SHAMIMA FAROOQUI

v.

SHAHID KHAN

(Criminal Appeal No. 564-565 of 2015)

APRIL 06, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Code of Criminal Procedure, 1973:

s.125 – Maintenance under – Claim of, by divorced Muslim women – Family Court fixed Rs.2,500/- as monthly maintenance from the date of application till the date of order and Rs.4,000/- per month from the date of order till the date of remarriage – High Court upheld grant of Rs.2,500/- as monthly maintenance from the date of application till the date of order – However, reduced the maintenance from Rs. 4,000/- to Rs. 2,000/- from the date of order till the date of remarriage – On appeal, held: High Court rightly upheld the view of the Family Judge – However, reduction of maintenance from Rs. 4,000/- to Rs. 2,000/- not sustainable – High Court showed immense sympathy to the husband by reducing the amount after his retirement – Solely because the husband retired, there was no justification to reduce the maintenance by 50% – Court cannot be oblivious of the asseverations made by the appellant – It is the obligation of the husband to maintain his wife – He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning – High Court while reducing the amount became oblivious of the fact that the wife has to stay on her own – Sustenance does not mean and can never allow to mean a mere survival – Maintenance u/s. 125, has to be

A *adequate so that she can live with dignity as she would have lived in her matrimonial home – She cannot be compelled to become a destitute or a beggar – Thus, order passed by the High Court is set aside and that of the Family Court is restored.*

B

s.125 – Object and principle – Held: Principle behind s. 125 is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home – When C *wife is held entitled to grant of maintenance within the parameters of s. 125, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home – She cannot be compelled to become a destitute or a beggar – Order u/s. 125 can be passed if a person despite* D *having sufficient means neglects or refuses to maintain the wife – If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance u/s.* E *125 unless disqualified, is absolute right.*

Judicial deprecation: Application u/s. 125 CrPC for grant of maintenance filed but not decided for 14 years – Held: It is distressing and shocking that there was no order F *for grant of interim maintenance – Application for grant of maintenance has to be disposed of at the earliest – Family courts established to deal with the matrimonial disputes, including application u/s. 125 CrPC, have become absolutely apathetic to the same – Delay occurs either due to the* G *uncontrolled design of the parties or the lethargy and apathy shown by the judges – There should be a proactive approach and the said approach should be instilled in the family court judges by the Judicial Academies functioning under the High Courts.*

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Anita Rani v. Rakeshpal Singh **1991 (2) Crimes 725 (All);** *Dharmendra Kumar Gupta v. Chander Prabha Devi* **1990 Cr.L.J. 1884**; *Rakesh Kumar Dikshit v. Jayanti Devi* **1999 (2) JIC, 323 (ACC);** *Ashutosh Tripathi v. State of U.P.* **1999 (2) 763,** *Allahabad J.I.C; Paras Nath Kurmi v. The Session Judge* **1999 (2) JIC 522 All;** *Sartaj v. State of U.P. and others* **2000 (2) JIC 967 All**; *Shamim Bano v. Asraf Khan* **2014 (4) SCR 844 (2014) 12 SCC 636;** *Danial Latifi v. Union of India* **2001 (3) Suppl. SCR 419: (2001) 7 SCC 740;** *Khatoon Nisa v. State of U.P.* **(2014) 12 SCC 646;** *Bhuwan Mohan Singh v. Meena and Ors.* **AIR 2014 SC 2875;** *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.* **1997 (3) Suppl. SCR 529: (1997) 7 SCC 7;** *Chaturbhuj v. Sita Bai* **2007 (12) SCR 577: (2008) 2 SCC 316**; *Chander Prakash Bodhraj v. Shila Rani Chander Prakash* **AIR 1968 Delhi 174 – referred to.**

Case Law Reference

1991 (2) Crimes 725 (All)	**Referred to**	**Para 7**
1990 Cr.L.J. 1884	**Referred to**	**Para 7**
1999 (2) JIC, 323 (ACC)	**Referred to**	**Para 7**
1999(2)763, Allahabad J.I.C	**Referred to**	**Para 7**
1999 (2) JIC 522 All	**Referred to**	**Para 7**
2000 (2) JIC 967 All	**Referred to**	**Para 7**
2014 (4) SCR 844	**Referred to**	**Para 10**
2001 (3) Suppl. SCR 419	**Referred to**	**Para 10**
(2014) 12 SCC 646	**Referred to**	**Para 10**

A	**AIR 2014 SC 2875**	**Referred to**	**Para 12**
	1997 (3) Suppl. SCR 529	**Referred to**	**Para 15**
	2007 (12) SCR 577	**Referred to**	**Para 16**
B	**AIR 1968 Delhi 174**	**Referred to**	**Para 17**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 564-565 of 2015

C From the Judgment and Order dated 17.09.2013 and 26.03.2014 of the High Court of Judicature at Allahabad in Criminal Revision No. 134 of 2012 and CMA No.106544 of 2013 in Criminal Revision No. 134 of 2012

D Dr. J. N. Dubey, Anurag Dubey, Anu Sawhney, Meenesh Dubey, S. R. Setia for the Appellant.

The Judgment of the Court was delivered by

E **DIPAK MISRA, J.** 1. Leave granted.

2. When centuries old obstructions are removed, age old shackles are either burnt or lost their force, the chains get rusted, and the human endowments and virtues are not indifferently treated and emphasis is laid on "free identity" F and not on "annexed identity", and the women of today can gracefully and boldly assert their legal rights and refuse to be tied down to the obscurant conservatism, and further determined to ostracize the "principle of commodity", and the "barter system" to devoutly engage themselves in G learning, criticizing and professing certain principles with committed sensibility and participating in all pertinent and concerned issues, there is no warrant or justification or need to pave the innovative multi-avenues which the law does not H countenance or give its stamp of approval. Chivalry, a

perverse sense of human egotism, and clutching of feudal megalomaniac ideas or for that matter, any kind of condescending attitude have no room. They are bound to be sent to the ancient woods, and in the new horizon people should proclaim their own ideas and authority. They should be able to say that they are the persons of modern age and they have the ideas of today's "Bharat". Any other idea floated or any song sung in the invocation of male chauvinism is the proposition of an alien, a total stranger - an outsider. That is the truth in essentiality.

3. The facts which are requisite to be stated for adjudication of these appeals are that the appellant filed an application under Section 125 of the Code of Criminal Procedure (CrPC) contending, inter alia, that she married Shahid Khan, the respondent herein, on 26.4.1992 and during her stay at the matrimonial home she was prohibited from talking to others, and the husband not only demanded a car from the family but also started harassing her. A time came when he sent her to the parental home where she was compelled to stay for almost three months. The indifferent husband did not come to take her back to the matrimonial home, but she returned with the fond and firm hope that the bond of wedlock would be sustained and cemented with love and peace but as the misfortune would have it, the demand for the vehicle continued and the harassment was used as a weapon for fulfilment of the demand. In due course she came to learn that the husband had illicit relationship with another woman and he wanted to marry her. Usual to sense of human curiosity and wife's right when she asked him she was assaulted. The situation gradually worsened and it became unbearable for her to stay at the matrimonial home. At that juncture, she sought help of her parents who came and took her to the parental home at Lucknow where she

availed treatment. Being deserted and ill-treated and, in a way, suffering from fear psychosis she took shelter in the house of her parents and when all her hopes got shattered for reunion, she filed an application for grant of maintenance at the rate of Rs.4000/- per month on the foundation that husband was working on the post of Nayak in the Army and getting a salary of Rs.10,000/- approximately apart from other perks.

4. The application for grant of maintenance was resisted with immense vigour by the husband disputing all the averments pertaining to demand of dowry and harassment and further alleging that he had already given divorce to her on 18.6.1997 and has also paid the Mehar to her.

5. A reply was filed to the same by wife asserting that she had neither the knowledge of divorce nor had she received an amount of Mehar.

6. During the proceeding before the learned Family Judge the wife-appellant examined herself and another, and the respondent-husband examined four witnesses, including himself. The learned Family Judge, Family Court, Lucknow while dealing with the application forming the subject matter Criminal Case No. 1120 of 1998 did not accept the primary objection as regards the maintainability under Section 125 CrPC as the applicant was a Muslim woman and came to hold even after the divorce the application of the wife under Section 125 CrPC was maintainable in the family court. Thereafter, the learned Family Judge appreciating the evidence brought on record came to opine that the marriage between the parties had taken place on 26.4.1992; that the husband had given divorce on 18.6.1997; that she was ill treated at her matrimonial home; and that she had come back to her parental house and staying there; that the husband had not made any provision for grant of

maintenance; that the wife did not have any source of income to support her, and the plea advanced by the husband that she had means to sustain her had not been proved; that as the husband was getting at the time of disposal of the application as per the salary certificate Rs.17654/- and accordingly directed that a sum of Rs.2500/- should be paid as monthly maintenance allowance from the date of submission of application till the date of judgment and thereafter Rs.4000/- per month from the date of judgment till the date of remarriage.

7. The aforesaid order passed by the learned Family Judge came to be assailed before the High Court in Criminal Revision wherein, the High Court after adumbrating the facts referred to the decisions in ***Anita Rani v. Rakeshpal Singh***[1], ***Dharmendra Kumar Gupta v. Chander Prabha Devi***[2], ***Rakesh Kumar Dikshit v. Jayanti Devi***[3], ***Ashutosh Tripathi v. State of U.P.***[4], ***Paras Nath Kurmi v. The Session Judge***[5] and ***Sartaj v. State of U.P. and others***[6] and came to hold that though the learned principal Judge, Family Court had not ascribed any reason for grant of maintenance from the date of application, yet when the case for maintenance was filed in the year 1998 decided on 17.2.2012 and there was no order for interim maintenance, the grant of Rs.2500/- as monthly maintenance from the date of application was neither illegal nor excessive. The High Court took note of the fact that the husband had retired on 1.4.2012 and consequently reduced the maintenance allowance to Rs.2000/-from 1.4.2012 till remarriage of the appellant herein. Being of this view the learned Single Judge modified the order passed by the Family Court. Hence, the present appeal by

[1] 1991 (2) Crimes 725 (All)

[2] 1990 Cr.L.J. 1884

[3] 1999 (2) JIC, 323 (ACC)

[4] 1999 (2) 763, Allahabad J.I.C

[5] 1999 (2) JIC 522 All

[6] 2000 (2) JIC 967 All

special leave, at the instance of the wife.

8. We have heard Dr. J.N. Dubey, learned senior counsel for the appellant. Despite service of notice, none has appeared for the respondent.

9. It is submitted by Dr. Dubey, learned senior counsel that Section 125 CrPC is applicable to the Muslim women and the Family Court has jurisdiction to decide the issue. It is urged by him that the High Court has fallen into error by opining that the grant of maintenance at the rate of Rs.4,000/- per month is excessive and hence, it should be reduced to Rs.2000/- per month from the date of retirement of the husband i.e. 1.4.2012 till her re-marriage. It is also contended that the High Court failed to appreciate the plight of the appellant and reduced the amount and hence, the impugned order is not supportable in law.

10. First of all, we intend to deal with the applicability of Section 125 CrPC to a Muslim woman who has been divorced. In ***Shamim Bano v. Asraf Khan***[7], this Court after referring to the Constitution Bench decisions in ***Danial Latifi v. Union of India***[8] and ***Khatoon Nisa v. State of U.P.***[9] had opined as follows:-

"13. The aforesaid principle clearly lays down that even after an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code. We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld

[7] (2014) 12 SCC 636

[8] (2001) 7 SCC 740

[9] (2014) 12 SCC 646

by the High Court, the Constitution Bench opined that as the Magistrate could exercise power under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the Act, the order did not warrant any interference. Thus, the emphasis was laid on the retention of the power by the Magistrate under Section 125 of the Code and the effect of ultimate consequence.

14. Slightly recently, in *Shabana Bano* v. *Imran Khan*[10], a two-Judge Bench, placing reliance on *Danial Latifi (supra)*, has ruled that:-

> "21. The appellant's petition under Section 125 CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the iddat period only."

Though the aforesaid decision was rendered interpreting Section 7 of the Family Courts Act, 1984, yet the principle stated therein would be applicable, for the same is in consonance with the principle stated by the Constitution Bench in Khatoon Nisa (supra)."

In view of the aforesaid dictum, there can be no shadow of doubt that Section 125 CrPC has been rightly held to be applicable by the learned Family Judge.

11. On a perusal of the order passed by the Family Court, it is manifest that it has taken note of the fact that the salary of the husband was Rs.17,654/- in May, 2009. It had fixed Rs.2,500/- as monthly maintenance from the date of submission of application till the date of order i.e. 17.2.2012 and from the date of order, at the rate of Rs.4,000/- per month

[10] (2010) 1 SCC 666

till the date of remarriage. The High Court has opined that while granting maintenance from the date of application, judicial discretion has to be appropriately exercised, for the High Court has noted that the grant of maintenance at the rate of Rs.2,500/- per month from the date of application till date of order, did not call for modification.

12. The aforesaid finding of the High Court, affirming the view of the learned Family Judge is absolutely correct. But what is disturbing is that though the application for grant of maintenance was filed in the year 1998, it was not decided till 17.2.2012. It is also shocking to note that there was no order for grant of interim maintenance. It needs no special emphasis to state that when an application for grant of maintenance is filed by the wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. An application for grant of maintenance has to be disposed of at the earliest. The family courts, which have been established to deal with the matrimonial disputes, which include application under Section 125 CrPC, have become absolutely apathetic to the same. The concern and anguish that was expressed by this Court in ***Bhuwan Mohan Singh v. Meena and Ors.***[11], is to the following effect:-

> "13. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida[12], while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus:-
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> "The Family Courts Act was enacted to provide for the establishment of Family Courts with a view

[11] AIR 2014 SC 2875

[12] (2003) 4 SCC 166

to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith." A

14. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions Under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope B C D E F G H

A and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, B property disputes, etc."

[emphasis supplied]

13. When the aforesaid anguish was expressed, the C predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the D uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the Courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the Court. E As regards the second facet, it is the duty of the Court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a F corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on for ever." This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters G between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a pro-active approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the H

present, we say no more. A

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was B getting a monthly salary of Rs.17,654/-.

15. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to C conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman D suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and E can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to F lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within G the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt H

A that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These
B are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance
C under Section 125 CrPC, unless disqualified, is an absolute right. While determining the quantum of maintenance, this Court in ***Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.***[13] has held as follows:-

D "The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or
E deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her
F case. At the same time, the amount so fixed cannot be excessive or extortionate."

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. ***In Chaturbhuj***
G ***v. Sita Bai***[14], it has been ruled that:-

"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and

[13] (1997) 7 SCC 7

H [14] (2008) 2 SCC 316

as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal[15] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. 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[16]."

This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

17. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in ***Chander Prakash Bodhraj v. Shila Rani Chander Prakash***[17] wherein it has been opined thus:-

"An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and

[15] (1978) 4 SCC 70

[16] (2005) 3 SCC 636

[17] AIR 1968 Delhi 174

A child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

18. From the aforesaid enunciation of law it is B limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. C Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot D be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.

19. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000/- to E Rs.2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would F show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there G was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solelybecause the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it H

deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order. A

20. Having stated the principle, we would have proceeded to record our consequential conclusion. But, a significant one, we cannot be oblivious of the asseverations made by the appellant. It has been asserted that the respondent had taken voluntary retirement after the judgment dated 17.2.2012 with the purpose of escaping the liability to pay the maintenance amount as directed to the petitioner; that the last drawn salary of respondent taken into account by the learned Family Judge was Rs.17,564/- as per salary slip of May, 2009 and after deduction of AFPP Fund and AGI, the salary of the respondent was Rs.12,564/- and hence, even on the basis of the last basic pay (i.e. Rs.9,830/-) of the respondent the total pension would come to Rs.14,611/- and if 40% of commutation is taken into account then the pension of the respondent amounts to Rs.11,535/-; and that the respondent, in addition to his pension, hand received encashment of commutation to the extent of 40% i.e. Rs.3,84,500/- and other retiral dues i.e. AFPP, AFGI, Gratuity and leave encashment to the tune of Rs.16,01,455/-. B C D E

21. The aforesaid aspects have gone uncontroverted as the respondent- husband has not appeared and contested the matter. Therefore, we are disposed to accept the assertions. This exposition of facts further impels us to set aside the order of the High Court. F

22. Consequently, the appeals are allowed, the orders passed by the High Court are set aside and that of the Family Court is restored. There shall be no order as to costs. G

Nidhi Jain Appeals allowed.

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