

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

+ CRL. REV. P. 253/2021 & CRL.M.As. 12673/2021, 12675/2021

Date of Decision: 12.08.2021

IN THE MATTER OF:

TARUN PAWAR

..... Petitioner

Through: Mr. Mehr Nanda, Advocate

Versus

PUSHPA PAWAR

..... Respondent

Through: None.

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed under Section 397 Cr.P.C. assailing the interim maintenance order dated 15.11.2018 passed by the Family Court, South-West District, Dwarka Courts, New Delhi in MT No. 1132/17.

2. As per the facts narrated in the petition, the petitioner/husband was married to respondent/wife on 28.02.2017. However, owing to matrimonial discord the respondent filed a petition for maintenance under Section 125 Cr.P.C. in December, 2017.

3. In the aforesaid application, the respondent claimed that she was a housewife having no source of income, and she was totally dependent upon her parents for her day to day needs and expenses. It was claimed that the petitioner was running the business of cable network under the

name and style of *M/s Tarun Cable Network*. It was further stated that besides earning Rs. 3,00,000/- per month from the said business was also having a rental income of approximately of Rs.50,000/- from his flat at *Sector-7 Rohini* and property bearing No. 53-A, *Ber Sarai, New Delhi*. It was also claimed that the petitioner was also having other source of income including interests from FDRs, mutual funds and share market. It was thus claimed that the petitioner was earning about Rs.3.5 lakhs to 4 lakhs per month.

4. The petitioner filed his reply. It was stated that the respondent was highly qualified being B.A., B.Ed., J.B.T and CTET. It was also stated that the respondent was taking tuitions and also earning rental income from property bearing No. 53 *Bijwasan, New Delhi*.

5. The petitioner had denied that he was running the business in the name and style of *M/s Tarun Cable Network* as the same was in the name of his mother. The petitioner filed his income affidavits and also placed on record his ITR for the assessment year 2017-2018 which showed his annual gross income at Rs.2,52,933/-. The petitioner had also placed on record a pay slip to show that at that time his monthly income was only Rs.15,000/-.

6. The Family Court noted that on the said payslip neither the name nor the post of the petitioner was mentioned. The Family Court also took note of the fact that the petitioner had filed Income Tax Return for the assessment year 2018-2019 showing his gross annual income as Rs.1,250/- only. The Family Court noted that the said Income Tax Return was filed only after filing of the maintenance petition by the respondent. While granting interim maintenance, the Family Court took note of the Income Tax Return for the year 2017-2018, as per which the income is

stated to be Rs.2,52,932/- p.a. Taking the income at Rs.21,000/- per month, the Family Court had granted 1/3rd share i.e., Rs.7,000/- to the respondent from the date of filing of the maintenance application till the disposal of the petition.

7. It is contended that the respondent is highly qualified. 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 Sh. Arun Vats v. Pallavi Sharma and Another 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.

8. 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 Cr.P.C. [Refer: Chaturbhuaj 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 & Others 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.”

9. The criteria as to how to apportion and distribute the family resources cake amongst the members of the family was outlined in the decision of this Court in Annurita Vohra v. Sandeep Vohra reported as **2004 SCC OnLine Del 192**, wherein it was held as follows:-

“2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be

extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members."

10. In the present case, a perusal of the impugned order would show that the Family Court had divided the family cake into three shares, giving two shares to the petitioner and one to the respondent. Accordingly, out of the income of Rs.21,000/- per month, an amount of Rs.7,000/- per month have been granted to the respondent as an interim maintenance.

11. Keeping in view the totality of the facts and circumstances as well as the decision in Annurita Vohra (Supra); and in the absence of any proof that the respondent is earning, I find no ground to interfere in the order on interim maintenance passed by the Family Court.

12. Needless to say, that in the final order of maintenance if any higher or lesser amount is to be granted, the amount paid by the petitioner as interim maintenance shall be adjustable.

CRL.M.A. 12674/2021

1. The present application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 787 days in filing the petition. Even otherwise, a perusal of the application would show that no sufficient grounds are made out in the present application.

2. The revision petition is accordingly dismissed both on merits as well as delay along with the pending applications.

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

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 12, 2021
p'ma

