

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. REV. P. 306/2021 & CRL.M.As. 15310-15311

Date of Decision: 24.09.2021

IN THE MATTER OF:

BHASKAR SINGHA

..... Petitioner

Through: Mr. S.C. Soren, Advocate

Versus

MONIKA

..... 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 401 Cr.P.C. read with Section 397 Cr.P.C. on behalf of the petitioner assailing the order dated 22.07.2021 passed by the learned Principal Judge, Family Courts, North-East District, Karkardooma Courts, Delhi, vide which the petitioner has been directed to pay interim maintenance of Rs.6,500/- per month to the respondent till the disposal of the petition.
2. Learned counsel for the petitioner submitted that the parties were married on 19.06.2020 according to Hindu rites and ceremonies in Agra, U.P. No child was born out of this wedlock. Due to matrimonial disputes, the parties are not residing together since 14.07.2020. It is further submitted that MT No. 293/2020, in which the order on maintenance has been passed, was filed only to create pressure on the petitioner and his

family, since there is another dispute pending between the parties regarding allegations of rape of sister of the petitioner by the brother of the respondent.

3. From a perusal of the impugned order, it is apparent that the petitioner has disclosed that he is working as Senior Marketing Sales Executive with *M/s Barahi Ltd, Natural Mineral Water Polymers (Indian), Kirti Nagar, New Delhi* and is getting an income of Rs.20,324/- per month. After perusing the salary slip, the Family Court came to the conclusion that his gross income is Rs.21,343/- per month and the net income is Rs.20,324/- per month.

4. With respect to the financial status of the respondent, the Family Court had noted on the basis of affidavit filed that she was not employed anywhere. She claimed that she was in possession of no moveable or immovable asset and was therefore unable to maintain herself. She had further claimed to have an expenditure of Rs.25,500/- per month. The statement of her savings bank account revealed that no regular income was being credited to her account.

5. In Annurita Vohra v. Sandeep Vohra reported as **2004 SCC OnLine Del 192**, the Delhi High Court in connection with the issue at hand has noted thus:-

“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."

(emphasis added)

6. Learned counsel for the petitioner has contended that the respondent is a postgraduate and is capable of earning. 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 Sh. Arun Vats v. Pallavi Sharma and Another reported as **(2019) SCC OnLine Del 11817** wherein, while relying on the 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 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 and Others v. Anil Kachwaha reported as **(2014) 16 SCC 715**, where it was observed as follows:-

“6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of the appellant wife and the factual findings, as recorded by the Family Court.

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8. The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, 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.”

7. To a similar effect is the decision of a Coordinate Bench of this Court in Krishna Dhawan v. State & Anr. reported as **2012 SCC OnLine Del 2048**.

8. In the present case, the Family Court after dividing the family cake into two pieces in terms of Annurita Vohra (Supra) gave two shares to

the petitioner and 1/3rd share to the respondent. Accordingly, this Court finds no illegality, infirmity and perversity in the order on interim maintenance passed by the Family Court.

9. In view of the above, the present petition is dismissed alongwith pending applications.

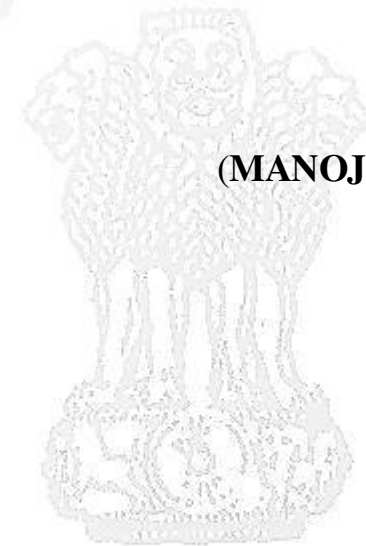
10. Needless to say that in the final order of maintenance if any higher or lesser amount is granted, the amount paid by the petitioner as interim maintenance shall be adjusted.

11. A copy of this order be communicated electronically to the concerned Court.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 24, 2021

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