

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

**CRL.REV. P. 491/2018**

Date of Decision: 24.02.2020

**IN THE MATTER OF:**

**MS. AFREEN**

..... Petitioner

Through: Mr.Dalvinder Singh, Mr.Rajat  
Vadehra and Mr.Rishabh Jain, Advocates

versus

**GOVT OF NCT DELHI & ANR**

..... Respondents

Through: Ms.Manjeet Arya, APP for State  
Mr.Ritesh Bawri, Mr.Vipin Bansal, Mr.Vinesh  
Kumar and Mr.Sarthak Sharma, Advocates for  
R-2.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. The present petition is directed against the order dated 02.04.2018 passed by the Family Court, Delhi in CC No.241/2017 whereby the application for interim maintenance filed by the petitioner was dismissed.
2. Learned counsel for the petitioner has assailed the impugned order on the ground that merely because the petitioner is educated and capable of earning, interim maintenance cannot be denied to her. Per contra, learned counsel for respondent No.2 has supported the impugned order. He submitted that respondent No.2 is a single parent taking care of the minor child. He further submitted that respondent No.2 is unemployed.

In rebuttal, learned counsel for the petitioner submitted that in the petitioner's evidence, bank records of respondent No.2 have been summoned and the statements of account have been placed on record of the Family Court.

3. I have heard learned counsels for the parties and have also gone through the case records.

4. The marriage between the parties was solemnised on 09.02.2014 and one girl child was born out of the wedlock, who is in custody of respondent No.2.

5. It was stated in the petition that respondent No.2 is working as a Manager in a company known as M/s Ansari Discount Whole Seller in Johannesburg, South Africa and earning a salary of Rs.1,50,000/- p.m. It was also submitted that respondent No.2 was earning an additional amount of Rs.2,00,000/- per month through his side business in the name of Africa Fabric Centre.

6. The Family Court, while passing the impugned order, reasoned it on the basis that the petitioner holds an M.Com degree and since the minor daughter is living with respondent No.2, she can go out of the house and search for a job or at least earn something by giving tuitions. The Family Court held that *"Non-doing of any job or even searching for the same at all itself is not excusable and it can create a ground for denial of any maintenance to her"*. The Family Court also came to the conclusion that there was nothing on record to indicate that respondent No.2 has any source of income.

7. The issue whether a wife being qualified and capable to earn 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 Delhi 11817** wherein, while relying on the decision rendered in the case of Shaliya v. Khobbana reported as **(2018) 12 SCC 199**, it was held that ‘capable of earning’ and ‘actual earning’ are two different things. Merely because the wife is capable of earning is not a sufficient reason to deny her maintenance. I also deem it profitable to reproduce the observations of the Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as **(2014) 16 SCC 715** as follows :-

*“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.”*

8. It has been informed that the petitioner has summoned the bank records from the respondent’s bank which show credits of different amounts. For the reasons discussed above, the impugned order is set aside. The family court will hear the parties afresh on the point of interim maintenance.

9. The parties shall appear before the concerned Family Court on 11.03.2020.

10. A copy of this order be communicated to the concerned Family Court.

11. The petition is disposed of in the above terms.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**FEBRUARY 24, 2020**

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