

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

+ **CRL.REVISION No.680/2015**

Date of Decision: August 26, 2016

KRIPA NARAYAN

..... Petitioner

Through **Mr.Amit Wadhwa and
Mr.Jaspal Singh Gujral, Advs.**

versus

MAMTA PATHAK

..... Respondents

Through **Mr.O.P.Saxena and Mr.Sanjay Verma,
Advs.**

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present revision petition has been filed under Section 397 and 401 Cr.P.C. against the impugned order dated 17.09.2015 passed by the Principal Family Judge, Patiala House Court, New Delhi.

2. The facts of the case in a nutshell are that a petition under Section 125 Cr.P.C. was filed by the respondent/wife against the petitioner husband being M.No.32/2013 stating there that the marriage between the parties was solemnized on

28.11.1994 at Meerut as per Hindu rites and ceremonies. One female child namely baby Meetali was born out of the wedlock on 22.02.1998.

3. It was stated in the petition by the respondent that she is a well qualified lady having a good status due to her long experience in life. That the petitioner is a businessman having income in Lakhs, purchased properties and having good reputation maintaining a First Class living standard. It was also stated that the petitioner currently owns and maintains luxury cars. It was also submitted that the petitioner/husband has earned name and fame due to very hard work and effort and he had purchased all the properties in his name except one property which was in the joint name of the parties. She stated that her in-laws assaulted her and inflicted all types of cruelties upon her, both mental and physical. It was also alleged that in 2003 she was thrown out of the matrimonial home whereafter she took a rented accommoation in Delhi, started living there with her daughter and also got her daughter admitted to a school. She further stated that as per available sources, the

petitioner was doing business and running his two factories in Meerut and earning approximately Rs.5,00,000/- per month and was owning and maintaining two luxury cars and one Gypsy. It was also stated that the petitioner is wilfully neglecting to maintain the respondents.

4. The petition was contested by the petitioner/husband by filing a written statement and reply to the interim maintenance application. It was submitted that the respondent/wife is working in a multi-national company and earning around Rs.7 lakhs per annum in comparison to the petitioner/husband who is earning 1/4th of the same being Rs.2,03,990/- in the assessment year 2010-2011, Rs.2,21,890/- in the assessment year 2011-12 and Rs.2,28,070/- in the assessment year 2012-2013. The petitioner/husband also submitted that after his monthly expenses, he is hardly able to save any amount for his daughter's future as he is spending Rs.8,000/- towards school fees, tuition fees and other expenses of the child apart from other miscellaneous expenses.

5. The Trial Court while disposing of the petition dealt

with each condition as stipulated under Section 125 Cr.P.C. separately and arrived at the conclusion that the respondent is a legally wedded wife of the petitioner; that as for the allegations levelled by the respondent with respect to harassment and cruelty meted out to her, the same can be adjudicated only after trial; that as for the refusal/neglect on the part of the petitioner to maintain his wife, it was obligatory on the petitioner to discharge that onus; that as for the income of the respondent, it was observed that she had filed an affidavit that she is a B.Ed, has done MBA from Symbiosis in 2013, is unemployed, has no independent source of income and is dependent upon her father for maintaining herself and the minor child; that with respect to the expenditure being incurred by the respondent/wife, it was observed that in her affidavit she had stated that she spends Rs.10,000/- per month towards rent, Rs.8,100/- towards household expenses apart from other miscellaneous expenses including a sum of Rs.1,07,900/- per hearing on litigation expenses; that as for the income of the petitioner/husband, it was observed that he had filed an

affidavit to the effect that he is a graduate in commerce, is self-employed in manufacturing unit (Micro Unit) namely M/s Viraat Rubber Industries, Meerut since 1990 where he is having six employees, he owns one Maruti Gypsy, one TVS Fiero, one Honda Eterno and one Maruti Swift apart from other electronic appliances. As per his profit and loss statement, his net profit is shown as Rs.3,33,789/- till 31.03.2014. He had purchased four plots as detailed in the affidavit where in two plots, he had 50% ownership; that as for the expenditure of the husband, it was observed that as per his affidavit, he spends Rs.28,000/- towards his expenditure out of which Rs.10,000/- is appropriated towards education of the child, Rs.11,004/- per month towards instalment of house loan apart from other miscellaneous expenses; he is stated to have invested in six insurance policies; there were two current accounts and one savings bank account in Allahabad Bank where he deposited Rs. 1 lakh on 21.03.2013, Rs.1,25,000/- on 19.03.2013 and Rs.1,25,000/- on 02.05.2013. He also filed copies of his ITRs. For the Assessment Year 2012-13, 2013-14

and 2014-15, his total income was Rs.3,21,942/-, Rs.3,37,108/- and Rs.3,72,059/- respectively.

6. After analysis of income and expenditure of both the parties, the Trial Court observed that the marriage between the parties is an admitted fact; allegations of petitioner/husband that the respondent/wife deserted him without informing him or his parents; mutual recriminations, showing self-justification and holding other side responsible for marital discord raise triable issues and, therefore, cannot be looked into at this stage.

7. As for the means of livelihood of the parties, the Trial Court observed that the respondent deposed that she is B.Ed and MBA qualified and unemployed and is not earning anything. The petitioner/husband alleged that the respondent/wife is not entitled for maintenance as she is a well qualified lady and maintained herself. The petitioner/husband placed on record three bank statements which show that he is earning between Rs.1,00,000/- to Rs.1,50,000/- approximately. However, in his affidavit, he deposed that his monthly

expenditure was around Rs.28,000/-. The respondent/husband also placed on record monthly statements in different bank accounts where he had deposited between Rs.1,00,000/- to Rs.1,50,000/- every month. The total income of the petitioner/husband, after deduction of income tax, for the assessment years 2012-13, 2013-14 & 2014-15 was Rs.2,28,070/-, 2,37,620 and Rs.2,72,060/- respectively.

8. The Trial Court, in the given facts, concluded that the petitioner/husband who is having six insurance policies, two current accounts and one savings bank account where entries are shown to the tune of lakhs, owning cars and plots, is liable to pay a maintenance of Rs.35,000/- per month from the date of filing of the application. The petitioner was also directed to pay Rs.20,000/- as litigation expenses to the respondent/wife. The arrears were directed to be cleared in six equal monthly instalments and the current maintenance was directed to be paid by 10th of each month till disposal of the petition and to be credited in account of the respondent/wife.

9. The learned counsel for the petitioner/husband in

support of petition has taken the grounds that the Trial Court has fallen into an error as the affidavits of assets have not been filed by the respondent in accordance with law; that interim maintenance awarded by the Trial Court to the tune of Rs.35,000/- per month is on the higher side; that as per the ITR filed by the petitioner for the assessment year 2014-15 his income is Rs.3,72,059/- i.e. Rs.31,000/- per month, how can he pay the maintenance of Rs.35,000/- a month; that the Trial Court did not consider the payment/withdrawal of the account which exceeded the receipts and wrongly concluded that the petitioner is earning Rs.1,00,000/- to Rs.1,50,000/- per month; that the Trial Court failed to appreciate that the petitioner is maintaining middleman status and hardly saves anything after meeting the household expenses, daughter's studies and his mother's expenses; that the maintenance awarded should aid the applicant to live in a similar life style as she enjoyed at her matrimonial home and moreover, in the present case, the respondent left the matrimonial home at her own will and whims without the knowledge and consent of the petitioner in

2003; that the moveable assets like bike, scooter or car were purchased by the petitioner on a hire-purchase basis and were not purchased in the same year; that the respondent/wife is well qualified and is maintaining a good status in society and has knowingly, intentionally with mala fide intentions not disclosed her employer details, ITR returns, bank account details for the last three years; that the respondent has refused to live with the petitioner out of her own will and without any rhyme or reason and that she is live-in relationship with one Mr.Sandeep and in order to marry him and stay with him, the respondent filed mutual divorce petition on 17.07.2007 before the Principal Family Judge, Meerut, UP and thus the petition under Section 125 Cr.P.C. is not maintainable and the respondent is not entitled to any interim or final maintenance.

10. I have heard the learned counsel for the parties and perused the record.

11. The marriage between the parties is not in dispute. It is settled law and even the duty of the husband to maintain his wife. It is expected from a husband to give his wife the same

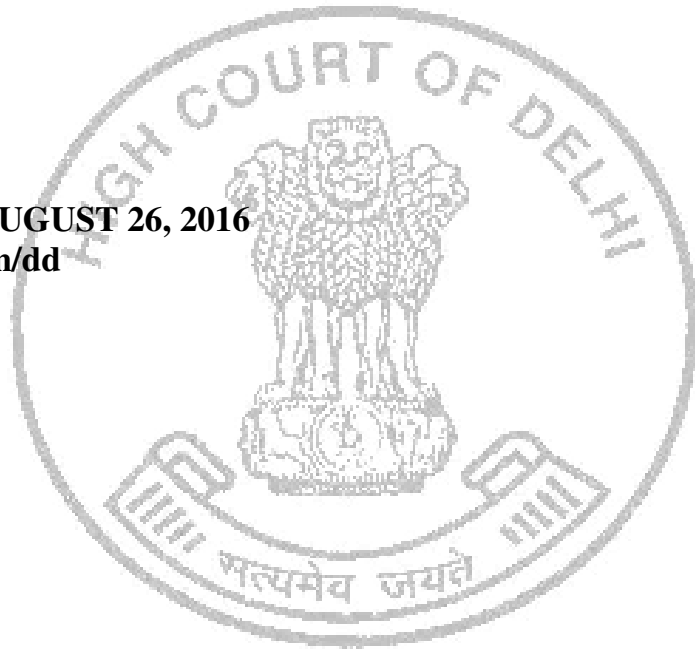
standard of living which enjoys whether living jointly or separately. In the present case, it has been shown from the record that the petitioner was having a handsome income and maintaining himself well. There were transactions worth lakhs as per the entries of the accounts maintained by the petitioner. It was also shown that the petitioner was having cars and several plots. After considering all the aspects, the Trial Court rightly came to the conclusion in awarding the maintenance of Rs.35,000/- in favour of the respondent/wife being interim maintenance which is subjected to adjustment at the time of final judgment.

12. In view of above discussion and facts and circumstances, this Court does not find any infirmity or illegality in the order 17.09.2015 so as to call for interference by this court as the order passed by the Trial Court is a well reasoned one, based on the income and expenditure statements brought before the court by the parties through their affidavits and ITRs.

13. The present revision petition is dismissed with a direction to the Trial Court to expeditiously dispose of the

petition filed by the respondent/wife under Section 125 Cr.P.C. preferably within a period of six months. The interim maintenance granted by the Trial Court vide order dated 17.09.2015 shall be subject to adjustment at the time of award of final maintenance in the petition filed by the respondent/wife under Section 125 Cr.P.C.

AUGUST 26, 2016
dm/dd



(P.S.TEJI)
JUDGE