion, this stand is meritless to the extent that in India, the bond between siblings and their dependence on each other

may not always be financial but it is expected that a brother or sister will not abandon or neglect his or her sibling in time of need. I completely agree with the learned counsel for the respondent that the petitioner's divorced sister for claim for her maintenance and dependence can file a case against her husband. However, it has not been made clear in the present case as to whether the divorced sister of the respondent is receiving any maintenance or is being maintained by her husband or not. It is also not clear as to whether she is able to maintain herself as no argument has been put forth before this Court and it also does not find any mention in the judgment of the learned Trial Court. Therefore, I am of the view that though the divorced sister can legally and morally claim maintenance from her husband, the respondent, at the same time, must be spending and is expected to spend some amount for his sister on special occasions and in case of any emergent need. Therefore, though while apportioning the income of the respondent, one portion of income of the respondent cannot be apportioned to the sister, some amount as expenditure on yearly basis has to be kept aside for the divorced sister as moral obligation of the respondent. The plea of the petitioner that no amount should be considered to be spent on the divorced sister is meritless especially in the Indian context and the peculiar circumstances of the present case.

23. The counsel for the petitioner was not able to point out as to whether the 79 years' old father of the respondent is not being maintained by respondent or is able to maintain himself having some

income of his own. It is the moral and legal duty of the respondent to look after his father in the golden years of his life and ensure every comfort and support to him as 'He is because of Him'. I, therefore, am of the opinion that in absence of any proof of independent income of the father, at this stage, the respondent must be spending some amount on looking after his father. The learned Principal Judge of Family Court has rightly held the same.

24. The father of the respondent may not be present before the Court to ask for maintenance, there is no argument or proof of his being independent or having financial resources to maintain himself. This Court still has to appreciate that even though he has not appeared before this Court it cannot be denied that he has to depend on his son at the age of 79. The father may not have considered filing case for maintenance before a Court of law. At times, parents may feel sad and inferior even at the thought of being maintained by their child and asking for maintenance. Their love and affection for their child is so overpowering that they may decide to live uncomfortably but not ask for maintenance. Parents want to feel independent as they don't live with their children, their children live with them. With these thoughts in mind, I hold that the needs of the father are not many as he is staying with the respondent but a certain amount of expenditure must be apportioned for his needs.

25. In the present case, the total of income of the respondent has been shown as Rs. 49,407/- and the deductions have been shown as Rs.19,452/-. After deductions the net carry on salary will come to

Rs.29,955/-. The learned Trial Court has rightly held that the deduction of Rs. 5,000/- towards recently taken personal loan cannot be considered as deduction as it is for his personal benefit and not mandatory statutory deduction; the total carry on home salary will thus come to about Rs. 35,000/- per month.

26. The Apex Court in the matter of ***Kulbhushan Kumar vs. Raj Kumari and Others*** (1970) 3 SCC 129 while adjudicating the deductions that can be made from the income of the husband before awarding maintenance, observed as below:

“...19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income-tax Department assessment proceedings under the Income-tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income-tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car...”

27. A similar view was taken in the case of ***Nitin Sharma and Others vs. Sunita Sharma & Others*** (2021 III AD (Delhi) 210), wherein a bench of this Hon'ble Court was pleased to hold as under:

“...24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted. On this aspect, the pertinent observations of Hon'ble Supreme Court in Dr. Kulbhushan Kunwar v. Raj Kumari MANU/SC/0349/1970 : (1970) 3 SCC 129, which have been followed by a Bench of Punjab & Haryana High Court in Seema & Anr. Vs. Gourav Juneja, are as under:-

"...12. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group Insurance Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his "means" to pay maintenance. In the case of Dr. Kulbhushan Kunwar v. Raj Kumari MANU/SC/0349/1970 : (1970) 3 SCC 129: 1971 AIR (SC) 234 while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only of income-tax but also of house

rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of Dr. Kulbhushan Kunwar's case (supra) reads as under:--

"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity 20-11-2021 (Page 5 of 8) www.manupatra.com Ishaan Sharma charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car..."

13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary..."

(emphasis supplied)

28. The son of the respondent from the present petitioner has already attained majority and, therefore, the respondent would have 4 dependents on his income i.e. the respondent himself, the petitioner in this case, the subsequent wife and the daughter born from the subsequent wedlock, apart from some expenditure on his father and his divorced sister. Therefore, the income would have to be divided into 5 shares, two shares to be allocated to the respondent as being the earning member and one share each to the remaining dependents.

29. In view of the peculiar circumstances of this case, wherein respondent no. 2 has remarried after divorce with the Petitioner and has a child from the wedlock, there exists a need to strike a balance between the sensitive and delicate situation of the respondent towards the petitioner and the child from their wedlock, as well as the subsequent marriage and child.

Conclusion

30. Therefore, as per calculation even if five shares are apportioned about Rs. 8,000/- can be apportioned to the petitioner in the present case. However, considering the circumstances regarding the dependence of aged father of the respondent on respondent and other circumstances mentioned above and making a provision for that approximately Rs.7,500/- will come to share of all the dependents. In these circumstances, in my opinion, ends of justice will be met in case the amount of maintenance is enhanced from Rs. 6,000/- to Rs. 7,500/- per month from the date on which the respondent received his first enhanced salary, which according to the learned Trial Court is

February, 2018 and has not been disputed either by the petitioner or by the respondent. The maintenance cannot be enhanced from the date of the application as the present petition is under Section 127 Cr.P.C. wherein, the maintenance amount has to be decided on the basis of the date on which the salary of the husband had changed.

31. The petition along with pending application stands disposed of in above terms.

SWARANA KANTA SHARMA, J.

JUNE 3, 2022

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