



2025:DHC:3627



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 13.05.2025

+

CRL.REV.P. 1373/2024 & CRL.M.A. 38590/2024**PRAVEEN KUMAR**

.....Petitioner

Through: Appearance not given.
versus**POOJA ARYA**

.....Respondent

Through: Mr.Mayank Maini, Mr.Anmol
Chadha, Mr.Biman Sethi,
Mr.Aryan Sharma and
Mr.Ankit Verma, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this revision petition, the petitioner-husband seeks setting aside of order dated 21.10.2023 [hereafter '*impugned order*'], passed by the learned Family Judge, North District, Rohini Courts, Delhi [hereafter '*Family Court*'] in MT. Case No. 287/2022.

2. Briefly stated, the facts of the present case are that the marriage between the parties was solemnised on 12.01.2016 and a child was born out of the wedlock, who is currently in the custody of the respondent (wife), aged about six years. The parties have been living separately since July 2017. The respondent-wife had alleged that she was subjected to cruelty and harassment by the petitioner - husband, who is a practicing advocate. The respondent was earlier



employed as a guest teacher with the Delhi Government, but became unemployed upon the termination of her contractual employment on 08.12.2022. The respondent had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter ‘Cr.P.C.’] seeking maintenance, and the learned Family Court, had *vide* impugned order dated 21.10.2023, directed the petitioner herein to pay a monthly interim maintenance of ₹7,500 each to the child and to the respondent. However, since the respondent was admittedly earning a notional income equivalent to the petitioner until December, 2022 and was equally responsible for the child’s upkeep, no maintenance was awarded for the period prior to January, 2023. Thus, the petitioner was made liable to pay arrears from January, 2023 onwards until further orders.

3. The learned counsel for the petitioner argues that the learned Family Court failed to appreciate that the petition under Section 125 of Cr.P.C. was filed by the respondent-wife solely to harass and humiliate the petitioner and in retaliation to an earlier order passed in the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. It is argued that the petitioner is already under mental stress due to this litigation and is now suffering from ailments requiring treatment, further exacerbated by financial strain. The petitioner, a practicing advocate at District Court Jind, Haryana, earns only ₹10,000–₹15,000 per month and supports his 72-year-old mother. In contrast, the respondent-wife is highly educated (M.A.,



B.Ed., etc.) and was working as a teacher, earning ₹40,000–₹45,000 per month, including tuition work. Her income, as reflected in her ITRs and bank statements with high-value transactions, shows that she is financially better placed and capable of maintaining herself and the minor child. It is also argued that the learned Family Court erred in not considering that the respondent left the matrimonial home on her own volition and did not rejoin the petitioner despite a court order, and the petitioner remains willing to reside with the respondent and minor child. Additionally, major expenses for the child's education are borne by the Delhi Government, including tuition fees, books, and other facilities. Therefore, the maintenance awarded is excessive and based on an incorrect estimation of the petitioner's income, while the respondent's actual earnings were not assessed with the same scrutiny. The learned counsel appearing on behalf of the petitioner states that the respondent was earlier employed as a teacher and was earning ₹30,000/- and her bank account statement adequately reflects the same. He therefore states that the respondent is capable of earning and has filed the present case to harass the petitioner. He argues that the petitioner is a practising advocate with a practice of 15 years in Haryana, however, he is earning only ₹10,000/- to ₹15,000/- per month. He therefore states that since the respondent is capable of earning, she is not entitled for maintenance. It is contended that the petitioner, already struggling financially and emotionally, is in no position to comply



with the maintenance order, and hence, the impugned order deserves to be set aside.

4. The learned counsel for the respondent, on the other hand, argues that the petitioner is a well-established and financially stable practicing advocate before the High Court of Punjab & Haryana since 2010, and apart from a flourishing legal practice, he also earns income from other sources such as rental properties. It is emphasised that the petitioner has no dependents other than the respondent and their minor son. The learned Family Court, after a comprehensive evaluation of the documents placed on record and the petitioner's deliberate concealment of his true income, rightly assessed his notional income at ₹30,000/- per month and awarded a modest interim maintenance of ₹15,000/- per month for both the respondent and the child – an amount which is reasonable considering the high cost of living in a metropolitan city like Delhi. It is further argued that the petitioner failed to produce any credible documentary proof to substantiate his claims regarding the respondent's alleged employment, whereas the respondent submitted sufficient evidence to establish the petitioner's affluent lifestyle. It is argued that the respondent is currently unable to engage in employment due to her responsibilities in caring for their minor son, and her past employment as a teacher cannot be a valid ground to deny her rightful maintenance. The learned counsel appearing on behalf of the respondent argues that the respondent was earlier working as TGT,



however, since it took long hours to commute and she was not getting any employment near her home, she had to give up her teaching career to take care of the minor child, as a single parent. It is also stated that the ITRs and the bank account statement of the petitioner, as discussed in detail by the learned Family Court would reveal that he had bank entries of deposit of huge amount, which can lead to a conclusion that he was earning at least ₹ 30,000/- per month and there is no illegality or infirmity in the impugned order. Therefore, it is prayed that the present petition be dismissed.

5. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material available on record.

6. Having heard rival contentions and considered the record, this Court is of the view that the respondent/wife was admittedly employed as a TGT, earning approximately ₹30,000/- per month until 2022. However, she was compelled to resign from her position due to the demands of single-handedly raising the minor child, coupled with the burden of long commuting hours. These circumstances, as reflected in the pleadings and submissions, reasonably explain her discontinuation from employment. It is undisputed that the respondent is presently unemployed. In this background, it shall be apposite to take note of the observations of the Hon'ble Supreme Court in *Rajnesh v. Neha & Anr.: (2021) 2 SCC 324*, the relevant portion of which reads as under:

“58. In a marriage of long duration, where parties have endured



the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.”

7. In the present case, it is not in dispute that the parties have been residing separately, and the respondent/wife has been taking care of the minor child as a single parent. The material on record reflects that the respondent was previously employed as a guest teacher; however, owing to the compelling responsibilities of single-handedly raising the child and the considerable distance of her workplace, she had to discontinue her employment. This Court finds the explanation both reasonable and justified. It is well settled that the responsibility of caregiving to a minor child falls disproportionately upon the parent with custody, often limiting their ability to pursue full-time employment, especially in cases where there is no family support also to take care of the child while the mother is at work. In such circumstances, the cessation of employment by the respondent cannot be viewed as voluntary abandonment of work, but as a consequence necessitated by the paramount duty of child care.



8. This Court is therefore of the considered opinion that the learned Family Court has committed no error in appreciating the factual matrix and applying the correct legal principles, including the ratio laid down in *Shailja v. Khobbana*: (2018) 12 SCC 199, wherein the Hon'ble Supreme Court had held that mere capability to earn is not the same as actually earning, and being capable of earning alone is not a valid reason to reduce maintenance. It is not the potential earning capacity of the wife but her actual income at the relevant time that is to be considered while determining the amount of maintenance. Thus, the learned Family Court has rightly observed that there exists a material distinction between being 'capable of earning' and 'actually earning'.

9. In this Court's view, the learned Family Court has rightly held that for the period during which the respondent/wife was employed, she was not entitled to maintenance. However, for the period thereafter – when it is *prima facie* evident that she remained unemployed due to her role as the primary caregiver for the minor child – the notional income of the petitioner was appropriately assessed.

10. The learned Family Court, while awarding interim maintenance, has rightly considered the needs of the child, and the standard of living to which the parties were accustomed. This Court finds no perversity or legal infirmity in the said assessment.

11. Be that as it may, a perusal of the record also reveals that



while assessing the notional income of the present petitioner at the stage of granting interim maintenance, the learned Family Court has taken into consideration the respondent's statement of income and expenditure as well as her bank account statements. However, no specific reference has been made to the income affidavit or bank statements of the petitioner himself. The learned Family Court has merely observed that since the petitioner has been practising as an advocate since the year 2010, his monthly income can be notionally assessed at ₹30,000/-, based on estimation and reasonable guesswork. While such estimation is not per se impermissible at the interim stage, especially in the absence of credible financial disclosures by the petitioner, it would have been more appropriate for the learned Family Court to record in clearer terms the insufficiency in the petitioner's income affidavit, before resorting to notional assessment, as held by the Hon'ble Supreme Court in case of **Rajnish v. Neha** (*supra*). Thus, once the income affidavits and bank account statements have been filed by the parties, the learned Family Court should have referred the same at the time of deciding the application for grant of interim maintenance.

12. Nonetheless, this Court is of the opinion, at this stage, that the notional income assessed is not entirely disproportionate.

13. Considering the above discussion and taking into account the fact that income affidavit filed by the petitioner herein was not taken into consideration, this Court deems it appropriate to remand the



matter back to the learned Family Court. The Family Court shall reconsider the application for interim maintenance afresh, specifically taking into account the income affidavits and bank statements filed by both parties, and pass a reasoned order in accordance with law. The said exercise shall be completed within a period of one month from the date of receipt of this order.

14. In the meantime, as an interim arrangement, the petitioner shall continue to pay a sum of ₹7,500/- per month to the respondent/wife and ₹4,500/- per month to respondent no. 2/minor child, which shall be without prejudice to the final determination by the learned Family Court, and any amount paid shall remain adjustable in future maintenance. The payments shall be made regularly before the 10th day of each calendar month either directly or by deposit in the bank accounts of the respondents.

15. The revision petition stands disposed of accordingly.

16. Copy of this judgment be forwarded to the learned Family Court for information and compliance.

17. In view of the above, the present petition along with pending application stands disposed of.

18. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

May 13, 2025/zp/ns