



\$~22

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

% *Decided on : 28th January, 2022*

+ **CRL.REV.P. 357/2020**
CRL.M.A. 15896/2020 (for stay)

SH.BHAGWAN DASS Petitioner
Represented by: Mr. M.A. Inayati, Advocate.

Versus

SMT. POONAM & ORS. Respondent
Represented by: Mr. Yogesh Kumar Gupta,
Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT : (ORAL)

The hearing has been conducted through video conferencing.

1. By this revision petition, the petitioner seeks setting aside/modification of the judgment dated 31st August 2020 passed by the Additional Principal Judge, Family Courts, West District, Tis Hazari Courts directing the petitioner to pay a maintenance of ₹3000/- per month to the respondent No. 1 with effect from 12th April 2010 till 31st December 2017, then at the rate of ₹4500/- per month with effect from 1st January 2018 till 31st July 2020 and then at the rate of ₹10,000/- per month with effect from 1st August 2020 till her life time or she gets remarried after divorce from the petitioner. The petitioner was further directed to pay an amount of ₹4000/- per month to the respondent No. 2 with effect from 12th April 2010 till 31st December 2017, then at the rate of ₹4500/- per month with effect from 1st January 2018 till 31st July 2020



and then at the rate of ₹6000/- per month with effect from 1st August 2020 till the date of majority of this child i.e. 8th November 2020. The petitioner was further directed to pay an amount of ₹3000/- per month to the respondent No. 3 with effect from 12th April 2010 till 31st December 2017, then at the rate of ₹4500/- per month with effect from 1st January 2018 till 31st July 2020 and then at the rate of ₹6000/- per month with effect from 1st August 2020 till the date of attaining majority by the child. The petitioner was also directed to pay an amount of ₹7500/- to each of the three respondents as litigation expenses for the period of litigation.

2. Learned counsel for the petitioner submits that the petitioner had clearly stated and filed a reply stating that he was able to earn ₹4000/- per month at the time of filing reply to the petition and presently, he was earning ₹16,000/- per month and thus, he was not in a position to pay the amount directed vide impugned order as the same was beyond his income and assets. The learned Additional Principal Judge, Family Courts wrongly assessed the income of the petitioner till 31st December 2017 at ₹20,000/- per month and ₹27,000/- per month till 31st July 2020 and since 1st August 2020, the present income was assessed at ₹35,000/- per month.

3. The petitioner did not file his bank statement before the Family Court stating that he was not depositing his income in the bank. Claim of the petitioner in his affidavit of income, assets and expenditure was that he was working as a 'freelance worker working at Karol Bagh, New Delhi', however, no other particulars were given. In his cross examination, the petitioner denied that he was running a factory of rice bags and shoes at D-290, Madipur, Delhi and claimed that he used to



repair old shoes by visiting different factories and on further cross examination, stated that he did not remember the names of those factories. The petitioner claimed that he resided at D-290, Madipur, Delhi and that the house belonged to his mother but on further cross examination, he admitted that it was he who sold this house to his mother. However, he did not remember the year when this house was sold by him to his mother.

4. The respondents placed on record photographs of the electricity bills relating to the house No. D-289/290, J.J.Colony, Madipur for the months of September 2012 and June 2015, in which the electricity bills for the premises were raised in the name of the petitioner. It is thus evident that not only premises No. 290, the petitioner even possessed House No. D-289, J.J.Colony, Madipur. Further, in the affidavit, the petitioner claimed that he had an expenditure of ₹15,500/- per month including the amount of maintenance being paid to the respondents at the rate of ₹10,000/- per month and that in addition, he was paying ₹82,960/- per annum by way of life insurance and endowment policies but he did not furnish the particulars about these policies nor the copies of the policies were filed. The learned Additional Principal Judge, Family Courts noted that thus, even as per the own showing of the petitioner, he was incurring an expenditure of ₹22,000/- per month.

5. The petitioner admittedly has a bank account but he has neither disclosed the account number nor filed the copy of the bank statement. The respondents had placed on record the photographs downloaded from the Facebook page of the petitioner wherein, the petitioner has taken certain selfies and he is seen visiting various places in India as tourist. Even an Air Conditioner is seen at his premises and some of the



photographs appeared to be of his workplace where he is sitting in an office chair with CCTV camera screen installed near him. In two photographs, the petitioner is seen with boxes of finished goods and in one photograph, he is seen standing near a new SUV and in some other photographs, he is seen travelling wearing decent attires. Thus, on the basis of the standard of living of the petitioner, the Court assessed the present income of the petitioner at ₹35,000/- per month.

6. In the decision reported as 2018 SCC OnLine Del 10828 Vijay Kushwaha vs. Chanchal, this Court in an appeal where the appellant/husband failed to produce any documentary proof with regard to his employment status and also his actual income and by not disclosing his source of income, held that the appellant/husband is trying to defeat the legitimate right of the respondent/wife to claim maintenance and also shirking his responsibilities. In such situation, the Court held that it was not to allow the relief of reduction in amount of maintenance to the appellant/husband when he himself has not come with clean hands and is trying to hide the true facts from the Court.

7. In the decision reported as (1997) 7 SCC 7 Jasbir Kaur Sehgal (Smt.) vs. District Judge, Dehradun, the Hon'ble Supreme Court held that while awarding maintenance, the Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. It was further held that when diverse claims are made by the parties, one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.



8. As noted above, the petitioner is clearly evasive in his affidavit. He has neither filed his bank statement nor his income tax returns as he does not pay the income tax. However, from the life style of the petitioner, the findings of the learned Additional Principal Judge, Family Courts assessing his income at ₹35,000/- per month is a fair assessment of the income and hence, this Court finds no error in the impugned order as admittedly, the respondent No. 1 has no means to support herself as she is not working and has two children to look after as well.

9. Petition is accordingly dismissed.

10. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JANUARY 28, 2022

akb