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

% Judgment delivered on: 03.04.2019

+ CRL.REV.P. 237/2015

NISHA SAIFI Petitioner

versus

MOHD SHAHID Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nitin Rai Sharma and Mr. Sanjeet, Advs.

For the Respondent : Mr. Ahif Ojha, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 25.02.2015 whereby interim maintenance of Rs. 4000/- has been awarded to the petitioner besides grant of Rs. 11,000/- for litigation expenses.

2. Petitioner seeks enhancement of maintenance from Rs. 4000/- to Rs. 15,000/- per month.

3. Learned counsel for the petitioner submits that the trial court has also erred in awarding maintenance from the date of the order and not from the date of the application. Learned counsel submits that in case the directions are issued for payment of maintenance from the date of the application, petitioner shall not press her prayer at this stage for

enhancement and would await final outcome of the petition pending before the trial court.

4. Application under Section 125 Cr. P.C. was filed on 02.09.2011 and was disposed of by the impugned order dated 25.02.2015. The only issue that arises in the present petition is whether the award of maintenance is to be from the date of the application or from the date of the order.

5. One has to look at the nature of the maintenance awarded under section 125 Cr.P.C. If the object of section 125 Cr.P.C is to afford subsistence allowance to the wife, who is not able to maintain herself, then the award normally should be from the date of the application. For the court to award maintenance from the date of the order there have to be compelling circumstances for the court to take such a view. Maintenance awarded to a wife is not a bounty. It is awarded to her so that she can survive. The fact that time is spent between the date of the application and a final adjudication and an award in favour of the wife, does not mean that she had enough funds to maintain herself. When the trial court comes to conclusion that wife is entitled to an award of maintenance, the assessment in fact relates back to the date of the application. When the assessment relates back to the date of the application then there have to be compelling circumstances for the trial court to restrict the award of maintenance to a period post the date of the application.

6. A coordinate bench of this court in *Bimla Devi Vs Shamsher Singh* (2015) 224 DLT (CN8) 8 held that “*Maintenance is a right which accrues to a wife against her husband since the inception of her getting married with him. A moral and legal obligation and duty is cast upon the*

husband to maintain his wife. The necessary corollary is that from the time the wife starts residing separately from her husband, she can claim maintenance from him”.

7. The Supreme Court of India in *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 9 SCC 632 held that “*the High Court was not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order.*”

8. Further, in *Jaiminiben Hirenghai Vyas & Anr vs Hirenghai Ramesh Chandra Vyas & Anr.* (2015) 2 SCC 385 the Supreme Court held that “*Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case”.*

9. In the present case the trial court has merely recorded that maintenance is awarded from the date of the order. No reasons have been recorded by the trial court as to why maintenance is being awarded from the

date of the order. As noticed above since maintenance is awarded to a wife so that she can survive and it is not a bounty, normally it should be awarded from the date of the application and for valid reasons, to be recorded, from the date of the order.

10. This Court also in judgment dated 19.03.2019 in Crl. Rev. P. 374/2017, titled as 'Pushpa & Ors. Vs. Ram Avtar' following the judgment of the Supreme Court has held that ordinarily the maintenance should be awarded from the date of the application and for valid reasons to be recorded, from the date of the order.

11. In the present case, the trial court has not recorded any reasons as to why the maintenance is awarded from the date of the order. The impugned order to that limited extent cannot be sustained.

12. In view of the above, the impugned order is modified to the extent that respondent shall pay the maintenance amount to the petitioner @ Rs. 4000/- per month from the date of the application i.e. 02.09.2011. Respondent shall clear the entire arrears of maintenance in four equal monthly instalments.

13. The petition is allowed in the above terms.

14. Order *dasti* under signatures of the Court Master.

APRIL 03, 2019
'rs'

SANJEEV SACHDEVA, J