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

% *Date of Judgment: 10th January, 2019*

+ **MAT.APP.(F.C.) 64/2018**

RAJPAL SINGH Appellant

Through: Mr. Vinod Malhotra, Adv.

versus

AVLEEN KAUR @ NEETU Respondent

Through: Mr. Atul Kharbanda, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 22.01.2018 passed by the Family Court on an application filed by the appellant/husband seeking modification of the order dated 23.08.2016 which has been passed on an application filed by respondent/wife under Section 24 of the Hindu Marriage Act seeking interim maintenance for herself and her minor son who was 8 years of age at the relevant time. The Family Court upon hearing counsels for the parties had awarded a consolidated maintenance of Rs.25,000/- per month for the minor son and Rs.25,000/- per month for the wife/respondent.
2. The aforesaid order was assailed by the appellant herein by filing the MAT APP. (F.C.) No. 108/2017 which was disposed of by an order dated 24.07.2017 while granting leave to the appellant/husband to withdraw the appeal and seek modification of the order dated 23.08.2016.

3. The Family Court in the application seeking modification has reduced the maintenance of the respondent/wife from Rs.25,000/- to Rs.20,000/- per month while maintaining the maintenance awarded to the son.
4. Some necessary facts which are required to be noticed for disposal of this appeal are that the marriage between the parties was solemnized on 26.03.2000 at New Delhi as per Sikh rites. Out of their wedlock a son was born on 29.08.2003. Thereafter, the parties on account of a marital discord started residing separately.
5. We may note that the petition for grant of divorce by mutual consent was filed but the same was subsequently withdrawn. The minor son has been residing with the respondent/mother for the last 8 years. The modification of the order dated 23.08.2016 was sought on the ground that the respondent/wife had concealed her true income and withheld material facts from the Court. It was contended based on the photographs placed on record that the respondent/wife was gainfully employed with a Banquet Hall and she was earning a large salary which had been concealed. In response to the allegations so made, the respondent/wife had fairly agreed that she was working in the Banquet Hall which was owned by her first cousin, namely Sh. Gurmeet Singh. It was explained that on account of her being depressed, her cousin had offered and allowed her to spend time at the Banquet hall, which she started from 01.03.2017, but without any remuneration. The owner of the Banquet Hall was also called upon to place documents on record with respect to the persons employed, the Family Court took into account that the average salary of the employees was around

Rs.13,600/- to Rs. 16,500/-. Based on the average salary being paid to other employees at the Banquet Hall, the Family Court had reduced the maintenance granted to the respondent/wife from Rs.25,000/- to Rs.20,000/- per month.

6. Mr. Vinod Malhotra, learned counsel appearing for the appellant/husband has strongly urged before this Court that the respondent/wife has been gainfully employed as a teacher. She is well qualified and has a degree of B.A. and B.Ed. She is capable of working and thus she is not entitled for any maintenance from her husband. It is further contended that there is nothing on record to show that the respondent/wife had made any attempt to secure an employment but was not able to secure it. It is also contended that the income tax returns filed by the appellant/husband have been ignored by the Family Court and his income has been assessed at Rs.12 lakhs instead of Rs.3 lakhs, which is evident from the income tax returns relied upon the appellant/husband.
7. Reliance has been placed on the judgment in the case of ***Rupali Gupta vs. Rajat Gupta*** reported at ***2016 SCC OnLine Del5009***. The paragraphs No. 11 and 13 have been relied upon to buttress the arguments so raised by him, which are reproduced as under:

“11. In context of award of interim maintenance under Section 24 of the Hindu Marriage Act to a well qualified spouse having the earning capacity but desirous of remaining idle has been deprecated in the decision reported as 2000(3) MPLJ 100 Smt. Mamta Jaiswal Vs. Rajesh Jaiswal observing as under:-

“6. in view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has

capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente life alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente life alimony. The law does not expect the increasing number of such idle person who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendent lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice-versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be tendency growing amongst such litigation to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of

litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be the aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.”

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13. The Supreme Court in the case reported as (2000) 4 SCC 266 *Padmja Sharma Vs. Ratan Lal Sharma* has dealt with the issue of maintenance and obligation of the mother having the earning capacity to maintain the children. The relevant discussion appears in para No.10 which is extracted hereunder:-

“10. Maintenance has not been defined in the act or between the parents whose duty it is to maintain the children. Hindu Marriage Act, 1955, Hindu Minority and Guardianship Act, 1956, Hindu Adoptions and Maintenance Act, 1956 and Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Acts are to be read in conjunction with one another and interpreted accordingly. We can, therefore go to Hindu Adoptions and Maintenance Act 1956 (for short the ‘Maintenance Act’) to understand the meaning of the ‘maintenance’. In Clause (b) of Section 3 of this Act “maintenance includes (i) in all cases, provisions for food, clothing residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage.” and under Clause (c) “minor means a person who has not completed his or her age of eighteen years.” Under Section 18 of Maintenance Act a Hindu wife shall be entitled to be

maintained by her husband during her life time. This is of course subject to certain conditions with which we are not concerned. Section 20 provides for maintenance of children and aged parents. Under this Section a Hindu is bound, during his or her life time to maintain his or her children. A minor child so long as he is minor can claim maintenance from his or her father or mother. Section 20 is, therefore, to be contrasted with Section 18. Under this Section it is as much the obligation of the father to maintain a minor child as that of the mother. It is not the law that how affluent mother may be it is the obligation only of the father to maintain the minor.”

8. It has also been highlighted before us that it is not believable that the respondent/wife would work *pro bono* with her cousin brother at the Banquet Hall.
9. *Per contra*, learned counsel for the respondent/wife has opposed this appeal. It is contended that the appellant/husband is a man of means. He is a rich business man dealing in tyres and other motor parts and his minimum income would not be less than Rs. 5 lakhs per month, which is mostly received in cash and thus the copies of income tax returns filed by him cannot be relied upon to assess his true income.
10. It is also contended by the counsel for the respondent/wife that the findings of the Family Court in the order dated 23.08.2016 have attained finality, wherein the Family Court has taken into consideration the income affidavit and the expenditure of the appellant herein. Learned counsel has drawn the attention of the Court to Pages 45 and 46 of the said order, which we reproduce below, to submit that it is not acceptable that a person with an income of Rs.25,000/- would pay rent of Rs.15,000/-, Rs.6,000/- towards servants and would be left only with Rs.4,000/- for his existence:

“At the outset it may be pointed out that allegations and the counter allegations made by the parties on the conduct of the each other cannot be looked into at this stage as the same are question of fact and are required to be proved. The fact of the matter is that marriage is admitted and the issue born from the wedlock is also admitted who is in the custody of the applicant/respondent. At the time of settlement for mutual divorce the petitioner/non-applicant stated that he will pay Rs. 15,000/- towards the maintenance of the respondent and the child till the time the respondent settles her life.

From the pleadings and available documents on record, it is discernible that the non-applicant/petitioner is from a well off family and he has concealed his real income and the particulars furnished by him in his reply and affidavit in terms of Puneet Kaur Judgment appears to be not true. There are entries from the outstation customers showing the payments made in the account of the applicant/wife and it seems that it was the non-applicant who was handling the business and to evade the income tax he had opened an account for the business transaction in the name of the applicant herein. If Rs.25000/- is admitted as income of the petitioner and if he pays Rs. 15000/- as rent, Rs. 6000/- towards servants so it is beyond imagination that with Rs. 4000/- left the petitioner would be able to pull on.

As per his own admission in the affidavit filed in terms of Puneet Kaur’s judgment the petitioner is also maintaining two bank accounts i.e. saving account in AXIS Bank, Punjabi Bagh and joint account with respondent in Syndicate Bank being operated by the respondent. The bank account of the petitioner /non-applicant shows large bank transactions. Even in the joint bank account of the applicant there are huge money transactions by the non-applicant which shows that the non-applicant was doing a fabulous business. Moreover, the petitioner admits paying LIC policies of Rs. 1 Lac so the petitioner’s projection of his income as Rs. 25000/- PM is beyond comprehension and appears to be an incorrect projection.”

11. It has also been submitted that the two banks accounts of the appellant/husband show huge money transactions. Additionally, it is

contended that a person, who is left with a balance of Rs.4,000/- per month cannot dream of securing LIC policy of Rs.1 lakh.

12. We have heard learned counsels for the parties and carefully examined the record.
13. It is often seen that the spouses do not reflect their true and correct income making the task of the Family Court difficult to assess the true and correct income of the spouses. The Family Court has to rely upon guess work to assess the income of the spouses. (*See: Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.*, reported at (1997) 7 SCC 7.
14. By an order dated 23.08.2016, the Family Court has awarded maintenance in the sum of Rs.25,000/- per month for the minor son and Rs. 25,000/- per month for the wife/respondent. On an appeal filed before this Court, leave was granted to seek modification. The application seeking modification was partly allowed by the Family Court by the order dated 22.01.2018 and the maintenance of the respondent/wife was reduced from Rs. 25,000/- to Rs. 20,000/- per month. It has been re-agitated before us that since the wife/respondent is employed at a Banquet Hall and is earning a good salary the orders dated 22.01.2018 and 23.08.2016 should be set aside. We have carefully examined the orders passed by the Family Court and find no infirmity in the same. The Family Court has correctly applied the law to the facts of the present case. The present case is a perfect example of the parties not reflecting the true and correct income by the spouses

before the Family Court. It has been stated by the appellant/husband that he has a monthly income of Rs. 25,000/-. Out of which, he is paying rent of Rs. 15,000/- per month as rent and Rs. 6,000/- towards servants. In this background, we find that it is highly unbelievable that the appellant/husband would be surviving on a meagre sum of Rs.4,000/-. Additionally, we find that it has been admitted by the appellant/husband that Rs 1 lakh per annum was spent by the appellant/husband over the LIC policies of the appellant, respondent/wife alongwith their son. The judgment sought to be relied upon by the learned counsel for the appellant is also not applicable to the facts of the present case. The Court cannot loose track of the fact that the respondent/wife as a single parent bring up her 8 years old son. On an application seeking modification filed by the husband/appellant, the Family Court has infact considered the submissions of the husband and reduced the maintenance of the wife from Rs. 25,000/- to Rs. 20,000/- per month. Although, the appellant/husband could not produce a single document to show that the wife/respondent was gainfully employed and was drawing a salary. We are also of the view that the explanation rendered by the wife with regard to spending time at the banquet hall of her cousin brother to be praisable. Thus, we are of the view that the Family Court has rightly analysed the probable income of the appellant/husband.

15. Having regard to the complete facts of the present case and taking into consideration the judgment of the Supreme Court of India in the case of *Jasbir Kaur Sehgal (Smt.) (supra)*, we find no infirmity in the order

dated 22.01.2018 passed by the learned Family Court. The present appeal is devoid of any merit. The appeal is, accordingly, dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

JANUARY 10, 2018

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