

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.REV.P. No 830/2019

Judgment reserved on : 26.10.2021

Date of decision : 10.12.2021

RITU SETHI

..... Petitioner

Through: Ms.Manika Tripathy Pandey,
Advocate with petitioner in
person.

versus

VIVEK SETHI

..... Respondent

Through: Mr. Amarjit Singh Bedi and
Mr.Varun Chandiok, Advocates

CRL.REV.P. No 869/2019

VIVEK SETHI

..... Petitioner

Through: Mr. Amarjit Singh Bedi and
Mr.Varun Chandiok, Advocates

versus

RITU SETHI

..... Respondent

Through: Ms.Manika Tripathy Pandey,
Advocate with respondent in
person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The petitioner of Crl.Rev.P. No. 830/2019 Ritu Sethi
(hereinafter referred to as 'R') is the wife of the respondent to

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the petition i.e. Vivek Sethi and petitioner of Crl.Rev.P.869/2019 (hereinafter referred to as 'V') in which 'R' his wife is arrayed as the respondent. Both the petitions assail the same impugned order dated 30.5.2019 of the Court of the learned Principal Judge, Family Courts, Saket Courts, New Delhi in M-23/2017 vide which 'R' was awarded maintenance to the tune of Rs.20,000/- per month from the date of the filing of the maintenance petition M-23/2017 before the learned Judge, Family Courts, Saket as filed on 15.2.2017 till she is legally entitled to receive the same with it having been directed that the arrears of interim maintenance/maintenance under Section 24 of the Hindu Marriage Act, 1955, awarded by the said Court would be adjusted in the said awarded amount and 'V' was directed to pay the arrears of maintenance within a period of three months from the date of the order dated 30.5.2019 in equal instalments and to pay the monthly maintenance after the date of the order by way of money order or by deposit in the bank account of 'R' on furnishing the account number of the same on or before the 10th date of each calendar month with it having been inter alia directed that 'R' would be entitled to receive the maintenance to the highest amount of the various allowances, if any, awarded to her by various Courts. Whereas, 'V' the petitioner of Crl.Rev. P. No. 869/2019 has sought the setting aside of the said order in *toto*, 'R' the petitioner of Crl.Rev. P. No. 830/2019 has sought a

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modification of the said impugned order and has sought the enhancement of the quantum of maintenance.

2. The response of either side to the respective petitions is placed on the record.
3. Vide order dated 22.8.2019 in Crl.Rev.P. No. 869/2019 filed by 'V', it was submitted by the counsel for 'V', on instructions, that besides paying the maintenance @Rs.20,000/- per month he was ready and willing to deposit a sum of Rs.50,000/- towards the arrears without prejudice to his rights and contentions which was directed to be so paid within a period of 6 weeks and the matter was renotified for the date 27.11.2021 till which date the directions to pay the arrears vide the impugned order were directed to remain stayed.
4. Crl.M.A. No. 34739/2019 was filed by 'R' in Crl.Rev.P. No. 869/2019 seeking a vacation of the stay granted by the order dated 22.8.2019 and modification thereof. Learned counsel for 'V' on 30.8.2019 submitted that the amount of Rs.50,000/- qua which it had been submitted that 'V' was ready and willing to deposit the same as per the proceedings dated 22.8.2019 would be deposited within a week. Vide order dated 30.8.2019 in Crl.Rev.P. No. 869/2019 'V' was further directed to pay an amount of Rs.1,50,000/- on or before the next date of hearing that was fixed in the matter, i.e., 27.11.2019, without prejudice to his rights and contentions.

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5. Submissions qua both the petitions and the application Crl.M.A. No. 3479/2019 were addressed on behalf of either side on 26.10.2021 with the matter having been reserved for orders.
6. An application Crl.M.A. No. 19257/2021 was filed on 1.12.2021 by 'R' in Crl.Rev.P. No. 830/2019 seeking to the effect:

*“a) fix the date for passing the order / judgment;
b) pass the Judgement reserved on 26th October 2021;
c) release the arrears of maintenance to the tune of Rs.2,70,000/- stayed by Delhi High Court Order; and
d) Pass any other order(s)/relief(s) which this Hon'ble Court deems fit and proper may also be passed, in the interest of justice.”,*

and vide order dated 2.12.2021, the matter was thus directed to be listed for pronouncement on 10.12.2021, i.e., today at 4:30 p.m.

7. The Trial Court Record and the Appellate Court Record in the digital form was requisitioned vide order dated 13.08.2019 in Crl.Rev.P. No.830/2019.
8. 'R', the petitioner of M-23/17, i.e., the petitioner of Crl.Rev.P. No. 830/2019, vide her petition under Section 125 of the Cr.P.C., 1973, had sought maintenance from 'V', filed on 27.1.2017 which was assigned to the Principal Judge Family Court concerned for the date 15.2.2017 vide which 'R' had sought the grant of adequate maintenance to meet her day to day expenses and to match the status as that of 'V', who she submitted otherwise comes from an affluent and well-to-do

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family and also sought directions to 'V' to place on record his current Income Tax Return and to file an affidavit and to file an affidavit *inter alia* disclosing therein what were the assets, both moveable or immoveable held by him either in his personal capacity or as a member of the HUF or any other status.

9. A perusal of the records in M-23/17 indicate that the factum of solemnization of the marriage between 'R' and 'V' on 10.12.2001 at New Delhi is undisputed; that after the marriage the parties to both petitions started living at S-83, Greater Kailash-I, New Delhi-110048, has not been specifically denied by 'V'. 'R' through her petition M-23/17 had *inter alia* submitted that she was maltreated at her matrimonial home for not bringing adequate gifts for the family and for not meeting and matching the status of the family of 'V' with it having been submitted by 'R' that there were demands made repeatedly for sums of money and she was also physically assaulted for the same. 'R' had also submitted that the behavior of 'V' had gradually become rude, he used to come late at night in a drunken condition, used to fight with her over small issues and did not provide adequate financial help to her to meet the day-to-day needs of the household and this led to a regular fight. *Inter alia*, 'R' had submitted through her petition that though she had a meagre earning, the mother of 'V' insisted that she contributed to the household expenses and she was thus forced to pay Rupees 6000 to 7000 per month to meet the day-to-day household expenses. *Inter alia*, 'R' had alleged through her

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petition M-23/17 that 'V' was engaged in extramarital affairs and when they were objected to by 'R' she had to face abuses, taunts and assaults from him and the relations become sour each day from 2002 and she was constrained to file a complaint in the CAW Cell on 5.8.2002 whereafter she was subjected to more cruelty and that she was also threatened to be thrown out from the matrimonial home and apprehending her being denied access to the matrimonial home, 'R' had been constrained to file a Civil Suit for Permanent Injunction seeking a restraint against 'V' and his family members in this Court numbered as CS(OS) 1548/2002 wherein vide order dated 12.5.2003 a restraint order was passed which was however set aside in an Appeal vide order dated 14.7.2003 in as much as 'V' put up a plea that the house was owned by his grandmother and not by him nor by his mother and thus did not constitute a matrimonial home, but vide the said order dated 14.7.2003, liberty was granted to 'R' to stay in the premises for a period of three weeks from the date of that order and on 5.8.2003 she was denied entry into the matrimonial home and was compelled to stay at her parental home against her wishes from 5.8.2003.

10. FIR 36/2003 CAW Cell was lodged on the complaint of 'R' whereafter 'V's' family filed a false complaint against her on 12.7.2003 and whilst 'R' was allegedly trying to save her marriage, 'V' filed a divorce case bearing HMA No. 750/2003 alleging desertion and cruelty against 'R' which petition was decided vide judgment dated 20.3.2017 and the divorce was

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granted on the grounds of cruelty which judgment was challenged by 'R', the operation of which has been stayed vide order dated 16.7.2019 in Mat Appeal(FC) 107/2017 by the Division Bench of this Court which Mat Appeal (FC) No. 107/2017 is pending.

11. 'V' was acquitted in FIR No. 36/2003 Police Station Greater Kailash-I vide order dated 17.9.2016 and the Crl.A.No.29/16 against the said acquittal was also dismissed vide judgment dated 21.02.2018.

12. Vide order dated 3.7.2018 in M-23/17, the application filed by 'R' for grant of maintenance was dismissed. Vide order dated 28.1.2019 in Crl.Rev.P. No. 705/2018 filed by 'R' against the said order in as much as a submission was made on behalf of 'V' that he would pay a sum of Rs.10,000/- per month from the date 28.1.2019 till disposal of the petition pending before the Trial Court, it was clarified that no adjournment would be given to any party by the Trial Court for any reason whatsoever and the Trial court was directed to dispose of the petition within four months. Vide order dated 20.8.2004 in HMA No. 750/2003, the application filed by 'R' dated 9.2.2004 was disposed of by the Additional District Judge, Delhi, directing payment of maintenance allowance @ Rs.10,000/- per month from the date of the moving of the application till disposal of the case along with the litigation expenses of Rs.11,000/- which amount of maintenance allowance was enhanced to Rs.20,000/- per month from the date of filing of the application stated to be

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15.2.2017 which actually ought to read as 27.1.2017 as per the Stamp on the petition.

13. 'R' has submitted that the amount of Rs.20,000/- awarded by the learned Judge Family Court is insufficient in as much as she is not continuously employed and has to meet her day-to-day expenses with great difficulty whereas 'V' comes from an affluent background and is making a substantial income for himself and 'V' is working as an independent Travel Advisor in the Travel Industry and provides his services to the individuals and corporate firms and is making substantial income for himself.
14. 'R' has further submitted that whilst the civil suit CS(OS) No. 1548/2002 was pending, 'V' in order to defeat her claim had on papers shifted to a rented accommodation at Chitaranjan Park, New Delhi in January, 2003 which he admittedly vacated after the said suit was dismissed and this showed the conduct of 'V' which was solely focussed on how to decrease the maintenance amount to the minimum.
15. It has further been submitted by 'R' that the expenditure incurred by her per month to meet her basic needs is approximately Rs.50,000/- and the maintenance amount awarded of Rs.20,000/- is very meagre in comparison. 'R' further submits to the effect that it is settled law that the maintenance to the wife should not be so inhumane that she be denied a dignified life at par with the status of the husband, who admittedly is well off and living and enjoying a lavish lifestyle

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and that parity has to be maintained between the status of the husband and the wife and that the maintenance should be such that the wife can be maintained as per the social standard as that of the husband.

16. 'R' has further submitted to the effect that the learned Judge, Family Court, failed to consider the fact that the Will of the property bearing House No. S-83, Greater Kailash-I, New Delhi, executed (by the late mother of 'V') in the favour of 'V's sisters clearly stated that they should take care of 'V' throughout his lifetime and it is a fabricated Will only to defeat 'R's interest and that 'V' has no other liability apart from that of 'R'. 'R' further submits that it is an undisputed fact that she has not remarried and is thus entitled to maintenance and the maintenance awarded is very meagre for her to sustain herself specially when the learned Family Court has already rendered a positive finding that she is unemployed and has no source of income. 'R' further submits to the effect that despite the learned Family Court having concluded that 'V' is a man of status and in order to circumvent and deprive her, has maintained a minimum balance in his account and created artificial residences by showing a purported lease deed and a Will of his mother in favour of her daughters (the sisters of 'V') to show that 'V' has no property despite the factum that 'V' was the sole beneficiary of the house No. S-83, Greater Kailash, New Delhi-110048, being the only son and male child in his family and his two sisters being unmarried (one of whom

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Rashmi Sethi has settled in Dubai and the other sister who claimed to be in possession of the house bearing No. S-83, Greater Kailash-I, New Delhi, with eight bedrooms is single. 'R' further submits that she has to manage her rented accommodation, food, daily needs as well as her medical expenses in as much as she has been diagnosed with various ailments and has to pay a substantial amount towards her treatment.

17. 'R' has further submitted to the effect that that her mother who was her only support after 2015 has also passed away in the year 2019 and on her demise she was virtually on the road, forced to starve in the absence of roof over her head and no source of income. 'R' has further submitted to the effect that despite Rashmi Sethi, the sister of 'V', admittedly residing in Dubai, 'V' has taken a flat at Gurgaon on rent despite his contention that he has no source of income and despite his contention that he is financially dependent on his sisters and that the learned Family Court had observed that this arrangement was made by 'V' just to deprive 'R' the comforts of life which she was entitled to, but despite the same a meagre amount of maintenance had been awarded.

18. It has further been submitted through the petition in Crl.Rev.P. No.830/2019 by 'R', the petitioner thereof, that the learned Family Court had already come to the conclusion that the house at Greater Kailash was a three storyed building with eight bedrooms and it was an admitted fact that one of the sisters of

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‘V’ who was occupying the house was single and unmarried and that the said house was capable of fetching substantial rent from which the expenses of ‘R’ could be met as she was entitled to live the same standard of life as ‘V’ but despite the same the learned Family Court did not award the maintenance adequately nor did it direct to make any arrangement for her living. ‘R’ further submits that keeping in mind the status of her husband and the fact that she is unemployed and has no place to stay, she has sought redressal by the petition filed by her by seeking enhancement of the maintenance of Rs.20,000/- as awarded vide the impugned order dated 30.5.2019 by the learned Judge Family Court, South-East, Saket, in M-23/17 and has also thus sought the vacation of the order dated 22.8.2019 whereby the directions to pay the arrears vide the impugned order had been stayed in Crl.Rev.P. No.869/2019 qua which she has filed Crl.M.A. No.34739/2019.

19. ‘R’ has further submitted that ‘V’ has till date not paid the arrears of maintenance directed to be paid to her in three equal instalments vide the impugned order dated 30.5.2019 and has also failed to pay a monthly maintenance in terms of the said order which is always paid late and keeps ‘R’ at his mercy. ‘R’ has further submitted to the effect that the parties have been employed in litigation for more than 10 years and that ‘V’ has made every attempt to defeat her rights and has done everything within his powers to cause hardships to her and her family. It has been submitted by ‘R’ that pursuant to order dated

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30.8.2019 in Crl.Rev.P. No 869/2019 filed by 'V' whereby it had been submitted on behalf of 'V' that he would pay an amount of Rs.1,50,000/- on or before the next date of hearing without prejudice to his rights and contentions, 'V' has made partial payment of the arrears to 'R'.

20. 'R' has further submitted to the effect that she is an aged lady and has been unemployed since 2015, and that though she has attempted to get a job since 2015 due to the age factor no one was prepared to employ her and apart from the monthly maintenance that 'V' is bound to pay her, she has no other source of income. *Inter alia*, 'R' has submitted to the effect that during the pendency of M-23/17 she had been evicted from her residences at Lajpat Nagar, New Delhi and Gurgaon due to non payment of rent which had also been established before the learned Family Court which vide the impugned order had observed to the effect that she was always dependent on her parents. 'R' has further submitted that her father was a retired government servant and the entire family was dependent on the pension received by him and after he passed away in 2010 'R' and her mother were dependent on the meagre family pension received by her mother but that her mother also passed away in 2019.

21. 'R' has further submitted to the effect that she is in an extremely difficult situation in as much as she has to look for new accommodations and does not have funds for the same. 'R' has further submitted to the effect that the learned Family

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Court has also observed vide the impugned order that 'R' and her mother were evicted on multiple occasions and had no funds and had to pledge their jewellery to gather funds. 'R' further submits that she had taken up a rental accommodation in Malviya Nagar but on 16.1.2019, the landlord of the accommodation filed an Eviction Suit No. 35/2019 against her, the matter was sent to mediation and the settlement was drawn and vide order dated 30.7.2019 the matter was disposed of as she had agreed to vacate the premises by 30.9.2019 but as no arrears of maintenance were paid despite passing three months in terms of the impugned order dated 30.5.2019 she was constrained to file an Execution Petition for execution of the order dated 30.5.2019 in M-23/17 in which the proceedings were earlier stated to have been listed for 2.12.2021. 'R' has further submitted to the effect that in as much as 'V' was not paying the arrears of maintenance she was constrained to file an application seeking extension of time for vacating the rental accommodation at Malviya Nagar and the matter was listed on 29.11.2019 when at the request of the petitioner the matter had been listed for 20.11.2019 with it having been made clear that no more extension would be granted to her.

22. 'R' has further submitted to the effect that one bedroom units are not being rented out for less than Rs.24,000/- per month and most of the landlords ask for a guarantor or security deposit and that since her parents have passed away, she has no other family member to depend on and presently as per the averments made

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in Crl.M.A. No. 19257/2021 vide which the applicant 'R' had sought that a date be fixed for pronouncement of judgment in Crl.Rev.P. No 830/2019, she has submitted vide her application dated 29.11.2021 that she is residing presently at an accommodation at Kalkaji but the landlord has filed a false criminal case against her at Uttarakhand which is pending and she does not have funds to contest the same and the landlord has also initiated eviction proceedings against her for vacating the premises due to non-payment of monthly rent. 'R' has further submitted to the effect that she has been litigating all her cases through the legal aid society and is not in a position to survive without the payment of arrears of maintenance and has thus sought the enhancement of maintenance from the meagre amount of Rs.20,000/-. 'R' further submits to the effect that 'V' has a lot of monthly expenses including rent, water and electricity charges, food provisions, medical expenses and that the property S-83 Greater Kailash-I, New Delhi, has been sold and during the proceedings before the Family Court 'V' had submitted in his evidence by way of affidavit dated 23.4.2019 that his mother had left no estate in his favour but that 'R' has been able to obtain the true and certified copy of the official record of the sale deed dated 8.1.2020 for sale of S-83, Greater Kailash-I, New Delhi, sold by Mala Sethi and Rashmi Sethi (sisters of 'V') to Laxman Dass Thadani and as per Clause H & L of the said Sale Deed it is mentioned to the effect:

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“H. AND WHEREAS the said Mrs. Suniti Sethi, also died on 16.03.2017 (her husband Sh. K. D. Sethi, predeceased her having died on 09.06.1993), leaving behind her last un-registered Will and Testament dated 05.03.2012, whereby and whereunder she devised and bequeathed the said property, in favour of her two daughters namely (1) Ms. Mala Sethi (1/3rd undivided share) and (2) Ms. Rashmi Sethi (2/3rd undivided share) and also bequeathed the life interest in favour of her Son namely Sh. Vivek Sethi till he is alive, in respect of her daughter namely Ms. Rashmi Sethi’s portion in the said property.

L. AND WHEREAS the said Sh. Vivek Sethi, voluntarily out of his own wish and desire, already surrendered/abandoned and relinquished the life interest so bequeathed to him under the said Will dated 05.03.2012, in favour of his sisters (the VENDORS herein), absolutely and forever, who had thus acquired absolute and exclusive ownership to the said property free from all charges, liens etc. A Deed of Declaration to that effect was executed by the said Sh. Vivek Sethi, on dated 15.02.2019, duly registered as Document No.350, in Addl Book No.IV, Volume No.443, on pages 105-111 on 16.02.2019, in the office of the Sub-Registrar-VA, Hauz Khas, New Delhi.”

23. *Inter alia* ‘R’ submits that ‘V’ has created false residences which is established from his testimony and written statement before the learned Family Court and that he had played a fraud upon the Family Court by not disclosing true facts about of his having voluntarily giving up his share of the property to his sisters and that ‘V’ had thus committed perjury before the Court of the Principal Judge, Family Courts. That ‘V’ has been served through counsel of the notice of the application Crl.M.A. No.

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19257/2021 is indicated as per the proof of service placed on record.

24. 'V' through his response to Crl.Rev.P. No.830/2019 filed by 'R' has submitted that the petition is a gross abuse of the process of law as 'R' has concealed that the entire purpose and motive behind filing the petition is nothing but to extort money from him despite knowing the fact that he is 62 years of age and has no source of income and is dependent upon his sisters for his survival with it having been submitted that 'R' despite having no dependent member of her family stays in a three bedroom apartment at Malviya Nagar, South Delhi with a monthly rental of Rs.27,000/- and despite the change in the circumstances there has been no change in her lifestyle or requirements. The said reply of 'V' is dated 25.9.2019. *Inter alia* 'V' submits to the effect that 'R' has filed no documents substantiating her plea for enhancement of maintenance that she is able bodied but chooses not to work and may be thus directed to file her fresh income affidavit along with her latest bank statements and also be called upon to state her reasons for not working. 'V' has submitted through his response to Crl.Rev.P. No. 830/2019 that Crl.Misc.Petition 4449/2014 has been filed by 'R' seeking the setting aside of the order dated 10.5.2013 wherein the charge dropping proceedings against Suniti Sethi and Mala Sethi was upheld and that 'V' was charged only under Section 498A of the Indian Penal Code, 1860 and was discharged under Section 406 of the Indian Penal Code, 1860

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and was acquitted vide the order dated 17.9.2016 in relation to FIR No. 36/2003, Police Station Greater Kailash under Section 498A of the Indian Penal Code, 1860 and the appeal filed against the order dated 17.9.2016 was dismissed by learned District & Sessions Judge, South-East, Saket vide order dated 21.2.2018 in Crl.Appeal No. 29/16.

25. 'V' has further submitted to the effect that he has no independent source of income since November, 2013, and his expenditure was being borne by his mother, who expired on 16.3.2017, and he is now dependent upon his sisters for his basic necessities, that his family comprises of two spinster sisters, one Rashmi Sethi, who bears his monthly expenses approximately Rs.13000 to 17,000/-, and that vide order dated 3.7.2018, the learned Principal Judge had dismissed the application filed by 'R' noticing that she had concealed material facts in filing the petition which order was assailed by 'R' in Crl.Rev.P. No. 705/2018 wherein as an interim measure 'V' had conceded to the grant of maintenance @ Rs.10,000/- per month. 'V' has further submitted that he had to move to Chitaranjan Park as 'R' was picking up fights with his family members on one pretext or the other and thus to buy peace and with an intention to make the marriage work he had shifted to Chitaranjan Park and had asked 'R' to join but he did not see any intention of 'R' to make their marriage work and 'R' only wanted to grab the property at any cost.

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26. 'V' further submitted that till the date the order dated 5.8.2003 was in force it had been complied with by him and that there were no complaints filed by 'R' that she was not getting entry into the premises despite the orders passed by this Court. 'V' further submitted to the effect that the FIR was wholly concocted as indicated vide two concurrent findings of the Courts.
27. The said contentions that have been raised by 'V' through his reply to Crl.Rev.P. No.830/2019 have been refuted by 'R' through her rejoinder to the said reply and she submitted that 'V' had shifted to the rented accommodation only on papers at Chitaranjan Park but was in fact living at S-83 Greater Kailsh-I, New Delhi qua which he had also filed two affidavits in relation to which 'R' had filed an application under Section 340 of the Cr.P.C., 1973 which aspect was also taken note of in the order dated 20.8.2004 in the divorce proceedings.
28. 'V' through Crl.Rev.P. 869/2019 also assails the same impugned order dated 30.5.2019 in M-23/17 of the Court of the learned Family Court, Saket, of which modification has been sought in Crl.Rev.P. no. 830/2019 whereby the petitioner thereof, i.e., 'R' has sought an enhancement of the maintenance amount beyond Rs.20,000/- per month put forth virtually the same submissions as are set forth through reply of 'V' to Crl.Rev.P. No.830/2019.
29. The Income Affidavit of 'R' dated 27.1.2017 and the Income Affidavit of 'V' dated 23.11.2017 have been perused. It is

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essential to observe that the affidavits of assets, income & expenditure of 'V', significantly, the affidavit of 'V' in Part II the relevant information relation to the spouse at Sr. No. 4 reads to the effect:

RELEVANT INFORMATION RELATING TO THE SPOUSE

1.		
2.	Whether your spouse is earning? If so, give particulars of the occupation and income of your spouse	Not aware
3.		...
4.	Particulars of the assets and liabilities of your spouse	No liability. Her mother is earning pension besides that I have no knowledge

30. The response of 'V' where he specifically states that he is not aware whether 'R' is earning and that he is not aware of any assets of his spouse is significant, in as much as thus 'V' does not categorically claim that 'R' is gainfully employed in any manner or has assets through which she can sustain herself. That 'R' despite not being gainfully employed, as submitted by her, and despite having been awarded maintenance only @ Rs.10,000/- per month initially vide order dated 20.8.2004 was residing in a premises with a monthly rent of Rs.23,000/- per month with increase of 10% per annum and household expenses

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of Rs.15,000/- per month are also aspects which equally cannot be overlooked. However, the submission that has been made by 'R' through Crl.M.A. No. 19257/2021 filed on 29.11.2021 wherein she submits that she has to vacate the rental accommodation which she had taken up at Malviya Nagar after she had been evicted from her residence at Lajpat Nagar, New Delhi, and Gurgaon due to non-payment of rent and that she has to vacate even this accommodation at Malviya Nagar as she is unable to pay the rent of the rented flat to the landlord with her submission that the rent at Malviya Nagar is also Rs.24,000/- per month, also is an aspect which has essentially to be considered.

31. 'V' claims that he is totally unemployed and is dependent on his sisters for his upkeep and maintenance in as much as the property S-83, Greater Kailash-I, New Delhi had been bequeathed by Mrs.Suniti Sethi, the mother of 'V' vide a Will dated 5.3.2012 to Mala Sethi (sister of 'V') to the extent of 1/3rd undivided share and 2/3rd undivided share to Rashmi Sethi, the other sister of 'V' and had bequeathed the life interest in respect of the portion of the property bequeathed to Rashmi Sethi to 'V' till he was alive. That Rashmi Sethi, Sister of 'V', works in Dubai and is settled there for about 17 years is not disputed and that 'V' was residing in the property at Greater Kailash-I, New Delhi, owned by his sisters at the time of the impugned order is admitted by 'V', that the mother of 'V' executed a Will in favour of his sisters qua the property at

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Greater Kailash-I where there was a clause that his sisters would have to make arrangement for his comfortable stay till he was alive as submitted by 'V' who stated that there were eight bedrooms at the Greater Kailash-I is admitted by 'V' with it having been stated by 'V' before the learned Family Court, he himself was residing at Gurugram in a PG accommodation which 'V' through his statement before the learned Family Court in his cross-examination as RW-1 has stated in his deposition dated 7.5.2019 that the property S-83 at Greater Kailash-I had a ground, first and second floor and in totality had eight bedrooms and that his current address is at Gurugram since July, 2018 where he lives in an accommodation comprising of an attached bathroom and one bed which he shares with one roommate and he has to teach under-privileged children at Gurugram, Haryana, as a part-time measure.

32. Inter alia, 'R' had submitted that the factum that the property S-83 Greater Kailash-I, New Delhi-110048, has been sold vide a sale deed dated 19.12.2019 by Mala Sethi and Rashmi Sethi, sisters of 'V', after 'V' relinquished his life interest bequeathed absolutely and forever by his mother Mrs. Suniti Sethi in the said property vide a Will dated 5.3.2012 which property was sold for a total consideration of Rs.17,04,00,000/- to Laxman Das Thadani S/o Gopal Chand Thadani, is an aspect placed on record by 'R' since 12.10.2020 with a copy of the said registered sale deed having been placed on record in Crl.Rev.P. No. 830/2019 which aspect has been reiterated vide Crl.M.A.

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No. 19257/2021 filed by 'R'. There has been no refutation of this document placed on record by 'R' on 20.10.2019 that S-83, Greater Kailash-I, New Delhi has been sold for an amount of Rs. 17,04,00,000/- in which 'V' has relinquished all his life interest in the said property in favour of his sisters. That 'V' despite being a beneficiary of the life interest in the property S-83, Greater Kailash-I, New Delhi pursuant to the Will dated 5.3.2012 of his late mother whereby it was ordained upon Rashmi Sethi his sister to ensure that 'V' has a comfortable life at the said premises, has received nothing in the form of payment or consideration in any kind out of the consideration of the sale proceeds thereof to the tune of Rs.17,04,00,000/- cannot be believed.

33. Though as observed herein above, the aspect of 'R' continuing to stay in an accommodation with rentals of Rs.23,000/- to Rs.24,000/- per month as referred to herein above also cannot be overlooked and thus there does appear to be some concealment of facts in relation to the assets which are available to 'R' for her sustenance, it can nevertheless not be overlooked that as laid down by the Hon'ble Supreme Court in *Rajnesh V. Neha & Ors.*; **(2021) 2 SCC 324 : (2021) 2 SCC (Civ) 220 : 2020 SCC OnLine SC 903 at page 371** Crl.Appeal 730/2020 decided on 4.11.2020 qua the criteria to determine the quantum of maintenance quantum of maintenance, it has been observed to the effect:

“III. Criteria for determining quantum of maintenance

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77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

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80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any

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income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in Bharat Hegde v. Saroj Hegde [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

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86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence

87. Section 17 of the DV Act grants an aggrieved woman the right to live in the “shared household”. Section 2(s) defines “shared household” to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

88. The right of a woman to reside in a “shared household” defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in Satish Chander Ahuja v. Sneha Ahuja [Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, by a Bench comprising of Hon'ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.] held that “shared household” referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any

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stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or casual living at different places would not constitute a “shared household”. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a “shared household”. Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

89. Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(c) Where wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The

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court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuja v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451]

90.2. *In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.*

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.*

90.4. *An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the*

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family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. *This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.*

(d) Maintenance of minor children

91. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.*

92. *Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.*

(e) Serious disability or ill health

93. *Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.”*

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34. As laid down by the Division Bench of this Court in Mat.Appeal (FC) No. 169/2018 titled *Jai Kishan vs Anamika* vide judgment dated 27.7.2018 in paragraph 15 thereof to the effect in relation to an application seeking interim maintenance under Section 125 of the Cr.P.C., 1973, filed by the wife, the test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband.

35. As laid down in *Shamima Farooqui vs Shahid Khan*; 2015 (5) SCC 705 by the Hon'ble Supreme Court, the obligation of the husband to provide maintenance stands on the higher pedestal than the wife and that an able bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, cannot contend that he is not in a position to earn sufficiently to maintain his family and that the onus is on the husband to establish the necessary material that there are sufficient grounds to show that he is unable to sustain a family in discharge of his legal obligations beyond his control and that if the husband does not disclose the exact amount of his income, adverse inference would be drawn by the Court.

36. Furthermore, as laid down in *Sanjay Damodar Kaley v. Kalyani Sanjay Kaley*; 2020 SCC OnLine Bom 694 as regards the contention raised on behalf of 'V' that 'R' has a potential to earn and does not seek to so earn, as observed by the Hon'ble High Court of Bombay in *Sanjay Damodar Kale V. Kalyani Sanjay Kale*, placing reliance on the verdict of *Sunita*

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Kachwaha & Ors. v. Anil Kachwaha. 2014 (16) SCC 715, the mere potential to earn of the wife is not sufficient to deny the claim of the maintenance of the wife.

37. That 'R' is facing eviction proceedings repeatedly and has been directed to surrender her residential accommodation by 20.12.2021 is however an aspect which cannot be overlooked in as much as Section 125 of the Cr.P.C., 1973, has been enacted with a view to prevent vagrancy or destitution of a woman on account of failure of the marriage and not as a punishment to the other spouse as observed by the Hon'ble Supreme Court in ***Rajnesh V. Neha and Ors.*** (supra) whilst laying down the criteria for determining the quantum of maintenance and as observed therein by the Hon'ble Supreme Court, the Court must have due regard to the standard of living of the husband and as well as spiraling inflation rates and high cost of living and the plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualification. 'V' in the instant case has educational qualifications as stated in Part-I of his affidavit dated 23.11.2017 of being a Bachelor of Commerce.

38. As laid down in ***Rajnesh V. Neha and Ors.*** (supra) the test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, i.e., (the husband) and the standard of living that the applicant (the wife) was accustomed to in her matrimonial home and that though the

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maintenance amount awarded must be reasonable and realistic and should avoid either of the two extremes, i.e., the maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury.

39. In view thereof, taking into account the spiraling inflation rates, and the apparent capacity of 'V' who lives in adequate comfort, the interim maintenance awarded to 'R' vide the impugned order dated 30.5.2019 is enhanced to Rs.35,000/- per month which amount of enhanced maintenance is directed to be paid to 'R', the petitioner of Crl.Rev.P. No.830/2019 by the respondent 'V' to the petitioner 'R' w.e.f from the month of January 2020 in view of the Sale deed dated 19.12.2019 in respect of sale of H. No. S-83, Greater Kailash-I, New Delhi and is directed to be paid to 'R' into her bank account by 7th day of each consecutive English Calendar month and the arrears of maintenance from January, 2020 to November, 2021 Rs.35000/- to be paid within six months from today.

40. As regards the period from the date of institution of M-23/17 (though awarded vide the impugned order w.e.f. 15.2.2017 as being the date of the application, as a bare perusal of the application itself shows the stamp of filing to be 27.1.2017), from the date 27.1.2017 till the date 31.12.2019, the amount of maintenance awarded to 'R' (wife) by 'V' (husband) @ Rs.20,000/- per month is upheld as awarded vide the impugned

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order dated 30.5.2019 in M-23/17 with the modification that the said maintenance is to be paid from the date 27.1.2017 onwards till the date 31.12.2019 at the said rate.

41. The petition Crl.Rev.P.830/2019 is disposed of accordingly and Crl.Rev.P.869/2019 is dismissed and the stay granted vide order dated 22.8.2019 on directions to pay arrears of maintenance in terms of the order dated 30.5.2019 in M-23/17 is thus vacated. All payments made however by 'V' to 'R' pursuant to proceedings in Crl.Rev.P. 869/2019 shall however be adjusted in the entire amount payable by 'V' to 'R'.

DECEMBER 10th, 2021/SV

ANU MALHOTRA, J.

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