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

CNR No. DLHC010355542026

+ **CRL.M.C. 5650/2026 and CRL.M.A. 23615/2026**

SH SUSHIL KUMAR

.....Petitioner

Through: Mr.Amrendra Kumar Choubey and
Mr.Pankaj Kumar Tiwari, Advocates.

versus

SMT ARCHANA & ORS.

.....Respondents

Through: Ms. Kiran Bairwa, APP for State

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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05.08.2026

CRL.M.A. 23614/2026 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 5650/2026 and CRL.M.A. 23615/2026

1. By way of the present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Article 227 of the Constitution of India, the petitioner assails; (a) the order dated 16.05.2024 passed by the Metropolitan Magistrate, Mahila Court, North District, Rohini Courts, Delhi in Ct. Case No. 57/2022 titled "*Archana v. Sushil Kumar & Ors.*", whereby interim maintenance of Rs. 12,500/- per month each was awarded to respondent no. 1 and the minor child under Section 23 of the Protection of Women from Domestic Violence Act, 2005; (b) the judgment



dated 26.08.2025 passed by the Additional Sessions Judge, North District, Rohini Courts, Delhi in Criminal Appeal No. 132/2024, whereby the aforesaid order was affirmed; and (c) the order dated 16.04.2026 passed in Misc. CrI. No. 453/2025, whereby the petitioner's application under Section 403 of the BNSS seeking correction of the judgment was dismissed.

2. The facts of the case would indicate that the relationship of husband and wife, i.e. the parties, is undisputed. There is one child, born on 20.08.2020, out of the said wedlock, who is presently in the care and custody of respondent no. 1. *Prima facie*, the allegations of domestic violence stand proved from the averments made in the complaint as well as in the DIR, a finding recorded by the Trial Court and left undisturbed by the Appellate Court.

3. The Trial Court, *vide* order dated 16.05.2024, while deciding the application under Section 23 of the DV Act, noted that the petitioner had, in his income affidavit, disclosed a salary of Rs. 12,000/- per month from CBN Multi Media Pvt. Ltd., whereas his bank statement reflected credit entries of Rs. 20,742/-, Rs. 30,133/-, Rs. 16,717/- and Rs. 16,254/- for the months of September to December 2023 respectively, apart from recurring UPI credits ranging between Rs. 10/- and Rs. 3,500/- from undisclosed sources. Taking further note of the fact that the petitioner had resigned from his earlier employment, where his last drawn salary was Rs. 70,335/- per month, shortly after the institution of the present proceedings, the Trial Court notionally assessed the petitioner's income at not less than Rs. 50,000/- per month and, apportioning the same on the settled formula of two shares to the earning spouse and one share each to the dependents, directed payment of Rs. 12,500/- per month each to respondent no. 1 and the minor child, with



effect from the date of the petition, i.e. 07.01.2022.

4. Aggrieved thereby, the petitioner preferred Criminal Appeal No. 132/2024 under Section 29 of the DV Act. The Appellate Court, *vide* judgment dated 26.08.2025, dismissed the appeal and affirmed the order of the Trial Court. The relevant findings of the Appellate Court are extracted as under:-

“Why would a person who is earning Rs. 70,000 per month resign from his job on his own for a work where he is getting only Rs. 10,000/- to 12,000/- per month... Considering the above said concealment of facts and the unexplained bank account entries, the Ld. Trial Court rightly assessed the income of the appellant observing that appellant must be earning Rs. 50,000/- or more per month.”

“A woman's right to maintenance is a matter of her financial need and her ability to maintain the same standard of living established during the marriage; it does not matter whether she is employed or not... no other document has been placed on record which establishes that at present the respondent is working.”

“the scope of interim maintenance granted under Section 23 of PWDV Act is far more wider than the maintenance awarded under Section 24 of Hindu Marriage Act... the purpose of granting maintenance under PWDV Act is to provide same standard of life to the petitioner and her children, which they were enjoying before filing of the petition.”

5. The petitioner thereafter filed Criminal Misc. No. 453/2025 under Section 403 BNSS before the Appellate Court, seeking correction of the finding recorded in the judgment dated 26.08.2025, on the ground that the amounts of Rs. 20,742/-, Rs. 30,133/-, Rs. 16,717/- and Rs. 16,254/- reflected in the bank statement were, in fact, debit entries and not credits as recorded. *Vide* order dated 16.04.2026, the said application was examined and dismissed. The findings of the Additional Sessions Judge are extracted as under:-

“It has been admitted by Ld. Counsel for appellant that the entry which is



in issue itself reflects 'Credit' against it... from the bank statement, it is clear that amount was received through NEFT from CBN Multi Media Pvt Ltd and thereafter, the amount was withdrawn, therefore, the observation made regarding receiving of the abovesaid amount in his account has been rightly observed."

6. Learned counsel for the petitioner reiterates before this Court that the concurrent findings of the courts below proceed on an erroneous appreciation of the bank statement; that respondent no. 1, being a B.Ed. and Diploma holder in Nursery and Primary Teacher Training with prior work experience, is employable and ought to have been treated as possessing independent means; and that the quantum of maintenance fixed is consequently excessive and beyond the petitioner's paying capacity.

7. This Court has considered the submissions and perused the record, including the impugned orders and the material relied upon by the courts below.

8. At the outset, it may be noted that the jurisdiction of this Court under Section 528 of the BNSS, when invoked to assail concurrent findings of fact recorded by two courts below in maintenance proceedings, is not that of a further court of appeal. Interference is warranted only where the findings are shown to be perverse, based on no evidence, or vitiated by an error going to the root of the matter, and not merely because another view is possible on a reappraisal of the same material.

9. Insofar as the grievance regarding the bank statement is concerned, the record shows that this very objection was specifically raised by the petitioner before the Appellate Court by way of Misc. CrI. No. 453/2025 under Section 403 BNSS, and was examined and rejected on the finding that the entries were credit entries received through NEFT which were



subsequently withdrawn. Nothing has been placed on record before this Court to demonstrate that this reconciliation is factually incorrect.

10. Insofar as the assessment of notional income is concerned, it is well settled that where a party conceals or under-reports income, the court is entitled to assess the same on the basis of the material available on record, including bank statements and other financial indicators. The Supreme Court in ***Rajnesh v. Neha***¹, while laying down comprehensive guidelines governing maintenance proceedings, has recognised that courts may draw upon bank account details and other disclosed financial particulars where a party's true income is not correctly placed on record.

11. In the present case, both the Trial Court and the Appellate Court have concurrently found that the petitioner's disclosed income of Rs. 12,000/- per month is irreconcilable with (a) his admitted last drawn salary of Rs. 70,335/- per month in his previous employment; (b) the timing of his resignation, coinciding with the institution of the present proceedings; and (c) the unexplained credit entries and UPI receipts in his own bank statement. This is not a case of an income figure conjured out of thin air; it is a reasoned notional assessment arrived at after weighing the material on record, and this Court does not find it to be perverse or unsupported by evidence so as to warrant interference.

12. As regards the contention that the maintenance awarded is excessive, it may be noted that the quantum fixed works out to well within the range ordinarily considered reasonable. The Supreme Court in ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy***² indicated that an award in

¹ (2021) 2 SCC 324.

² (2017) 14 SCC 200.



the region of 25% of the paying spouse's net income would ordinarily be just and proper. On the notional income of Rs. 50,000/- per month concurrently assessed by the courts below, the cumulative award of Rs. 25,000/- per month to respondent no. 1 and the minor child together cannot be said to be disproportionate or excessive so as to shock the conscience of this Court.

13. As regards the plea concerning respondent no. 1's educational qualifications and past employment, both the Trial Court and the Appellate Court have concurrently recorded that no material was placed on record to show that respondent no. 1 is presently working, as distinct from having worked or studied prior to the marriage or the birth of the child.

14. It is well settled that a mere capacity to earn, or an educational qualification by itself, does not disentitle a spouse from maintenance. The Supreme Court in *Sunita Kachwaha v. Anil Kachwaha*³, while repelling a similar contention, held that the mere fact of a spouse being a qualified post-graduate would not, by itself, establish that she is in a position to maintain herself, absent proof of actual and current employment or earning. The concurrent findings of the courts below on this aspect are, therefore, neither perverse nor contrary to the settled legal position.

15. It is also relevant to note, as the Appellate Court has itself observed, that interim maintenance under Section 23 of the DV Act stands on a wider footing than an award under Section 24 of the Hindu Marriage Act, in that the former is intended to secure to the aggrieved person and the child the same standard of living they were accustomed to prior to the institution of proceedings, and not merely to prevent vagrancy during the pendency of



litigation. This Court, in *Neelam Walia v. Sanjay Walia*⁴, has held that the only requirement for grant of interim relief under Section 23 is that the application “*prima facie discloses the commission of domestic violence*”, the veracity whereof is to be tested during trial. That threshold stands squarely met on the facts of the present case, given the concurrent and unchallenged finding that the allegations of domestic violence are prima facie made out from the complaint and the DIR. Paragraph no. 9 is reproduced as under:-

“9. It is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application prima facie discloses that the respondent is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Consequently, any woman who proves that she has suffered domestic violence at the hands of her spouse/partner, is entitled for interim relief”.

16. Bearing in mind the overall facts and circumstances, and finding no perversity, illegality or jurisdictional error in the concurrent findings recorded by the courts below, this Court is of the view that no interference is called for with the order dated 16.05.2024, the judgment dated 26.08.2025, or the order dated 16.04.2026.

17. It is, however, clarified that the observations made hereinabove are confined to the interim stage and shall have no bearing on the final adjudication of the rights of the parties, which shall abide by the evidence led during trial.

18. Accordingly, the instant petition, along with the pending application, stands dismissed.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 5, 2026/Nc/nk

³ (2014) 16 SCC 715.

⁴ 2025:DHC:13.