

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

% **Judgment delivered on: 12th May, 2017**

+ CRL.REV.P. 632/2015 and CrI.M.A.No.3629/2016

VIPIN BATRA

..... Petitioner

Through: Mr. Manmeet Singh, Mr. Kunal and
Mr. Yash Batra, Advocates.

versus

BABY ARKA BATRA & ANR.

..... Respondents

Through: Mr. M.L. Mahajan and Mr. Gaurav
Mahajan, Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner- Vipin Batra under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. for setting aside the impugned order dated 06.06.2015 passed by the learned Additional Principal Judge, Family Courts, West, Tis Hazari Courts, Delhi in M-164/14 titled as *Baby Arka & Anr. vs. Vipin Batra*.
2. The brief facts stated in the application for interim maintenance under Section 125 Cr.P.C. filed before the Court of Chief

Metropolitan Magistrate, Tis Hazari, Delhi by the present respondents/petitioners through their mother/next friend/natural guardian, i.e. Smt. Manishwar Batra, are that the marriage between the petitioner- Vipin Batra and Smt. Manishwar Batra was solemnized on 03.09.1998 at New Delhi. From their wedlock the respondents, i.e. baby Arka Batra and baby Harita Batra, were born on 18.01.1999 and 01.12.2004 respectively. The mother of the respondents, i.e. Smt. Manishwar Batra, was forced to leave the matrimonial home on 15.04.2006. It has been further stated in the aforesaid application that the petitioner and his family never looked after the respondents and their mother, i.e. Smt. Manishwar Batra, and even at the time of the delivery of both the respondents all the expenses incurred were borne by the maternal grandparents of the respondents. It was further pointed out in the application that the respondents and their mother are residing with their maternal grandparents and all the expenses for their upbringing and education are being borne by their maternal grandparents. The petitioner is stated to be a man of means and till date he has not contributed even a single penny for the respondents upkeep therefore, the respondents/petitioners through their mother had filed the interim maintenance application against the petitioner.

3. Consequently, the learned Family Court after hearing the counsels for the parties and after perusal of the documents placed on record passed the impugned order dated 06.06.2015 whereby directing the petitioner to pay interim maintenance of Rs. 6000/- per month each for both the respondents from the date of filing of the

interim maintenance application along with the current maintenance and was further directed to pay litigation cost of Rs. 20,000/-.

Hence the present revision petition.

4. The learned counsel for the petitioner has submitted that the petitioner has complied with the order of making three and half lakhs rupees. It is further submitted that the petitioner is not having sufficient income sources to meet out the interim maintenance which is too harsh passed by learned Family Court.
5. The learned counsel for the petitioner has further submitted that the concerned Court at Panchkula of learned ADJ on 29.11.2012 has clearly held that Smt. Manishwar Batra (respondent therein) has enough sufficient means to maintain herself and the two children (respondents herein) whereas the impugned order dated 06.06.2015 passed by the learned Family Court does not give any heed to the said order dated 29.11.2012 which is too harsh.
6. The learned counsel for the petitioner has also submitted that the petitioner has already filed an application under Section 340 Cr.P.C. detailing the false facts stated on oath by the Smt. Manishwar Batra in her income affidavit. It is further submitted that as per the Bank Statement of Smt. Manishwar Batra, she had received Rs.10 lakhs from sale of part of immovable property at Derabasi and further transferred Rs.8 lakhs to her father on 26.06.2013. She has further transferred an amount of Rs.4 lakhs to her parents. She is making payments to Jaypee Greens and she is siphoning amounts from selling the parts from the factory premises and running the business on her own and she does not require any

maintenance. He further submits that prior to the dispute arisen between the parties, both the petitioner as well as Smt. Manishwar Batra were doing the same business.

7. The learned counsel for the petitioner has further submitted that the impugned order passed by the learned trial Court is not sustainable in the eyes of law as the same is based on conjectures and surmises thus, is liable to be set aside.

8. On the contrary the learned counsel for the respondents has submitted that the maintenance asked is for the minor daughters and the petitioner has to maintain the minor daughters and except Rs.3,50,000/- the petitioner till date has not paid a single penny as maintenance. It is further submitted that the petitioner is required to maintain his wife and children and an amount of Rs.8 lakhs is due towards the maintenance till date and submits that the present petition is devoid of any merit and the same is liable to be dismissed. The learned counsel for the respondents in support of his submissions has relied upon the following decisions:-

1) *Shyam Sunder Malik v. Ms. Geetika Malik & Anr; 124 (2005) DLT 491.*

2) *Vinod Babbar v. Baby Swati; 135 (2006) DLT 258 (DB).*

9. The object of Section 125 Cr.P.C. is to provide speedy remedy to women and children who are unable to support themselves and are in distress. It is intended to achieve a social purpose and maintenance cannot be denied to the children on the premise that

their mother is employed or has enough means to maintain them or that they are in the custody of their mother.

10. It is a settled principle of law that both the parents have a legal, moral and social duty to provide to their child the best education and standard of living within their means. The mere fact that the spouse with whom the child is living is having a source of income, even if sufficient, would in no way absolve the other spouse of his obligation to make his contribution towards the maintenance and welfare of the child, even if, the means/income/salary of that spouse may be less than the means/income/salary of the other spouse.
11. The Apex Court in *Noor Khatoon vs. Mohd. Quasim; 1997 Crl. L.J. 3972* has made the observation that a father having sufficient means has the obligation to maintain his minor children who are unable to maintain themselves till they attain majority and in case of females till they get married.
12. It is an admitted fact coming on record that the main maintenance petition is pending before the Trial Court and pleadings are also complete. The determination of the maintenance amount will be done by the Trial Court after leading of evidence by the respective parties and on the basis of material documents and income affidavits of the parties.
13. Furthermore, in the instant petition it is an admitted case on record that the children(respondents herein) are staying with the mother and even the paternity is not disputed therefore, in the absence of denial of existence of the marriage and non denial of paternity of the two minor children, the petitioner cannot shy away

from his statutory obligation of maintaining his legally wedded wife and his two minor children.

14. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds. Reliance is placed on the judgment of the Hon'ble Punjab and Haryana High Court in the case ***Dr. R.K. Sood vs. Usha Rani Sood; 1996 (3) 114 PLR 486*** and the relevant paragraph is reproduced as under:-

"17. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds."

15. In view of the aforesaid discussion, I find no infirmity in the impugned order dated 06.06.2015 passed by the Family Court. The revision petition filed by the petitioner is dismissed. However, this judgment shall not affect the merits of the case, as the determination

of the maintenance amount will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.

16. The present petition is disposed of in the above terms. The Trial Court is directed to dispose of the maintenance petition as soon as possible and preferably within a period of six months from the date of this judgment.
17. Copy of this judgment be sent to the concerned Court. No order as to costs.

MAY 12, 2017



I.S.MEHTA, J