

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

% **Reserved on : 25th October, 2021**
Pronounced on: 10th November, 2021

+ **CRL. REV. P. 334/2017 & CRL.M.A. 14082/2021**

MALA NIDAR Petitioner

Through: Ms. Sangeeta Chandra, Advocate.

Versus

SUNIL SAGARRespondent

Through: Mr. Simon Benjamin and
Ms.Yashika Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

[THROUGH VIDEO CONFERENCING]

CHANDRA DHARI SINGH, J.

1. This criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") has been filed against the impugned order/judgment dated 28th February 2017, passed by Principle Judge, Family Courts, Rohini, Delhi in MT No. 42/2016 titled as *Mala Vs. Sunil Sagar*, for enhancement of maintenance amount from Rs.8000/- (Rupees Eight Thousand Only) per month to Rs. 1,00,000/- (Rupees One Lakh only) per month.

2. Brief facts as transpired from the record are as follows:

- i. The marriage of the revisionist and the respondent was solemnized on 24th March 2013, according to Buddhist Rites Ritual at Trilok Bhawan, Shalimar Bagh, Delhi. On 20th May 2013, the revisionist left matrimonial house due to allegedly cruelties and atrocities committed by respondent and his family members. On 21st May 2013, the revisionist lodged the complaint which was registered as FIR bearing No. 315/2013 under Sections 498A/406/323/506/342/509/34 of Indian Penal Code, 1860 (in short “IPC”) with Police Station Mehrauli, New Delhi. The respondent was arrested in the said case and thereafter the respondent moved an application for grant of bail in the Court of learned Metropolitan Magistrate, Family Court, Saket, New Delhi. The said bail application was dismissed.
- ii. Thereafter, the respondent moved an application before the learned Additional Session Judge, Saket, New Delhi, which granted interim bail to the respondent for a period of two months. Thereafter, the matter was referred to Mediation Centre, Family Court, Saket, New Delhi and the revisionist and respondent were directed to appear before the Mediation Centre on 1st June 2013,. The revisionist along with her mother Smt. Vimla Devi, brothers namely Mahender and Gyanender and cousin sisters went to attend the Mediation Centre proceedings in Saket Court, New Delhi on 29th June 2013. It is alleged that during the mediation proceeding the respondent and his family members had misbehaved with the revisionist and her family

members and also given threat to face the consequences. The revisionist sent written complaint to Police Station Saket, Commissioner of Police, New Delhi, Hon'ble High Court and other forums.

- iii. Upon the incident which had taken place in the Mediation Centre, Saket, New Delhi, Ld. Additional Chief Metropolitan Magistrate, Saket, directed to register a case and therefore, FIR bearing No. 354/2013 dated 05.09.2013 under Section 323/325/401/406/509/34 IPC was registered in Police Station Saket, New Delhi against the respondent and his family members.
- iv. The revisionist filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 against the respondent and his family members which is pending in the Court of learned Metropolitan Magistrate, Saket Court, New Delhi.
- v. On 22nd January 2014, the revisionist filed a petition under Section 125 Cr. P. C. seeking maintenance in MT No.42/2016 and claimed maintenance at the rate of Rs. 1,00,000/- (Rupees One Lakh Only) per month from the date of filing of the application under Section 125 Cr. P. C. along with litigation expenses of Rs. 40,000/- (Rupees Forty Thousand only). The respondent had filed a reply to the application u/s 125 Cr. P. C. filed by the revisionist in the month of May, 2016. The

respondent had also filed the affidavit of his income/assets before the Court below along with the details of the income and bank statements.

- vi. After recording the evidence in the matter and after hearing both the sides, the Principle Judge, Family Court, Rohini disposed of the application under Section 125 Cr. P. C. and directed the respondent to pay Rs. 8,000/- (Rupees Eight Thousand Only) per month w.e.f. filing of petition, i.e., 22nd January 2014 along with the litigation expenses of Rs.11,000/- (Rupees Eleven Thousand Only) and clear the dues/arrears within 12 months.
- vii. Being aggrieved by the judgment/order dated 28th February 2017, passed by Principle Judge, Family Courts, Rohini, Delhi in MT No. 42/2016 titled as Mala Vs. Sunil Sagar, the instant Criminal Revision has been filed by the petitioner and prayed for enhanced maintenance to the tune of Rs. 1,00,000/- (Rupees One Lakh Only) per month on the grounds mentioned in the revision.

3. Ms. Sangeeta Chandra, learned counsel appearing on behalf of the revisionist submitted that respondent is a man of sufficient mean and is earning about more than two lakhs per month from the investment. Further, the respondent runs business and is an Estate Agent and also invests in property and shares. It is submitted that he also deals in gold jewellery. The learned counsel appearing on behalf of the revisionist

vehemently submitted that the respondent owns several properties in his name and received a sum of Rs.1.5 crores as share in respect of sold property prior to marriage. The learned counsel appearing on behalf of the revisionist submitted that the revisionist is fully dependent on her family members and is residing in a rented accommodation.

4. The learned counsel appearing on behalf of the revisionist submitted that the revisionist examined herself as PW-1 in support of the petition under Section 125 Cr. P. C. She testified on the lines of the petition vide her affidavit i.e. Exhibit PW-1/K and relied upon the documents marked as PW-1/A PW-1/C, PW-1/D, PW-1/G, PW-1/I along with Exhibit PW-1/B, Exhibit PW-1/E, Exhibit PW-1/F and Exhibit PW-1/H and submitted that after perusal of the said documents and the exhibits it is established that the respondent is a resourceful person and he is also earning more than Rs. 2 lakhs per month.

5. It is submitted that the Trial Court itself observed in para 7 of impugned judgment, that there is no infirmity or any other reason to disbelieve testimony of PW-1, but in spite of recording the above said fact in their judgment the Court below has awarded a meagre maintenance amount of Rs.8,000/- (Rupees Eight Thousand Only) per month to the revisionist without any basis and contrary to law established by the Hon'ble Supreme Court as well as in the several pronouncement of this Hon'ble Court.

6. The learned counsel appearing on behalf of the revisionist submitted that the Court below has also failed to appreciate that there is

no evidence on record to prove that the revisionist is employed or earning any income. It is also not denied by the respondent that she is residing with her parents in a rented accommodation. It is submitted that the amount of Rs. 8,000/- (Rupees Eight Thousand Only) awarded as maintenance is highly inadequate to meet the expenses.

7. It is submitted that the Court below has passed the impugned order without considering the contentions of the revisionist that the respondent is earning handsome amount i.e. Rs. 2,00,000/- (Rupees Two Lakh Only) per month. Even in the income affidavit filed in Domestic Violation Act proceedings before learned Metropolitan Magistrate, the respondent admitted that he deals in shares and equity and he is earning the sufficient amount from the share and equity business. The learned counsel appearing on behalf of the revisionist vehemently submitted that it is also the case of the revisionist before the Court below that since respondent is dealing in the business of share market and he is earning handsome amount/income from the said business therefore she has claimed the maintenance from the respondent at the rate of Rs. 1,00,000/- (Rupees One lakh only) per month which is proportionate with the income of the respondent and as per the dictum of the law laid down by the Hon'ble Supreme Court. In view of the above facts and circumstances, the learned counsel appearing on behalf of the revisionist submitted that the order passed by the Court below is bad in law, without considering the facts of the case as well as is contrary to the documents/material on the record. It is further submitted that taking into consideration of the above said facts and circumstances of the case the order dated 28th February 2017, passed

by the Principle Judge, Family Courts be set aside and prayed to enhance the maintenance amount from Rs. 8,000/- (Rupees Eight Thousand Only) per month to Rs. 1,00,000/- (Rupees One lakh only) per month.

8. *Per contra*, Mr. Simon Benjamin, the learned counsel appearing on behalf of the respondent vehemently opposed the instant revision and submitted that the present revision has been filed only to harass the respondent and submitted that entire allegations made in the maintenance petition as well as in the revision is based on false, vague, concocted, frivolous and fictitious facts and therefore there is no merit in the instant revision and the same be dismissed with cost.

9. Learned counsel appearing on behalf of the respondent submitted that the revisionist has failed to prove before the Court below that the respondent is earning handsome amount as claimed by the revisionist in the petition under Section 125 Cr. P. C. The order was passed after considering the entire facts of the case as well as the evidence, documents and other materials on record related to the income of the respondent. The Court below has passed the detailed order after considering the contention made in the reply filed by the respondent as well as the contention made in the petition. Considering the entirety of the matter, the Court below has passed the maintenance of Rs. 8,000/- (Rupees Eight Thousand Only) per month to the revisionist as per the principle laid down by the Hon'ble Supreme Court as well as by this Court in several pronouncements. In the case of giving the maintenance to the wife should be proportionate of the income of the husband. There is no illegality in the impugned order and therefore this Court may not interfere in the impugned order in the

instant revision filed by the revisionist. It is further submitted that there is limited scope in the revision to interfere in any order passed by the Court below. In the revisional jurisdiction the Court may only see any error apparent on record or gross illegality committed by the Court below while passing any judicial order but in the instant case there are no errors apparent on the facts or record and there is no gross illegality committed by the Court below. Therefore, the instant petition is devoid of merits and is therefore liable to be dismissed.

10. I have heard learned counsel of the parties at length and perused the record.

11. The fact of marriage between the revisionist/petitioner and respondent is not denied. The object behind Section 125 Cr. P. C. is to prevent vagrancy and destitution of wife, minor children and the parents. In case of ***Manish Jain Vs. Akanksha Jain***, (2017) 15 SCC 801, the Hon'ble Supreme Court has observed as under:

“16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual

situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

12. In the instant case, the revisionist/petitioner has stated that while awarding the maintenance vide order dated 28th February 2017, the Court below has ignored the facts that the respondent is resourceful person and having an income from his business and ancestral properties. In the proceedings under Section 125 Cr. P. C. she examined herself as PW-1 in support of the petition. She testified on the lines of the petition vide her affidavit exhibit PW-1/K.

13. She has also relied on certain documents which were marked as PW-1/A PW-1/C, PW-1/D, PW-1/G, PW-1/I along with Exhibit PW-1/B, Exhibit PW-1/E Exhibit PW-1/F and Exhibit PW-1/H. As per the documents which have been filed by the revisionist before the Court below regarding the proof of income of the respondent does not establish any exact income of the respondent. The revisionist herein vehemently submitted that since he is doing business in the share market, gold jewellery and investment business, therefore, she has presumption that he is earning more than 2.5 lakhs income per month. And therefore she has claimed proportionate maintenance of the income of the respondent. The Principle Judge, North West, Family Court, New Delhi while disposing of the application under Section 125 Cr. P. C. bearing MT No. 42/2016 has observed in para 10 as:

“10. A bare perusal of the loan agreement/agreements dated 01 November, 2013, 26 September, 2013 between Gautam Sagar and Sunil

*Sagar and receipt dated 20.10.2013 executed by Gautam Sagar regarding part payment of loan reflects the address of the respondent as B-126C, Freedom Fighters Enclave and, as such, the claim on behalf of the respondent that he is residing in a rented premises appears to be doubtful. Further, the large transactions in respect of the loans itself reflect that the respondent is a man means and **his claim** that he was working as an Office Attend with S.K. Properties, does not appear to be probable. Even otherwise, the aforesaid stand of the respondent could not be proved on record since his defence stood struck off. An agreement dated 09.09.2015 between respondent and his brother Gautam Sagar whereby the share and plot valued at Rs.11,86,523/- were received by Gautam Sagar, also corroborates the stand of petitioner that respondent was dealing in shares and his claim that he was having an income of Rs.5,800/- per month appears to be a last ditch effort to escape the liability of payment of maintenance to the petitioner. Counsel for the petitioner has also referred to the various entries in the passbook of Corporation Bank whereby it has been pointed out that in entry dated 25.09.2013 and 15.10.2013 there is reference to conversion to FDs of Rs.50,000/- and Rs.20,000/- which have not been disclosed by the respondent in affidavit. Similarly, credit entries dated 27.04.2015 and 07.09.2015 relating to credit of Rs.49,949/-, Rs.52,636/-, Rs.23,686/- and Rs.6,355/- also reflect that the respondent had some additional income and assets. The respondent has been proved to be belonging to a reasonable well settled family and was residing in the family property. The income of respondent as claimed to be Rs.5,800/- per month is not believable as even the minimum wages for a skilled labourer are in the range of Rs. 11,830/- per month approximately. Considering the overall nature of transactions as revealed from his own affidavit, the income of the*

respondent can be presumed to be not less than Rs.25,000/- per month. A person with the meager income of Rs.5,800/- per month as claimed by the respondent cannot be spending litigation expenses to the tune of Rs. 1,68,000/-.

Further, there is no evidence on record that the petitioner is employed or earning any income and is residing with her parents in a rented accommodation. Merely on the basis of an entry dated 20.07.2013 in her IDBI Bank Account for deposit of Rs.45,000/-; it cannot be presumed that she has a regular income.”

14. After perusal of the above such paragraph in which the Court below has determined the income of the respondent on the basis of the affidavit filed by the petitioner as well as the documents which were exhibited by the petitioner and the reply of the respondent, found that income of the respondent can be presumed to be not less than Rs. 25,000/- (Twenty Five Thousand Only) per month and on the said basis the maintenance has been awarded to the respondent.

15. The Hon’ble Supreme Court in the case of ***Chaturbhuj Vs. Sita Bai (2008) 2 SCC 316***, has held that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Hon’ble Supreme Court has observed as under:

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase

“unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr. P. C. is a measure of social justice and is specially enacted to protect women and children and as noted by this court in Captain Ramesh Chander Kaushal v. Veena Kaushal falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat.”

“7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 Cr. P. C. It has to be established that with the amount she earned the respondent wife was able to maintain herself.”

16. The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as punishment to the other spouse. The financial capacity of the husband is actual income with reasonable expenses for his own maintenance, and dependant 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. It is settled law that balance and equity must carefully be drawn between all relevant factors. The test of determination of maintenance in matrimonial disputes depends on the financial status of the respondent and the standard of living that the revisionist was accustomed to in her matrimonial home.

17. In the case of *Chaturbhuj Vs. Sita Bai* (2008) 2 SCC 316, the Hon'ble Supreme Court has held that the maintenance amount awarded must be reasonable and realistic, and advised 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 derives the wife to penury. The sufficiency of the quantum has to be adjudicated so that the wife is able to maintain herself with reasonable comfort.

18. The Hindu Marriage Act, 1955 provides statutory guidance with respect to the criteria for determining the quantum of maintenance. It provides the following factors which may be taken into consideration:

- a) Position and status of the parties.

- b) Reasonable wants of the claimant
- c) If the petitioner/claimant is living separately, the justification for the same.
- d) Value of the claimant's property and any income derived from such property.
- e) Income from claimant's own earning or from any other source.

19. A perusal of the law laid down by the Hon'ble Supreme Court would indicate that the proceedings under Section 125 Cr. P. C. have been enacted to remedy/reduce the financial sufferings of a lady who was forced to leave her matrimonial house, so that some arrangements would be made to enable her to sustain herself. It is the duty of the respondent to maintain his wife and to provide financial support to her and their children. The Husband cannot avoid his obligation to maintain his wife and children except if any legally permissible ground is contained in the statute.

20. In the present case, the petitioner/revisionist relies on the documents which show that the respondent is involved in several businesses but has not placed on record any documents to establish his exact income from that business as claimed by the petitioner/revisionist. The petitioner/revisionist has not exhibited any proof of exact income of the respondent during the proceedings before the Principle Judge, Family Court to establish that the respondent is earning more than Rupees Two Lakhs as claimed by the revisionist in the revision.

21. The petitioner has also not been able to point out any perversity in the impugned order. The Court below i.e. Principle Judge, Family Court while allowing the maintenance under Section 125 of the Cr. P. C. and while granting the maintenance to the petitioner vide order dated 28th February 2017, has taken into consideration entire facts and documents/materials on record and even this court does not find any material placed on record to ascertain the exact income of the respondent before the trial Court.

22. Having examined the materials on record and keeping in mind the limitation of revisional jurisdiction [ref: *Deb Narayan Haldar Vs. Anushree Haldar* (2003) 11 SC 303], this court is not inclined to interfere in the present revision petition and hence the Crl. Rev. P. No. 334/2017 is hereby dismissed. Consequently, the pending application is also disposed of.

23. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

November 10, 2021
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