

Supreme Court Of India

Criminal Appeal No. 125-126 Of 2017 (Special Leave Petition (Crl.) No. 6025-6026 Of 2013)

Judgment Date:

18-01-2017

Shailja & Another

..Petitioner

Khobbanna

..Respondent

Bench :

{ HON'BLE MR. JUSTICE MADAN B. LOKURHON'BLE MR. JUSTICE
PRAFULLA C. PANT }

Citation :

**AIR 2017 SC 1174 ; (2017) CRILJ 2306 ; 2017 ALLMR (CRI) 3107 ; 2017 (2)
AKR 314 ; 2017 (I) OLR 921 ; (2018) 12 SCC 199 ; 2018 (2) SCJ 571 ; (2017) 2
RCR (CIVIL) 701 ; (2017) 2 RCR (CRIMINAL) 497 ; (2017) 3 RLW 2490 (SC) ;
(2017) 3 KCCR 1809 ; 2017 SC 412 ;**

Judgment

1. Leave granted.
 2. The matters have been called out twice but there is no appearance on behalf of the respondent.
 3. We have gone through the impugned judgment and order dated 17.04.2013 passed by the High Court and order dated 22.11.2012 passed by the Family Court.
 4. The Family Court had directed payment of maintenance for an amount of Rs. 15,000/- per month to the appellant - wife and Rs. 10,000/- per month to the son.
 5. The High Court while considering the correctness of the order passed by the Family Court did not accept the contention of the respondent - husband that the appellant - wife was working. All that was held was that the appellant - wife was capable of earning and therefore maintenance was reduced to an amount of Rs. 6000/- from Rs. 15,000/- for her and Rs. 6000/- from Rs. 10,000/- for the son.
 6. In other words, out of an amount of Rs. 25,000/- (total) awarded by the Family Court for the appellant No.1 and the son, the High Court has reduced the amount to Rs. 12,000/- (total).
 7. We are not satisfied with the order passed by the High Court considering the income of the respondent - husband, which we have been told, is more than Rs. 80,000/- per month since the respondent - husband is a Senior Lecturer in a college. It is stated by learned counsel for the appellants that the respondent - husband is also the owner of 26 acres of irrigated land.
 8. That apart, we find that the High Court has proceeded on the basis that the appellant No.1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court.
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Whether the appellant No.1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No.1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.

9. Under the circumstances, we set aside the order passed by the High Court and restore the order passed by the Family Court.

10. It appears that the son has now attained the age of majority. If that is so, the son will be entitled to maintenance only till the age of reaching majority.

11. Subject to the above, the order passed by the Family Court is affirmed.

12. The appeals are accordingly allowed.