

maintenance granted to the respondent is on a higher side. It has been further stated that while awarding the interim maintenance, the Family Court has overlooked the fact that the respondent is enrolled as an Advocate and, therefore, must be earning respectably. In the petition, one of the grounds urged is that when the respondent is professionally qualified and capable of earning, then no maintenance ought to have been granted to her.

3. It is further submitted that after the *Roka* ceremony on 27.05.2018, the conduct of the respondent became questionable. Time and again, she misrepresented the facts about her personal and professional life. Even after marriage her conduct while at matrimonial home in *Bangalore* was aggressive and quarrelsome. In this regard, learned counsel has referred to where various utterances allegedly made by her, which have been quoted in the petition. It is also submitted that the respondent is not entitled to any maintenance under Section 125(4) Cr.P.C. as she has abandoned the petitioner since 22.10.2018 without any just and reasonable cause.

4. It is also submitted that on account of been diagnosed with Covid-19, the petitioner has incurred expenses for treatment. Further, the petitioner has the responsibility to pay the rent and also to maintain his father. Lastly, it was submitted that the impugned order was passed without hearing the petitioner's counsel.

5. Ms. Manpreet, Advocate appears on advance notice on behalf of the respondent and submits that the petitioner had in fact consented to the amount of interim maintenance fixed by the Family Court. She also submitted that the respondent is completely dependent on her parents and is also living with them. The petitioner in order to harass the respondent

has filed multiple cases at different places i.e., *Chandigarh*, *Bangalore* and *Delhi*. It has also been informed that in proceedings under the DV Act, the interim maintenance granted in the present proceedings has been considered and no additional maintenance has been awarded. It is also stated that the petitioner has considerable moveable as well as immovable assets. It has also been submitted that the petitioner has not paid a single penny to the respondent and till date arrears amounting to Rs.12,86,000/ have accrued in pursuance to the impugned order.

6. I have heard learned counsels for the parties.

7. The parties were married to each other on 15.09.2018 at *Chandigarh*. The parties resided together at the matrimonial home till about October, 2018 when the respondent left the matrimonial home. During the proceedings pending before the Family Court both the parties submitted their respective income affidavits as well as additional affidavits giving details of their income, assets and expenditure.

8. As per her affidavit placed on record, the respondent stated that she has no income and is staying with her parents. She has stated her monthly expenses at about Rs.1,00,000/-. It is also stated that the petitioner was earning Rs. 2,50,000 per month.

9. The petitioner also filed his affidavit, wherein it is stated that the petitioner is B.E. (IT) and MBA. He has disclosed his monthly income at Rs. 1,68,000/-. It is also stated that he had monthly expenses of about Rs. 1,50,000/- and that the respondent is an Advocate and practicing as an independent Counsel.

10. The Family Court while passing the impugned order noted the arguments made on behalf of the respondent and the petitioner who

appeared in person. The Court also perused the respective pleadings as well as the income affidavits filed by both the parties.

11. The marriage between the parties is not disputed. Although before the Family court, learned counsel for the petitioner contended that the respondent is professionally qualified and earning Rs.1,00,000/- per month but no income proof was placed on the record. On the other hand, it has been categorically stated by the respondent that though she is qualified as an Advocate but she is not practicing and is dependent on her parents and living with them.

12. The petitioner is highly qualified being an Engineer and MBA. Admittedly, he is earning Rs.1,68,000/- per month. The petitioner did not place any salary slip on the record but it has been recorded in the impugned order that as per the petitioner's bank statements, more than Rs.1,75,000/- was credited in his account as Salary.

13. So far as the contention that the petitioner has an added responsibility to maintain his father, it was noted in the impugned order that the petitioner's father is a pensioner. The said fact has not been denied in the present case.

14. The issue, whether the wife can be denied maintenance only on account of the fact that she is capable of earning, came before this court in Arun Vats v. Pallavi Sharma reported as **(2019) SCC OnLine Del 11817**, wherein while relying on decision rendered in the case of Shailja and Another v. Khobbanna reported as **(2018) 12 SCC 199**, it was held that 'capable of earning' and 'actual earning' are two different requirements. Merely because wife is capable of earning was held not be a sufficient reason to reduce the maintenance awarded by the Family Court.

15. In Sarwan Kumar Sharma v. Ranjana Sharma @ Ranjana Rani & Anr. in **CRL. REV.P. 590/2018** decided on 24.02.2020, this court had the occasion to deal with the expression "unable to maintain herself". It was held that it does not mean that the wife must be absolutely destitute before she could apply for the maintenance under Section 125 Code of Criminal Procedure. [Refer: Chaturbhuj v. Sita Bai reported as **(2008) 2 SCC 316** and Vinny Parmvir Parmar v. Parmvir Parmar reported as **(2011) 13 SCC 112**]. Reference was also made to the following observations of the Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as **(2014) 16 SCC 715** :-

“8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

16. In the present case, a perusal of the impugned order would show that the Family Court not only heard the petitioner who appeared in person, but also had gone through the income affidavits, documents and pleadings filed by the parties at the time of hearing.

17. Even, otherwise, in terms of Annurita Vohra v. Sandeep Vohra reported as **(2004) SCC OnLine Del 192**, the petitioner's admitted salary of Rs.1,68,000/- has to be divided in three equal shares, keeping two

shares for the petitioner and one share for the respondent and therefore, the award of Rs.50,000/- per month as interim maintenance to the respondent is completely justified.

18. I find no ground to interfere with the impugned order. Consequently, the present petition is dismissed alongwith the pending applications.

19. A copy of this order be communicated to the concerned Family Courts, Patiala House Court, New Delhi.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2020

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