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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 08.02.2021

Pronounced on: 18.02.2021

(1) + **CRL.REV.P. 322/2020 & CrI.M.A. 13958/2020**

NITIN SHARMA Petitioner

Through: Ms. Pooja Chhabra, Advocate

Versus

SUNITA SHARMA & ORS. Respondents

Through: Ms. Mamta Mayer & Mr. K.K.
Krishan Prabhu, Advocates

(2) + **CRL.REV.P. 374/2020**

SUNITA SHARMA & ORS. Petitioners

Through: Ms. Mamta Mayer & Mr. K.K.
Krishan Prabhu, Advocates

Versus

NITIN SHARMA Respondent

Through: Ms. Pooja Chhabra, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide above captioned first petition, petitioner/husband is seeking quashing of order dated 16.07.2020 passed by the learned Principal Judge, Family Court, Dawarka, vide which amount of interim maintenance has been

enhanced to Rs.22,000/- against the order dated 17.09.2019 passed by the learned trial court, whereby he has been directed to pay maintenance of Rs.10,000/- p.m. to respondent/ wife.

2. Vide above captioned second petition, petitioner/wife is seeking modification of the order dated 16.07.2020 passed by the learned Principal Judge, Family Court, Dwarka, vide which interim maintenance amount of Rs.10,000/- per month awarded by the trial court has been enhanced to Rs.22,000/- while claiming it to be on the lower side.

3. The subject matter of dispute in these petitions is essentially a matrimonial dispute. Since the orders impugned in both the petitions are common, therefore, with the consent of learned counsel for the parties these petitions have been heard together and are being disposed of by this common judgment.

4. In a petition under Section 125 Cr.P.C. filed by the wife, the learned trial court vide order dated 17.09.2019 has passed following directions:-

“No settlement could arrive at between the parties in the counselling cell. However, it appears that parties are agreeable to live in a rented accommodation. But the respondent submits that he shall find rented accommodation somewhere near his office.

Respondent is directed to file suitable rented accommodation before the next date of hearing. By that

time, he is directed to pay Rs.10,000/- per month as interim maintenance to petitioner.

The petitioner shall give her complete address to respondent where he can meet both his children as per his convenience.”

5. Dissatisfied with the amount of interim maintenance awarded by the learned Family Court vide order dated 17.09.2020, the wife preferred an application seeking enhancement of interim maintenance and the said application was allowed vide order dated 16.07.2020, while observing as under:-

“In view of the above facts and circumstances the application filed by the petitioners for interim maintenance is allowed. The respondent is directed to pay a sum of Rs.7,400/- per month each to petitioners no.1 to 3 i.e. Rs.22,000/- PM from the date of filing of the application till the disposal of the petition. The respondent is directed to make the payment of entire arrears of maintenance within a period of 5 months from today. Any amount paid by the respondent to the petitioners as maintenance under the order of any court shall be adjusted against the arrears. The application is disposed of accordingly.”

6. Aggrieved against the aforesaid orders, parties have approached this Court for relief.

7. The stand taken by husband is that the order dated 16.07.2020 is illegal and devoid of merits. According to husband, the trial court has failed to appreciate that he had been regularly paying *ad interim* maintenance

@Rs.10,000/- per month to his wife, though he himself has been earning Rs.39,560/- per month. Husband has alleged that the learned trial court has erred in taking his annual income at Rs.5,19,655/- as per Income Tax Returns (ITR) for the assessment year 2019-20, whereas his actual income as per ITR for the said year was Rs.4,36,880/- after deduction of tax. He has further raised grievance that while passing the impugned order, the learned trial court has not considered his salary receipt for the month of September, 2019 but has wrongly considered one entry in the bank statement which showed credit of Rs.44,560/- taking it to be his salary on 30.08.2019, whereas the fact is that in the month of August, 2019 he had received annual dress allowance of Rs.5,000/- in addition to his salary of Rs.39,560/- p.m. Besides, trial court has also not taken into consideration the amount of rent paid by him. It is stated that in the affidavit of income filed by his wife, she has not shown her expenditures.

8. Learned counsel for husband further submitted that the twin children born out of the wedlock of the parties are 06 years old and only a meagre sum of Rs.750/- each has to be paid towards their school fees and the maintenance amount fixed at Rs.7,400/- p.m. each person, is exorbitant and difficult for the husband to pay, as he has to take care of his old and ailing mother also,

who is totally dependent upon him.

9. Learned counsel for husband also submitted that he has not deserted his wife and rather she herself has chosen to stay away from him and learned trial court has failed to take into consideration provisions of Sub Sections 4 and 5 of Section 125 Cr.P.C. which provides that if wife has deserted her husband, she is not entitled to any maintenance.

10. Lastly, learned counsel for husband submitted that from his salary husband has to meet his expenses like paying rent, arranging for washer man, cook etc. and in addition has to bear expenses of his mother. It was submitted that he is not escaping from his responsibilities towards his wife and children and his *bona fide* is made out from the fact that he has been regularly paying the interim maintenance amount of Rs.10,000/- p.m., but vide order dated 16.07.2020, maintenance amount has been enhanced to Rs.22,000/- which is highly exorbitant and, therefore, this order deserves to be set aside.

11. On the other hand, the stand of wife is that the amount of Rs.22,000/- fixed towards interim maintenance vide impugned order dated 16.07.2020 is on the lower side and the learned trial court has ignored several relevant factors while passing the said order. It is averred by wife that in the impugned order, the amount of interim maintenance fixed @Rs.22,000/- per

month [@Rs.7,400/- p.m. each person] has been arrived at by taking into consideration ITR for the assessment years 2018-19 and 2019-20, according to which the annual income of husband has been taken as Rs.5,19,655/- and monthly income has been taken as Rs.44,560/-. In addition, learned trial court has also taken into consideration that husband's mother as dependent upon him, which are required to be looked into by this Court.

12. Learned counsel for wife submitted that as per affidavit dated 01.02.2021 filed by husband before the trial court, he has only three dependants, his wife and two minor children and his mother is not dependent upon him, as she is getting monthly pension of Rs.17,199/- from Northern Railways and in addition, she also receives rent of Rs.8,000/- per month from a house owned by her. As per the said affidavit, his brother is married and employed and thereby, their financial position is very strong. Learned counsel next submitted that mother of husband is in a good health condition and even otherwise, she is entitled to free medical facilities from Central Railways Hospital.

13. It was strenuously stated on behalf of the wife that while passing the order dated 16.07.2020, learned trial court has divided the income of husband into six shares, whereas it should have been actually divided into five shares.

It is stated that taking the income of husband @Rs.44,560/- per month and by dividing it into five shares, the monthly share of each member comes to Rs.8,661/- p.m. each person against the actual awarded maintenance of Rs.7,400/- p.m. each person.

14. It was also submitted on behalf of wife that she is unemployed and is currently living in a rented accommodation with her two children, which are in her custody and ,therefore, the amount of interim maintenance awarded by the trial court vide order dated 16.07.2020 is required to be enhanced.

15. In rebuttal, it is stated on behalf of husband that wife was a dance instructor prior to the marriage and thus, had source of income. It was also submitted that the husband had got employment in Indian Railways on compassionate grounds sighting ailment of his mother and after tendering of 'no objection' by his mother and he had undertaken to take care of his mother and younger brother, and therefore, the learned trial court has rightly divided husband's income into six shares.

16. It was also stated on behalf of husband that he has taken a loan to clear debts of his family, from friends and relatives and towards its repayment a substantial amount is being paid from his salary. Learned counsel for husband also submitted that the trial court has erroneously taken into

consideration his monthly income @Rs.44,560/- p.m. month against the actual income of Rs.39,560/- p.m., and therefore, the maintenance awarded by the trial court has to be reassessed and the impugned order dated 16.07.2020 is liable to be set aside. It has also been empathetically stated on behalf of husband that the interim maintenance @Rs.10,000/- awarded by the court vide order dated 17.09.2019 was just and proper and the said order be given effect to.

17. At this stage, it has been averred before this Court that the husband undertakes to purchase two LIC policies (with approximate EMI of Rs.4,200/-each for both children) as soon as the loan amount of husband gets over.

18. I have considered the rival submissions made by both the sides and gone through the impugned orders dated 17.09.2019 and 16.07.2020 as well as other material placed on record.

19. The factual matrix of the case, as noted in the impugned order dated 16.07.2020 passed by the trial court is that the marriage between the parties was solemnized as per Hindu rites on 02.05.2013 and out this wedlock, two twin boys were born. Due to certain differences, parties started living separately and the two sons are in the custody of wife. The wife claimed that

she is helpless and unemployed and is totally dependent upon husband for her survival and that for their sons. She further claimed that her husband had his own vehicle and is living a luxurious life and can easily maintain her and the children, but is deliberately neglecting his responsibilities. On these assertions, the wife has claimed interim maintenance @Rs.40,000/- per month.

20. It stands also noted in the order that as per income affidavit of husband placed on record, he is working as a Technician in Indian Railways and getting monthly salary of Rs.37,418/- p.m. and as per copy of ITR for the assessment years 2018-19 and 2019-20 placed on record, husband's gross income was Rs.5,19,655/- p.a. that is to say Rs.43,305/- p.m. However, while taking into consideration a credit entry of Rs.44,560/- made in husband's bank account on 30.08.2019, trial court has taken his income to be Rs.44,560/- p.m. and divided it into six shares (two shares for husband and one share each for mother, wife and two children) and thereby, granted maintenance of Rs.7,400/- p.m. each person.

21. So far as assertion of husband that his wife was a dance trainer prior to her marriage has rightly not been taken into consideration by the trial court, as no document has been placed on record that wife had ever worked after

marriage or is still working. Keeping this fact in mind, the learned trial court has rightly held husband responsible for maintaining his wife and children. The Hon'ble Supreme Court in *Sunita Kachwaha Vs. Anil Kachwaha (2014) 16 SCC 715* has held that merely because wife was earning something, would not be a ground to reject her claim for maintenance particularly when proof of her earnings were not placed on record before the courts below.

22. As far as monthly income of the husband is concerned, as per his affidavit of income, he has declared his income as Rs.37,418/- p.m., whereas as per ITR for the assessment year his monthly income is Rs.43,305/- p.m. As per credit in bank account, his salary is Rs.44,560/- p.m, which the trial court has taken into consideration. The extract of copy of salary slip for the month September, 2019, placed on record bifurcates his earnings and deductions as under:-

Earnings		Deductions	
Pay	32900	NPST-I	3685
DA	3948	CGIC-C	30
HRA	7896	OP Unit AL	1033
TRAN ALL	4032	RLY EMP.	50
NHA	477	NZ HRE BND	1000
TRAV. ALL	750	NZ HRE LOAN	4451
Gross Pay	50003	Deductions	10249
Net Pay	39,754		

23. The aforesaid extract of husband's salary slip of income and expenditure reveals that out of total gross pay of Rs.50,003/- per month, deduction of Rs.10,249/- are made towards pension scheme, insurance, society membership and repayment of loan.

24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted. On this aspect, the pertinent observations of Hon'ble Supreme Court in ***Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129***, which have been followed by a Bench of Punjab & Haryana High Court in ***Seema & Anr. Vs. Gourav Juneja 2018 SCC OnLine P & H 3045***, are as under:-

“12. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from the gross salary towards long term

savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group Insurance Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his “means” to pay maintenance. In the case of *Dr. Kulbhushan Kunwar v. Raj Kumari* (1970) 3 SCC 129 : 1971 AIR (SC) 234 while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of *Dr. Kulbhushan Kunwar's* case (*supra*) reads as under:—

“19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of “free income” as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of

appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."

13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary."

25. Applying the similar ratio to the case in hand, I find that though the wife has not disputed deduction of Rs.1,000/- p.m. towards NZRE BH NDLS, however, it is the duty of the Court to see the material available on record and to award just and fair maintenance. In this view of the matter, I find that while calculating income of the husband, deduction of Rs.1,000/- towards NZRE BH NDLS contribution (*which is a kind of saving*) and Rs.4,451/- NZRE BH Loan, from his gross income of Rs.50,003/-, cannot be permitted. Hence, husband's net income in hand comes to Rs.44,552/- p.m. and rounding it off to Rs.44,560/-, it has so rightly been arrived at by the trial court.

26. So far as the plea put-forth by the husband that he has to pay rent for his accommodation is concerned, it cannot be taken into consideration, as he is duty bound to arrange for accommodation for his wife and children, who are dependent upon him. Moreover, the claim of wife is that husband is staying in the house owned by his mother, which is a three storeyed building,

of which one floor is occupied by her, on another floor husband is residing and as per rent agreement placed on record, he is paying a sum of Rs.8,000/- p.m. towards rent to his mother. During the course of arguments, it was also admitted by learned counsel for husband that due to covid-19 husband was living in his mother's house but he intends to soon move out to a rented accommodation and also alleged that the wife along with children is staying at her brother's house, which is disputed by learned counsel for wife who has placed before this Court a copy of rent agreement which shows that wife is staying in a rented accommodation.

27. Be that as it may. The Hon'ble Supreme Court in ***Jasbir Kaur Sehgal Vs. Distt. Judge, Dehradun & Ors., (1997) 7 SCC 7*** has observed as under:-

“8.No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.....”

28. In view of the aforementioned observations, husband cannot wriggle

out of his responsibilities to provide shelter to his wife and minor children.

29. The next question which has to be decided by this Court is as to whether the court below was right in dividing husband's income into six shares while calculating and granting interim maintenance.

30. It is an admitted fact that mother of husband is receiving pension @Rs.17,199/- and medical benefits etc. It is also not in dispute that the three storeyed house is in the name of mother, of which one floor is occupied by her, another by the husband and the third floor is occupied by the brother of the husband. According to wife, as per the copy of rent agreement placed on record, husband is paying a sum of Rs.8,000/- p.m. towards rent to her mother and such might be the position of brother too. And in this way, mother is getting additional rental income of approximately Rs.16,000/- per month.

31. Even if it is assumed that the rent agreement placed on record might have been manipulated to save income tax, then also it cannot be lose sight of that mother is receiving a good amount of pension and is thus, financially independent. In addition, she is also getting medical benefits from a Government Hospital, which is an added advantage towards her financial savings. Another plea put forth by the husband is that he had got employment

in Indian Railways on compassionate grounds after demise of his father only because his mother had refused to procure it on medical grounds and tendered “no objection” in his favour and therefore, he is liable to maintain her. The Hon’ble Supreme Court in ***Bhuwan Mohan Singh Vs. Meena & Ors.*** (2015) 6 SCC 353 has observed as under:-

“2. 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 whereunder 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.”

32. Accordingly, I find that the trial court has erred in keeping mother's share in the income of husband.

33. In this view of the matter, taking the income of husband @ Rs.44,560/- p.m. and dividing it into two shares for him and remaining for his dependants i.e. wife and two children, that is to say by making five shares, each one is entitled to the share @Rs.8912/- (round of Rs.8910/-p.m.). Resultantly, the wife shall be entitled to interim maintenance @Rs.26,736/- p.m. and in round figure Rs.26,000/- instead of Rs.22,000/- p.m.

34. The impugned order dated 16.07.2020 is accordingly modified in aforesaid terms. Needless to say, nothing stops the husband/ father to buy LIC policies or any other kind of investment for the betterment and future of his children.

35. The above captioned petitions and pending application are accordingly disposed of.

36. The judgment be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 18, 2021/r