

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

+ CRL.REV.P. 204/2015 & CRL.M.A.4961/2015, 4963/2015,
5608/2015, 9820/2015, 8145/2016, 12393/2016

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Reserved on: April 27, 2018

Date of decision: May 31, 2018

REEMA SALKAN

..... Petitioner

Through: Mr. R.P. Vats, Adv.

versus

SUMER SINGH SALKAN

..... Respondent

Through: Ms. Malvika Rajkotia, Ms. Arpita
Rai, and Ms. Akriti Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner- Reema Salkan under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. and Section 19 of the Family Court Act, 1984 against the impugned order dated 28.01.2015 passed by the learned Additional Principal Judge, Family Courts North, Rohini, Delhi in Petition No.363/14 Unique Case I.D. No.02404R101992003 titled as *Reema Salkan vs. Sumer Singh Salkan*.

2. It is alleged in the maintenance petition dated 16.07.2002 that the petitioner got married with respondent no.1 as per the Hindu rites and ceremonies on 24.03.2002 at Infantry Hostel, Delhi Cantonment, Delhi and the initial source of parties contact was on the basis of newspaper advertisement.
3. It is further alleged that at the time of *rukka* ceremonies it was disclosed that the respondent is the permanent resident of Canada and he would take the petitioner on 28.03.2002 to Canada on a tourist visa. The father of the respondent and his other family member assured the petitioner that they would arrange for the petitioner's visa and on 15.03.2002 the father of the respondent called the parents of the petitioner to Meerut and asked for Rs. 1 lakh (Rs.55,000/- for petitioner's return ticket to Canada and Rs. 45,000/- for her subsequent immigration to Canada). They also demanded Rs.1 lakh from the parents of the petitioner for household goods. Consequently, the parents of the petitioner gave Rs. 2 lakh to the respondent's family apart from other gifts.
4. The marriage of the petitioner and respondent no.1 was solemnized on 24.03.2002 at the Radisson Hotel in Delhi. The petitioner remained at Meerut U.P. from 25.06.2002 till 14.07.2002 after the marriage the respondent's sister and mother-in-law started taunting the petitioner for bringing insufficient dowry and the mother-in-law took all the cash and gift items. On 28.03.2002, the sister of the respondent took all the *stridhan* which was given on marriage and her mother-in-law took all jewellery items with her. On 28.03.2002, the respondent No.1 left the petitioner at the airport in Delhi, from where the brother and sister took her to parental home. On 12.06.2002, when the respondent submitted

petitioner's immigration application in Canada, the petitioner informed the father of the respondent and other family members about her desire to return to Meerut and they told her that they would pick her up from Delhi on 25.06.2002 and her mother-in-law asked her to bring \$500 along with her, which she told that the respondent had spent on lawyer in Canada for her immigration.

5. It is further stated that during the petitioner's visit to Meerut from 25.06.2002 till 14.07.2002, the behaviour of her mother-in-law was very abusive, quarrelsome and rude. She used to shout at the petitioner on trivial matters, and abused her and her parents, used to call them indecent and senseless. When the petitioner objected to use of abusive language by the mother-in-law and father-in-law, the sister-in-law caught hold of petitioner's hair and thrashed her. She kept instigating her mother to throw the petitioner out of the house and her mother-in-law often used to call the parents of petitioner 'Kangla', who did not even gift a car. The petitioner felt very lonely and scared in such a hostile atmosphere.
6. It is further stated that on 14.07.2002, the mother-in-law of the petitioner took all her remaining *stridhan sarees*, jewellery and cosmetics and threatened her not to demand the same in future or she would be thrown out of the house. On the occasion of 'Teej', the mother-in-law of the petitioner demanded cash to be brought by her from her parents for Lancer car and also ordered to get gold chains for the respondent and his father, a gold set for herself, which she told must be heavier than the previous one. She told the petitioner to go back to Delhi, stating that she was burden upon them and if she wanted to live in Meerut, she should get the money from her parents for her upkeep. They dropped the

petitioner at Rajghat in Delhi, from where the parents of the petitioner picked her up and took her home and then she called the respondent and told him about his parents to stop all this, but the respondent scolded her for speaking against his parents.

7. It is further stated that on 08.08.2002, the petitioner went to Meerut to celebrate *Teej* and when she requested her mother-in-law for some jewellery to wear at her nephew's function, she flatly refused. On 10.08.2002, the petitioner again asked her mother-in-law for the jewellery which she had taken from her for safe keeping, she shouted “ I will burn you alive by throwing kerosene oil on you if you open your mouth for the same. She said “ *car ke paise to laayee nahi, upar se zevar maang rahi hai*”. She shouted at the petitioner saying “you have dared to defy our demands, you are second hand for us now”. She said “I will not let you go to Canada until our demands are fulfilled”. The petitioner got mortally afraid by their behaviour and called up her sister and asked her to take her from there. Since then the petitioner is living with her parents.
8. It is further stated that on 19.09.2002, the respondent withdrew his sponsorship for the petitioner's immigration to Canada. The petitioner came to know about this forgery on the internet website of Canadian immigration Department on 24.09.2002 and she tried to contact the respondent, but all in vain.
9. It is further stated that its thereafter only that the petitioner has made a complaint before CAW cell (*Crime Against Women cell*) against the respondent and his family members and a case FIR No. 127/2003 at Police Station-Alipur under Sections 498A/406/34 IPC was got registered.

10. It is further stated that the petitioner is leading a very lonely and pitiable life and it is the respondent and his family who made her life miserable. Since the respondent has not made any arrangement for her maintenance, she is totally dependent upon the mercy of her parents. The petitioner does not know any skilled or specialized work to earn her livelihood and on the other hand respondent is leading a very luxurious and comfortable life and is well settled in Canada, is employed in Customer Care Division, (Sprint Canada) and getting a monthly salary equivalent to Indian Rupees of Three Lakh. Besides the salary, the respondent is also having a monthly income of Rs.50,000/- from the agriculture produce, as he is the owner of large land situated in Village Bafar, Pargana/Tehsil & Distt. Meerut, U.P., thus making Rs. 3.5 lakhs.
11. Furthermore, it is stated that the respondent is also maintaining various bank accounts, including the bank account number 9926 with Punjab National Bank jointly with his father and NRI account with State Bank of India, NRI division as well as with SBI Meerut Cantt. The respondent /husband is also having joint bank locker with PNB Meerut in his own name along with his mother. All the bank accounts and other properties of the respondent are being maintained and controlled by his father and therefore the father of the respondent is equally liable to pay maintenance to the petitioner.
12. Furthermore, it is stated that the respondent/husband, his mother and father own/possess and acquired huge assets and properties as below: -
- a) One bungalow no.12 Tilak Road Begum Bagh, Meerut UP, owned by the father of the respondent.

- b) One palatial house no.325 friend's colony, New Delhi in the name of the grandfather of the respondent.
 - c) One house built over plot no. 3604, DLF city phase IV, Gurgaon, measuring about approximately 350 sq. yards, at Gurgaon Haryana in the joint name of father and mother of the respondent.
 - d) One flat at Rajender Nagar, New Delhi in the name of mother of the respondent.
 - e) A well fertile agriculture land measuring 5.5 hectare in village Bafar Distt. Meerut UP., owned.
 - f) Agriculture land owned by the father of the respondent.
 - g) One Honda City car and Zen car.
 - h) Huge investments made in shares, securities, fixed deposits in various companies and banks.
 - i) It is stated that the respondent and his family members are income tax payees.
13. It is further stated that the respondent has no other liability except to maintain the petitioner which is his legal and moral duty. It is therefore prayed that the respondent be directed to pay a maintenance @ Rs. 2 lakhs per month to the petitioner.
14. Per contra, the respondent No.1 in its written statement on 20.04.2004 has taken the preliminary objections that the petitioner is guilty of abusing and misusing the institution of marriage. The respondent has visited India for a limited period of about four days in March 2002 and at that time, he was a bachelor, aged about 35 years. Since the parents of the respondent were extremely keen on his marriage, they had given an advertisement for that purpose in the press. At the relevant time the

respondent was employed in the company "Sprint Canada". The respondent wanted a good looking, English speaking educated girl who could take up employment in Canada but did not wish to marry a bespectacled girl. Pursuant to that advertisement, the petitioner and her parents visited the house of the respondent on 09.03.2002. She was not wearing spectacles at the relevant time and disclosed that she was proficient in spoken English and was a graduate from Miranda College and had concluded her Master Degree thereafter, and also claimed having obtained a Post Graduate Diploma in Mass Communication from New Delhi. She also assured the respondent that getting a job in Canada would be easy as she had already worked for "Living Media India Limited" from June 1999 to November 1999 as a Journalist and again with Bennett Coleman and Co., New Delhi, from December, 1999 to March, 2000 and her salary was Rs. 10,000/- per month. Thereafter, from April, 2000, she had started working as a freelance journalist in Delhi and was earning much more. She told the respondent that she would be able to get an employment as a journalist or as a teacher in Canada. Without making any further enquires with regard to antecedents of the petitioner and her family, the marriage was finalized and the marriage was a simple marriage neither dowry was demanded nor accepted.

15. It is further stated that the petitioner and the respondent spent the wedding night at Hotel Radisson, New Delhi. The respondent was extremely perplexed as the conduct of the petitioner was unbecoming of newly wedded wife. On reaching the hotel, she immediately removed her bridal dress and make up and changed into casual wear, took out a bottle of whisky and cigarette from her baggage and consumed both. The

respondent was taken aback at such conduct of the petitioner as he hailed from a family where the women folk did not drink or smoke. Furthermore, the marriage remained unconsummated till the respondent left for Canada as the petitioner lacked warmth, was cold and frigid and she desired that consummation of marriage could wait till she and respondent developed an emotional bonding.

16. It is further stated that in the morning, at breakfast the petitioner disclosed that she was allergic to many food items and was on lifelong medication, much to his surprise as he had not been informed about this fact prior to marriage. The petitioner was very casual about the same and retorted that allergies were not uncommon and therefore, were not worth mentioning. Thereafter, when the respondent escorted the petitioner where the reception had been organised by his parents, he got another surprise, he came to know that the respondent was using spectacles and therefore, felt cheated as he had desired a non-spectacled girl. She mentioned that socially, she always used contact lenses and she did not consider it worth mentioning.
17. It is further stated that at another social dinner, at the house of Sh. P.N. Banerjee, a close family friend of the respondent's parents, the petitioner remained aloof and did not interact much. She also retorted caustically that she would not change her name, after the marriage and would not adopt the surname of the respondent, leaving the respondent and others astounded, adding to respondent's miseries, as the respondent hailed from a family of well cultured people who had a strong aversion to deceit, of any kind.

18. It is further stated that the respondent was to leave for Canada in early hours of 29.03.2002 therefore, the petitioner and the respondent along with the parents of the respondent came to Delhi on 28.03.2002 and after having dinner at the house of a relative at Anand Niketan, New Delhi, all proceeded to the airport. The petitioner's brother, sister and sister-in-law also reached the airport directly. Before leaving Meerut, the petitioner had told the respondent that she would go to her parental home from the airport, and she had accordingly pre-arranged with her relatives to meet her at the airport and thus, after seeing him off, she went to her parental home.
19. It is further stated that the petitioner and the respondent remained in touch telephonically, but the fear and miseries of the respondent were compounded by the conduct of the petitioner as she started shouting at him and even banged the phone at times. She was not interested in respondent as she never asked about his health, his well being or his job etc. as a normal newly wedded wife would, but she was only interested as to the status of her immigration to Canada. Even though the respondent had second thoughts whether he should facilitate the immigration of the petitioner and he expressed his thoughts to his parents but his parents reprimanded, him to complete the formalities and accordingly concluded the sponsorship facilities to facilitate her immigration to Canada on 12.06.2002. At the end of July 2002, the respondent was informed that the papers had reached Delhi and the remaining formalities would be completed in the Canadian High Commission, New Delhi and the respondent informed the petitioner, accordingly.

20. It is further stated that in August, 2002 the petitioner told the respondent that she was extremely happy that she would be finally getting her immigration Visa to Canada which was her lifelong ambition as she had failed on two occasions earlier to get the said visa and that she was looking forward to meeting a friend in Detroit. On respondent's enquiry about the identity of the friend, the petitioner shouted that it was none of his business, totally shattering the respondent mentally. Since it had now become clear to him that this was only a marriage of convenience for the petitioner, she having married him only to obtain passage to Canada and not wanting his life to be made more miserable after petitioner arrival in Canada, he withdrew the sponsorship in September, 2002 by writing to the Canadian authorities to this effect.
21. It is further stated that the petitioner thereafter made a false complaint against the respondent, his parents and sister to the CAW cell, on the basis of which the FIR No. 127/2003, was registered under Sections 498A/406/34 IPC with P.S. Alipur.
22. It is further stated that the petitioner has got sufficient means to maintain herself and hence is not entitled to any maintenance from the respondent/husband. The petitioner has neglected the respondent/husband and has voluntarily left the matrimonial home on 10.08.2002, on her own wish, to be able to continue her vocation as a journalist. It was the petitioner who has deserted the respondent without any reasonable cause. Furthermore, the petitioner has falsely impleaded the father of the respondent as a party in the instant case, though she has withdrawn her claim against his father on 04.03.2004.

ON MERIT

23. The respondent on merits in his reply admitted the solemnization of marriage, but it was a simple marriage, without any dowry. The assertions regarding the respondent, being a permanent resident of Canada was admitted, but he denied that he had told the petitioner that he would take her to Canada on a tourist visa. It is stated that the grant of immigration Visa is the domain of the authorities and it is common knowledge that after marriage, the respondent was required to sponsor his spouse for grant of immigration, which takes its own time and tourist visa is neither granted nor converted to spouse visa.
24. It is further stated that the respondent/husband had told the petitioner and her parents that he is working with ' Sprint Canada' and his means were limited, as he being a new immigrant and Toronto being an expensive city, two people could not survive on a single income and this was the reason he preferred to marry a girl who would be able to work in Canada. The petitioner and her parents were also informed that it takes about eight months for the immigration visa to be granted by the Canadian authorities. All the remaining allegations made by the petitioner against the respondent, his parents and sister, were emphatically denied. It was denied that she was ever subjected to any cruelty with respect to demands of dowry or that her *stridhan* was ever taken away.
25. It is further stated that at the time of engagement ceremony on 23.03.2002 at Meerut, some gifts and cash of Rs. 1 lakh had been given by the father of the petitioner to the respondent, but the respondent asked the father of the petitioner to take back the said amount of Rs. 1 lakh, but

the petitioner's father insisted the respondent to keep it. Initially the said amount of Rs. 1 lakh was deposited by respondent's father into his joint account with the respondent bearing no. 9926 with Punjab National Bank, Meerut. Thereafter, a saving bank account bearing no.10814 was opened in the name of the petitioner with the same bank at Meerut, and the said amount of Rs. 1 lakh was transferred to her account on 28.06.2002.

26. It is further denied that the parents of the petitioner had spent a very huge amount in the marriage or had been given handsome dowry, though it is stated that, as per the customs, the petitioner was given certain gifts by the respondent and his family members. The father of the petitioner having retired as a professor, belongs to service class and thus arranged the marriage in the 'Infantry Hostel', Delhi Cantt., and hardly 100 persons from both the sides were present, while the parents of the respondent gave the reception at 'Wheelers Club' at Meerut, Cantt., on 25.03.2002. It further denied that the petitioner was ever abused either by the respondent or his family members or that she was ridiculed by the mother of the respondent and his sister on any occasion, whatsoever.
27. It is also denied that the respondent and his family members were well aware, prior to the marriage, the petitioner is the daughter of retired professor, had they ever been dowry oriented, the respondent would not have gone to marry the petitioner, knowing their financial status. The incident of wedding night in the Radisson Hotel, Delhi, was again reiterated. It is stated that the petitioner always made half-hearted gestures of touching the feet of the elderly ladies, as per the customs of the family of the respondent.

28. It is denied that on 28.03.2002 the sister of the respondent rebuked the petitioner and took away her *stridhan sarees* and that his mother took away her jewellery. It is stated that the mother of the respondent was having a joint bank locker with him in Punjab National Bank, Meerut, and on the request of the petitioner, some jewellery was kept in the said locker for safe keeping, which was taken out on 09.08.2002 by the petitioner, when she finally left the matrimonial home on 10.08.2002.
29. It is further stated that the petitioner did not allow the marriage to be consummated and her behaviour was cold and rigid, causing mental cruelty to the respondent. It is also stated that the petitioner applied for her passport from the address of the respondent and when the police came to the house of the respondent's parents, they called the petitioner to come to Meerut for police verification. She came to Meerut, in the first week of May, 2002 for police verification and got it done and thereafter, she immediately left along with her father for her parental home.
30. It is admitted, that in June 2002 when the respondent submitted her immigration application in Canada and she was communicated, the same, and she made known to the parents of the respondent about her desire to return to Meerut. It is also admitted that his parents told her that they would pick her up from her parental home but is denied that her mother asked her to bring \$500 along with her. However, the intention of petitioner was never to have a good marriage, but she only wanted to implicate the parents of the respondent in false case, and her only desire was to go to Canada. It is admitted that the petitioner visited Meerut from 25th June, 2002 till 14th July, 2002 but it is denied that she was ever ill-treated by his parents or that his mother ever shouted at her. In the mean

time Rs.1 lakh was transferred to her account from the joint account of respondent with his father. It is denied that the petitioner was ever maltreated by the parents of the respondent, in any manner. It was the petitioner's demand that she wanted to go to her parental home at Delhi, it is submitted that the parents of the petitioner dropped her at Rajghat from where the parents of the petitioner picked her up.

31. It is also stated that before leaving for Canada, the respondent gave Rs. 75,000/- in cash to the petitioner, which was borrowed from his father, the amount being given, so that the petitioner was able to pay up for her tickets etc., and other miscellaneous expenses. It is stated that after receipt of the sponsorship papers, the attitude of the petitioner completely changed, she became very bold and told the respondent tauntingly that she had married him only to go to Canada. She also misbehaved with parents of the respondent which made the respondent realize that she is not a normal woman. He told his parents that he was reaching to limit of his endurance, but his parents scolded him and made him understand to not take any drastic step. However, the behaviour and attitude of the petitioner turned very rude and cruel towards the parents of the respondent and having no other alternative, they disowned the respondent and also gave a public notice in the newspaper 'The Statesman', dated 25.10.2002 and this factum was brought to the knowledge of both, the petitioner and the respondent, telephonically, but they were greeted with abuses and threats at the hands of the petitioner.

32. The respondent's parents also sent a legal notice dated 20.12.2002 through their lawyer to the petitioner as well as the respondent, apprising them regarding their debarment. The petitioner gave a reply to the said

notice dated 08.01.2003 to which a counter reply was given by his parents dated 18.09.2003. The petitioner threatened the respondent as well as his parents that she would implicate them in false cases and in this scenario, the respondent withdrew his sponsorship for immigration of the petitioner to Canada on 19.09.2002 but he did not ever submit any letter in name of the petitioner in Canadian Embassy as alleged by her.

33. It is stated that the petitioner was given Rs.75,000/- at the time when he was leaving for Canada for her tickets and other expenses, while Rs.1 lakh was transferred in her bank account from the joint account of his father with him. The petitioner was also given Rs. 1.5 lakh through the court at the time of grant of anticipatory bail. Besides this, the petitioner has deposits, FDRs, interest income and other movable and immovable properties, though the same have not been disclosed to the court. It is denied that she does not have any independent source of income, but rather she had disclosed to his parents, that she was graduate and has done Masters in English from Miranda House and had also done a post graduate diploma in Journalism and Mass Communication from New Delhi and had worked with newspapers and magazines mentioned above and was getting a salary to the tune of Rs. 10,000/- per month. Thereafter, she started working as freelance journalist and was earning much more.

34. It is stated that the respondent/husband was working with Sprint Canada and his annual gross salary was Canadian \$39,491.26/- and after deductions \$10,184.63/- his net annual salary in \$ 29,306.59/- which comes to the net monthly income of \$2,442.22/-. It is stated that he has to pay \$900/- as rent, \$400/- towards food, \$50/- towards laundry, \$50.58/-

towards cable TV, \$35/- towards gym, \$200/- towards miscellaneous expenses, \$400/- transportation, \$250/- for pre-paid telephone. However his net annual salary increased during 2010 to Canadian \$35,337.63 as per his pay slips and T-4 forms.

35. It is further stated that the respondent has no other source of income neither in Canada nor in India or any investment, deposits and agricultural land. The copy of the rent agreement has also been placed on record. It is also stated that the respondent is leading a very stressful life. He is living in one room apartment, having a kitchen and a bathroom and he cannot afford to buy and maintain a car, so he commutes by bus, cabs and metros. It is denied that he is leading a luxurious life. It is stated that he does not have any income of Rs. 50,000/- from agriculture land though it is admitted that he is the owner of some land at village Bafar, UP., but the said land is in dispute and the litigation is pending in the court of Sh. Chet Ram, Magistrate, Railway Road, Meerut, as the father of the respondent claimed to have inherited the said land and had thereafter filed the said case. It is stated that the respondent is having only one bank account bearing no. 9926 with PNB Meerut which was earlier a joint account with his father, but after severing all his relations with the respondent, his father had withdrawn his name from the said account. The other properties mentioned were all belonging to his parents and he has no interest at all in those properties. It is stated that he has been falsely implicated in all cases and that the instant petition is an abuse of the process of law. It is stated that the petitioner is well able to maintain herself and that the petition be dismissed with heavy costs.

36. The petitioner has filed rejoinder to its petition and denied the allegation made against the petitioner and reaffirmed the contents of the petition. The reply was filed by the respondent and the petitioner has denied the averment and allegation made in the preliminary objection of the reply and reaffirmed the contents of the petition.
37. During the pendency of the petition the efforts for reconciliation between the parties failed.
38. The petitioner was granted Rs.25,000/- as interim maintenance vide order dated 14.10.2004 from the date of filing of the petition till the further orders and the same was challenged by the respondent and the said order was modified by the learned ASJ, Delhi on 25.04.2005 into Rs.10,000/- per month as interim maintenance to the petitioner till further orders or till the disposal of the petition.
39. Subsequently, the respondent was proceeded *ex-parte* and the petition was disposed of by the learned Metropolitan Magistrate vide order dated 29.09.2007 directing the respondent to pay Rs.25,000/- to the petitioner.
40. The petitioner not being satisfied with the interim maintenance of Rs. 25,000/- per month, the petitioner preferred revision petition seeking enhancement of said amount which was rejected by the learned ASJ vide order dated 18.10.2009. The respondent also moved a petition before the same ASJ seeking setting aside of the *ex-parte* judgment dated 29.09.2007. The learned ASJ vide order dated 18.10.2009 dismissed the said petition, consequently, the respondent approached this Court for setting aside of the said *ex-parte* order and this Court ultimately remanded back the case vide order dated 22.11.2010 directing the respondent to lead evidence without delay and a sum of Rs.10 lakhs to be

deposited with the Court reduced the maintenance to Rs.10,000/- per month.

41. After passing of the said order the parties appeared before the court, but the petitioner stated that only the respondent has been allowed to lead evidence and did not allow herself to be cross-examined. Ultimately, clarifications were again sought from this Court and eventually vide order dated 28.02.2012 the order dated 22.11.2010 was set aside by the division bench and the respondent was directed to pay the interim maintenance to the petitioner till the disposal of the petition, failing which his right of defence would be struck off.
42. Subsequently thereafter, in another petition, preferred by the petitioner before the Hon'ble Supreme Court of India vide Crl. Appeal No.2347-2349 of 2014, the Hon'ble Supreme Court vide order dated 28.10.2014, ordered the release of 50% of the amount, which had since been deposited by the respondent, in this Court, in favour of the petitioner and also directed the trial Family Court to dispose of the petition within three months of passing of the said order.
43. The parties led their evidences in respect of their stand taken in the petition as well as reply and the Court below passed the impugned order dated 28.01.2015.
44. Aggrieved from the said impugned order dated 28.01.2015 the petitioner preferred the instant revision petition.
Hence, the present petition.

45. The learned counsel for the respondent has submitted that while determining the maintenance petition under Section 125 Cr.P.C. the

determining Court has to determine, legally, whether the petitioner who is coming to the Court is unable to maintain herself. She further submits that it may be possible that the petitioner wife may choose to take such plea to harass the husband for the litigation purpose only, whereas, factually, she is able to maintain herself and if at all she takes such plea she should not be permitted to take such plea for misusing the judicial process for their ulterior motives *qua* each other.

46. The learned counsel on behalf of the respondent/ husband has submitted that instant, is, a, revision and in the instant petition, the evidence shall not be re-appreciated, only, jurisdictional error, error of law has to be looked into or error on facts.
47. The learned counsel has further submitted that para 6 of the impugned order shows that after the marriage the husband left for Canada on 28.03.2002 and thereafter petitioner/wife was supposed to live at Meerut house with her in-laws however, she chose to stay with her parents till 25.06.2002, i.e. from 25.06.2002 to 14.07.2002 she lived with her in-laws.
48. The learned counsel on behalf of the respondent has submitted while going through pleadings, the allegation, put *qua* the present respondent is not in the form of asking for maintenance rather it forms a smell of Section 498A and Section 406 IPC. This *ipso facto* clarifies that the petitioners does not seems to ask for the maintenance to maintain herself but she has made it vindictive in the form of maintenance petition.
49. The learned counsel of the respondent has submitted that in the petition under Section 125 Cr.P.C. the petitioner/wife does not claim maintenance as she is unable to maintain herself and there are no such meaningful

averments referring to the same.

50. The learned counsel for the respondent has submitted that at the threshold, the petitioner must disclose in her petition that she is unable to maintain herself. She has further submitted that the petitioner has to prove/burden lies on her to prove that she is unable to maintain herself and only then the quantum can be decided. She further submitted that at the threshold it was not decided and during the trial too she has not established that she is unable to maintain herself and because of this reason her petition was dismissed. She further submitted that the entire evidence on record only shows that the petitioner is vindictive *qua* the respondent and because of this reason and ulterior motive she is filing the present petition *qua* the respondent herein and factually it is not a case of her being unable to maintain herself or for her needs but it is the vindictiveness to harass the respondent and by way of this petition she is continuing for the same course and the law in the case of ***Chaturbhuj v. Sita Bai*, AIR 2008 SC 530** by the Apex Court clearly says that these proceedings are not punitive for perceived neglect as perceived by the wife and it is the vindictiveness of the petitioner which resulted in filing the present petition and her conduct during the trial established her lack of bona fides and hence the petition was dismissed. The impugned judgment is dated 28.01.2015. Learned counsel for the respondent has further submitted that the marriage factually lasted only for four days. She further submitted that till date the petitioner has not filed the divorce petition which is *ipso facto* suggesting that it is nothing but the vindictiveness of the petitioner towards the respondent/husband. She further submitted that as on 09.02.2011 the petitioner was a practicing

lawyer in Delhi High Court and the petitioner after obtaining interim order, evaded to cross-examine herself and because of this reason the learned ADJ Ms. Poonam A. Bamba vide order dated 22.11.2011 dismissed her petition. The said order was challenged by the petitioner before this Court and this Court has specifically directed the petitioner to remain present herself for cross-examination and amount of Rs.10,000/- was restored and directed her to be present before the Trial Court to submit herself for cross-examination and finally the cross-examination was concluded on 01.12.2014. She has further submitted that due to vindictiveness of the petitioner, the respondent/husband lost the job at Canada because she has obtained a Red Corner Notice against him and Google check of the respondent indicated issuance of red corner notice against the respondent because of which he lost the job and could not get another job. She further submitted that Hon'ble Mr.Justice S.N.Dhingra quashed the red corner notice on 11.08.2010 and made observations about the vindictive litigation strategy of the petitioner because her brother was a police officer of the Andhra Pradesh Cadre and the said order/observation of Justice S.N. Dhingra was never challenged by the petitioner.

51. The learned counsel for the respondent has submitted that it was the petitioner who withdrew her application for immigration to Canada on 12.09.2002 and 19.09.2002. This withdrawal of her application for immigration to Canada from Canadian authorities *ipso facto* proves that it was the petitioner who deserted the respondent and not the respondent who deserted the petitioner. She has further submitted that after December, 2010, it is because of fault on the part of the petitioner that

the employment of the respondent was lost and thereafter respondent is neither gainfully employed nor having any source of income, therefore, the petitioner by her own act and conduct is not entitled for the maintenance. Counsel for the respondent further submitted that the respondent right now is in India without having any job. The learned counsel for the respondent heavily relied upon the judgment of this Court in the **Sumer Singh Salkan v. Asst. Directors and Ors.** of HMJ Shiv Narayan Dhingra and the second judgment of the Apex Court in the **Chaturbhuj v. Sita Rai**, AIR 2008 SC 530.

52. The learned counsel for the respondent has further relied upon the judgment of the Apex Court in the case of **Gandhe Vijay Kumar vs. Munjhi @ Mulchand**, (2017 SCC OnLine SC 841) decided on 27.07.2017. She further submitted that while exercising the Revisional jurisdiction, only the perversity point is to be seen in the revision petition. She has further submitted that the Court below determined the maintenance in two parts i.e. when the respondent was in service and subsequently when the respondent lost his job having no means. The counsel on behalf of the respondent has specifically pointed out that the Court below has given a finding that it is the petitioner who refused to join the matrimonial home in Canada and thus Section 125 (4) Cr.P.C., 1973 applies and both the parties are living separately with consent as the respondent is not joining the respondent at Canada and therefore, she is not entitled for any maintenance.
53. The learned counsel on behalf of the respondent has submitted that while the proceedings were going on before this Court, the petitioner has made

several scandalous allegations against the respondent including money laundering which would show the conduct and reinforce the respondent's conduct and the petitioner's conduct. The learned counsel for the respondent has submitted that the order of the Trial Court has already been complied with and submitted that all the scandalous allegations filed by the petitioner be withdrawn. The learned counsel for the respondent has submitted that it is the petitioner who is choosing not to empower herself despite her fine qualifications and competence. It is just harassment to the husband and nothing else. The learned counsel for the respondent has further submitted that the petitioner is working. The learned counsel for the respondent in support of her arguments has relied upon the following judgments:

(i) *Chaturbhuj v. Sitabai* [AIR 2008 SC 530]

(ii) *Sumer Singh Salkan v. Asst. Director and Ors.* [W.P(Crl.) No. 1315/2008]

(iii) *Rupali Gupta v. Rajat Gupta* [234 (2016) DLT 693]

(iv) *Nagendra Appa v. Neelamma* [AIR 2013 SC 1541]

(v) *Sanjay Bhardwaj v. State* [171 (2010) DLT 644]

(vi) *Damanreet v. Indermeet* [2013 (1) JCC 306]

(vii) *Mamta Jaiswal v. Rajesh Jaiswal* [2000 (3) MPLJ 100]

(viii) *Gandhe Vijay Kumar v. Mulji @ Mulchand* [Civil Appeal No. 1384 of 2011]

54. Per Contra, the learned counsel for the petitioner has submitted that the respondent is a permanent resident of Canada and got married with the petitioner on 24.03.2002 as per the Hindu rites and ceremonies at

Infantry Hostel and the said marriage was consummated on the wedding night at Radisson Hotel Delhi. The learned counsel for the petitioner has further submitted that petitioner is wife of the respondent No.1.

55. The learned counsel for the petitioner has further submitted that the petitioner is a legally wedded wife of respondent No.1

56. The learned counsel for the petitioner has further submitted that the petitioner's parents spent huge amount on the marriage of the petitioner and the respondent. The family members of the respondent assured at the time of marriage that the petitioner would be taken to Canada as the respondent is permanent resident of Canada.

57. The learned counsel for the petitioner has further submitted that at the time of marriage the respondent's father took Rs. 2 lakhs and other amount given in the said marriage. Later the respondent's father, mother and sister have kept all the jewellery and other gifts items with them which was given by the parents of the petitioner and threw her out from the matrimonial house in Meerut, UP, without any support and money and the petitioner having no source of income is residing at her paternal house and petitioner is unable to maintain herself whereas the respondent is leading luxurious life and having many sources of income.

58. The learned counsel for the petitioner has further submitted that the respondent earns about Rs. 3 Lakh per month as salary and Rs. 50,000 per month from Agriculture produce and leading a luxurious life and prays that the petitioner be granted maintenance as per the standard she would have maintained while staying in the matrimonial home and the same status of the petitioner as that of the husband and prays that the

petitioner be granted Rs.2 lakhs per month as maintenance amount from the respondent.

59. The learned counsel for the petitioner has further submitted that the Court below went wrong while passing the impugned order on facts and law.

60. The learned counsel on behalf of the petitioner has submitted that the Court below finally awarded the maintenance under Section 125 Cr.P.C, 1973 vide order dated 28.01.2015. He has submitted that the Court below went wrong in law and on facts while holding that the respondent is unemployed subsequently w.e.f. 08.12.2010. He has further submitted that under the law u/s. 125 Cr.P.C., 1973 the petitioner is entitled for the maintenance as wife and the respondent being a husband is legally bound to maintain the wife. The counsel for the petitioner in support of his arguments has relied upon the following judgments:

(i) *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705

(ii) *Sunita Kachwaha v. Anil Kachwaha* [AIR 2015 SC 554]

(iii) *Bhuvan Mohan Singh v. Meena & Ors.* [2014 Law Suit (SC) 551]

(iv) *Chaturbhuji v. Sitabai* [AIR 2008 SC 530]

(v) *Minakshi Gaur v. Chitranjan Gaur* [AIR 2009 SC 1377]

(vi) *Ashwani Mehta v. Vibha Mehta* [2012 (187) DLT 348] Delhi DB

(vii) *Aneeta Joshi v. Subhash Joshi* [2006 (4) MPLJ 336]

(viii) *Tejaswini v. Aravinda Tejas Chandra* [2009 (6) KarLJ 643]

(ix) *Vimal v. Sukumar Anna Patil* [1981 CrLJ 210 (Bombay)]

(x) *Shail Kumari v. Krishan Bhagwan Pathak* [(2008) 9 SCC-Civil Appeal 4666/2008]

- (xi)Annurita Vohra v. Sandeep Vohra* [110 (2004) DLT 546] Delhi**
- (xii)Shivangi Kriti v. Yogesh Singh* [2007 (98) DRJ 598] Delhi**
- (xiii)Sudhir Diwan v. Tripta Diwan* [147 (2008) DLT 756] Delhi**
- (xiv)Bharat Hegde v. Saroj Hegde* [AIR 2007 Del 197]**
- (xv)Bipinchandra Jaisinghbhai v. Prabhavati* [AIR 1957 SC 176]**
- (xvi)Lachman Utamchand Kirpalani v. Meena* [AIR 1964 SC 40]**
- (xvii)Puneet Kaur Vs. Inderjit Sawhney* [2011 183 DLT 403]**
- (xviii)Kusum Sharma Vs. Mahinder Kumar Sharma* [2015 (217) DLT 706]**
- (xix)Laxmi Bai Patel Vs. Shyam Kumar Patel* [JT 2002 (3) SC 409]**

61. As per the *Webster's Third New International Dictionary*, Volume II, the term '*maintenance*' means the act of providing means of support for someone, the provisions supplies, or funds needed to live on.

In *Words and Phrases*, Volume 26, the term '*maintenance*' means sustenance, support by means of supplies of food, clothing and other conveniences.

62. The doctrine of maintenance which was in the form of Common Law Doctrine in England, later, after Queen's Proclamation in 1958, the British left alone the personal laws of the communities i.e. marriage, divorce, property, succession, guardianship and rights of the women except for reform initiated from the communities within. To give a dignified life to destitute wife and children equivalent to that of the husband and father, the British introduced a provision under the Criminal

Procedure Code, 1898. Subsequently, it was felt that the parents too are required to be included in the said welfare scheme and the same has been incorporated under Section 125 Cr.P.C. in Chapter IX of the Code of Criminal Procedure, 1973.

63. The scheme of maintenance under the Criminal Procedure Code, 1973 is to prevent vagrancy and to provide to the neglected wife, children and parents a cheap and speedy remedy. This remedy is irrespective of other remedies of such neglected wife, children and parents under any other statutes such as Section 20 of the Hindu Adoption & Maintenance Act, 1956, Sec. 20 (d) of the Protection of Women from Domestic Violence Act, 2005 and any other statute. Subject to the outcome of ultimate determination by the Civil Court to which the parties belong i.e. the personal law or any other law in existence applies on their rights and status.
64. Sections 125 - 128 of Cr.P.C., 1973 constitute a complete Code in itself and provide summary procedure and remedy for granting relief to the destitute wife, minor children and parents.
65. Perusal of the record shows that the petition under Section 125 Cr.P.C., 1973 qua the respondent No.1 along with father of the respondent Narendra Singh Salkan respondent No.2 was filed on 16.07.2003 and notices were issued to the respondents. Later on, the petitioner withdrew her claim qua the respondent No.2 i.e. Sh. Narendra Singh Salkan vide her statement made on oath before the learned Metropolitan Magistrate on 04.03.2004. Thereafter the respondent No.1 arrayed as respondent (*hereinafter referred to as the respondent*). The respondent despite

service of notice, he refused to appear before the Court below and proceeded with the ex-parte on 05.03.2004. The relevant paragraph of the said order is reproduced hereunder for ready reference:

"05.03.04

*As per the report of **Overnite Express Ltd.** which is as recognized by Hon'ble High Court of Delhi, respondent is duly served and in spite of service, he has refused the service from the Court. In these circumstances, as respondent has failed to appear on all the dates of hearing, at this stage at 3:20 pm, Respondent is proceeded ex-parte.*

Put up for Ex-parte Arguments on Interim maintenance for 18/03/2004."

66. The respondent marks his appearance through counsel and reply to the application was filed on 05.05.2004 and rejoinder to the reply was filed on 28.05.2004.
67. On the basis of the pleadings an interim maintenance order was passed on 14.10.2014 by the learned Metropolitan Magistrate. The respondent again thereafter chose to proceed with the ex-parte on 18.02.2005. The respondent thereafter intended to join the process by setting aside of ex-parte order. Thereafter, the respondent moved application for setting aside the order and the petitioner has filed affidavit in support of evidence and the matter was fixed for setting aside ex-parte on 19.07.2005.
68. The statement of the petitioner in the instant petition is recorded on 19.07.2005 and thereafter the respondent failed to cross-examine on the subsequent dates. The case was adjourned for 5 times and on the sixth time the witness was discharged by the Court below on 27.10.2005. The

relevant paragraph of the said order is reproduced hereunder for ready reference:

" 27.10.2005

Present: Petitioner with counsel.

Proxy counsel Sh. Praveen Kumar for respondent.

Pass over sought.

Be awaited.

File taken up again at 1:05 p.m.

Present: Petitioner with counsel.

Proxy counsel Sh. Puneet Maheshwari for a respondent, proxy for Sh. Anand Maheshwari.

Counsel Sh. Maheshwari states that main counsel is not available and is likely to come at 2.00 p.m.

Having heard to the fact that petitioner is present since morning and has been waiting for counsel and despite seeking pass over, counsel is not available.

No ground is disclosed for making the witness waiting for counsel. Hence, witness discharged after cross examination being NIL, opportunity given.

Respondent is Ex-Parte.

List for EFA on 16.12.05.

M.M.DELHI

27.10.2005"

69. The matter was subsequently decided by the learned Metropolitan Magistrate, Rohini Delhi vide order dated 29.09.2007. Thereafter, there was no occasion for the petitioner to make her available for her cross-examination. The aforesaid order sheet indicates the petitioner who came forward to take shelter of beneficial welfare legislation was put to face hard process of legal tactics of the respondent.

70. The whole question hinges around whether the petitioner is entitled for maintenance from her husband?

The answer is YES.

71. The petitioner who is alleged to have been married with Sumer Singh Salkan on 24.03.2002 at Infantry Hostel, Delhi Cantonment, Delhi as per the Hindu rites and rituals and has filed her maintenance petition under Section 125 Cr.P.C., and in support of the aforesaid petition the petitioner has tendered her evidence in the affidavit i.e. Ex.PW1/A and placed reliance upon the certified copies of her degree i.e. Ex.PW1/1 to PW1/3, the marriage registration certificate dated 26.03.2002 i.e. Ex.PW1/4, the marriage photograph as Ex.PW1/5(colly) and the matrimonial advertisement in the newspaper is Ex.PW1/6.

72. At the relevant time of marriage, the petitioner's as well as the respondent's educational qualification are as follows:

- (i) As per admission of the petitioner at the time of marriage she was M.A in English, had a post-graduate diploma in journalism and mass communication.
- (ii) Per contra, the respondent Sumer Singh Salkan as per his admission in cross-examination he is B.Com, M.A (Eco.) and MBA from Kentucky university, USA and working in Canada as Canadian citizen and claim to be from the respectable family as his grandfather was a brigadier in Indian Army and his father was a tea planter in Assam over three decades and he has been brought

up in a good culture which is reproduced as under:

"The respondent comes from an extremely respectable family. His grandfather was Brigadier in Army Medical Core of the Indian Army. His father has been a tea planter in Assam for over three decades on the maternal side, the respondent's maternal grandfather was a General in Indian Army; the parents of the respondent are educated and reside in the society."

73. Before the respondent left for Canada, the petitioner and the respondent lived together in peace, which is reproduced as under:

"After having dinner at the house of the relative at Anand Nitken, New Delhi all proceeded to Airport. The petitioner's brother, sister and sister in law reached Airport directly. Before living Meerut, the petitioner told the respondent she would go to her parental home from the airport and she accordingly had pre-arranged with her relatives to meet her at the airport. The petitioner went to her parents' home in the company of her brother, sister in law and sister."

74. The petitioner after the marriage lived at the matrimonial home at Meerut from 25.03.2002 along with respondent husband, his parents and other family members. The Respondent who is a Canadian Citizen left for Canada on 28.03.2002 and the petitioner was supposed to join respondent in Canada after due formality having been completed by the respondent and the petitioner was kept with petitioner's parents on 28.03.2002. Leaving behind apart, the allegation of the petitioner having been maltreated, subsequently, between the period 25th June, 2002 to 14th July 2002.

75. The petitioner was left at mercy of her parents who were not legally

bound to maintain their daughter after the marriage. The petitioner realizing this fact asked for maintenance from her husband, the respondent husband instead of coming forward to provide the minimum sustenance to strengthen their relationship of husband and wife chose not to come back in India till 27.01.2011 in present proceedings, however, he has been participating in the maintenance petition since 18.03.2004 onwards. Non-providing of sustenance amount for the period of more than seven years *ipso facto* indicates the negligence on the part of the respondent as the respondent husband chooses to contest the maintenance petition under the garb of fraud played on him by the petitioner rather than coming forward to pay some amount as sustenance.

76. The onus lies on the respondent to prove that the petitioner committed fraud, in the instant case, it is admitted case of the respondent that marriage solemnized on 24.03.2002 at Delhi and thereafter the petitioner and the respondent lived together as husband and wife at Meerut, U.P., from 25.03.2002 to 28.03.2002 peacefully and the respondent left for Canada on 28.03.2002. The allegation of fraud played upon respondent is nothing but an after-thought story to counter the present maintenance petition.

77. So far dispute in the instant case remains, which pertains to petitioner joining the matrimonial home in Canada on completing the required formalities by the respondent. The respondent in paragraph one of preliminary objections has admitted that after his giving thoughtful consideration he himself has written to immigration office at Canada in September 2002 that he does not wish to facilitate an immigration of petitioner which is reproduced as under:

"After having given careful thought to the future of marriage with the petitioner the respondent in September 2002 wrote to the immigration office at Canada withdrawing himself as a Sponsor and indicating to the Immigrating authorities that he did not want to facilitate and immigration Visa for the petitioner."

78. The plea of the respondent that the petitioner wife is highly educated and intentionally she does not want to work is without proof and substance.

The respondent who is claiming himself to be unemployed and refusing to maintain the wife in one breath has got no right on another breath to say that she is highly qualified and she is intentionally not getting employed. The judgment relied upon by the counsel for the respondent i.e. **Rupali Gupta v. Rajat Gupta, 234 (2016) DLT 693** does not factually applies to the present petition as the present petition is filed under Section 125 Cr.P.C., 1973 and not under Section 24, Hindu Marriage Act, 1955.

79. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

80. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as she does not know any skill

and specialised work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not pleads that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in **Chander Prakash v. Shrimati Shila Rani**, AIR 1968 Del 174 by this Court is relevant and reproduced as under:

"7.....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 position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

82. The husband being an able-bodied person is duty bound to maintain his

wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in **Bhuwan Mohan Singh v. Meena**, AIR 2014 SC 2875, is relevant: -

*"3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. **The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband.** That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. **Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.**"*

(emphasis applied)

83. The respondent's mere plea that he does not possess any source of income *ipso facto* does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification.

84. So far, the quantum of maintenance is concerned nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however the husband is legally bound to maintain his wife as per the status of a respectable family to which he belongs. The husband being able-bodied along with high qualification B.Com, M.A.(Eco) and MBA from Kentucky University, USA could earn at least minimum of Rs. 18,332/- as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs. 9,000/- per month from 09.12.2010 onwards till further orders.

85. Consequently, the impugned order dated 28.01.2015 is set-aside to the extent of non granting the maintenance in favour of the petitioner /wife from 09.12.2010 onwards. However, the impugned maintenance in favour of the petitioner/wife till 08.12.2010 at the rate of Rs. 10,000/- per month is upheld. The respondent is directed to pay maintenance amount of Rs.9,000/- per month from 09.12.2010 onwards. Hence, the present revision petition is allowed. The arguments of the learned counsel for the respondent and the judgments relied upon by the respondent are of no help.

86. The present petition is allowed and disposed of in the above terms.

87. Let one copy of this judgment be sent to the concerned Court(s). TCR be sent back.

88. All the pending application(s) if any are disposed of accordingly. No order as to costs.

I.S.MEHTA, J.

MAY 31, 2018

