



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

% **Reserved on: 5th May, 2022**
Pronounced on: 31st May, 2022

+ **CRL. REV. P. 71/2022 & CRL.M.A 2210/2022**

AMIT SHARMA Revisionist

Through: Mr. Surender Chauhan and
Mr. Abhinav Kajal, Advocates

versus

SHELKKA SHARMA & ORS Respondent

Through: Ms. Swaty Singh Malik and
Ms. Tanvi Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C") has been filed for setting aside the impugned order dated 6th August, 2020 passed by Principal Judge, Family Courts, Dwarka, Delhi (hereinafter "learned Principal Judge") in Maintenance Case No. 327/2018 titled as *Shelkka Sharma & Ors. vs. Amit Sharma*, by which the revisionist was directed to pay maintenance of Rs. 25,000/- per month to respondent nos. 2 and 3, each; and order dated 6th March 2021 by which an application under Section 127 of the Cr.P.C was dismissed.



FACTUAL MATRIX

2. Brief facts as transpired from the record are as follows:
- i. Both the revisionist and the respondent got married on 11th May, 2005, according to Hindu rites and ceremonies. Out of the said wedlock two children were born. Master Aarav (respondent no. 2) was born on 22nd January 2008 in United States of America and Master Ryan (Respondent no. 3) was born on 11th January 2014 at New Delhi. In or about June 2018, relationship between the parties got strained. The Respondent no. 1 left the company of the revisionist and on 5th June 2018 filed a petition under Section 125 of the Cr.P.C claiming maintenance of Rs. 1,00,000/- per month along with the application of interim maintenance of Rs. 1,00,000/-, for herself and her two minor sons.
 - ii. The revisionist, upon receipt of the notice in the aforesaid petition, appeared and filed a detailed reply to the said petition under Section 125 of the Cr.P.C denying all the allegations.
 - iii. The Court below vide order dated 7th August 2018 directed the parties to file income details on affidavit. Both the parties filed their respective income affidavits. Respondent no. 1 also filed her rejoinder to the reply filed by the revisionist.
 - iv. On 29th July, 2020 during the course of arguments on the application seeking ad-interim maintenance, both the parties agreed that the date of separation is November 2019 and from January 2020 onwards the revisionist will pay school fees for both the children and will also pay



Rs. 15,000/- per month to meet their expenses by the end of each month by transferring money in the bank account of the Respondent no. 2 and 3. It was further agreed that the revisionist will pick both the children on every Saturday at 12 Noon from the house of respondent no.1 and drop back by 8 PM on Sunday.

- v. The impugned order dated 6th August 2020 was passed by the Court below, wherein the revisionist's income was assessed as Rs. 1,00,000/- per month and he was directed to pay Rs. 25,000/- per month to Respondent no. 2 and 3, each, including their school fees from the date of filing of the application. It was also held that Respondent no. 1 herein is earning sufficient money to effectively maintain herself and therefore she is not entitled to any amount of maintenance.
- vi. Thereafter, the revisionist filed an application under Section 127 of the Cr.P.C for alteration and modification of order dated 6th August 2020, which was dismissed vide impugned order dated 6th March 2021.
- vii. Being aggrieved by the orders dated 6th August 2020 and 6th March 2021, the instant Criminal Revision has been filed by the revisionist. Revisionist prays for partly setting aside the order dated 6th August 2020 and setting aside the order dated 6th March 2021, both passed by learned Principal Judge.



SUBMISSIONS

3. Mr. Surender Chauhan, learned counsel appearing on behalf of the revisionist submitted that respondent is a women of sufficient means and is earning more than Rs. 1 Lakh per month. It is submitted that Court below has wrongly and illegally assessed the income of the revisionist as Rs. 1,00,000/- per month without considering the reply to the petition under Section 125 of the Cr.P.C and the affidavit of Income and Assets, wherein the revisionist categorically mentioned his income as Rs. 25,208/- per month. The respondent no. 1 although alleged in her petition under Section 125 of Cr.P.C as well as in the affidavit of Income and Assets that the income of the revisionist is Rs. 3,00,000/- but she did not file any document or material on record to substantiate the same. It is submitted that there is no material or document available on record to *prima facie* show that income of the revisionist is Rs. 1,00,000/-. Therefore, the assessment of the income of the revisionist is only a guess work, which is not permissible under law.

4. The learned counsel for revisionist submitted that the Court below has directed the revisionist to pay a sum of Rs. 25,000/- per month to respondent no. 2 and 3, each, from the date of filing of the application, which is contrary to consent order dated 29th July, 2020. It is submitted that it is settled law that an order passed with consent of the parties cannot be altered, modified and set-aside unless there is an allegation of fraud or misrepresentation raised by either party against each other. In the present case there is no allegation by any of the parties that the order dated 29th July 2020 was passed by playing fraud or misrepresentation. It is further



submitted that despite the order dated 29th July, 2020, respondent no. 1 has not even allowed the revisionist to meet his two children from last 4-5 months.

5. It is submitted that Court below has rightly held that respondent no. 1 has sufficient earning and therefore, she is not entitled to any amount of maintenance and Court below has dismissed the application under Section 127 of the Cr.P.C without considering the facts of the case.

6. In support of his argument, learned counsel for the revisionist relied upon the following judgments:

- i. In ***Rajneesh vs Neha*, (2021) 2 SCC 324** the Hon'ble Supreme Court held as under:

“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.”

- ii. In the case of ***Bharat Hedge vs Shrimati Saroj*, 2007 SCC OnLine Del 622**, the Co-ordinate Bench of this Court laid down certain factors/guidelines to be considered for determining the maintenance



but the Court below has ignored the law laid down while awarding the maintenance to Respondent Nos.2 and 3. The relevant paragraphs are as follows:

“8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- 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 life style 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 guess work 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 u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act.”

- iii. In ***Vijay Kumar vs State of Bihar AIR 2004 SC 2123***, the Hon’ble Supreme Court has held that proceedings under Section 125 Cr.P.C is a civil proceeding. Relevant paragraphs are as follows:

“11. The position of law relating to proper jurisdiction was highlighted by this Court in Jagir Kaur v. Jaswant Singh [AIR 1963 SC 1521 : (1963) 2 Cri LJ 413] as follows: (AIR pp. 1523-24, para 5)

“The crucial words of sub-section (8) are, ‘resides’, ‘is’ and ‘where he last resided with his wife’. Under the Code of 1882 the Magistrate of the district where the husband or father, as the case may be, resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This in our view, has been designedly done by the legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language.”



14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.”

7. In view of the above facts and circumstances, the learned counsel appearing on behalf of the revisionist submitted that the impugned order is bad in law as the same was passed without considering the facts of the case and without perusing the documents/materials on record. It is therefore, prayed that the orders dated 6th August 2020 and 6th March 2021, passed by the learned Principal Judge, be set aside and the revisionist may be allowed to pay the amount in terms of order dated 29th July 2020 passed by the Court below.

8. *Per contra*, Ms. Swaty Singh Malik, learned counsel appearing on behalf of the respondents vehemently opposed the instant revision petition and submitted that the same is based on false, vague, concocted, frivolous and fictitious facts. It is nothing but an effort to delay the proceedings and harass the respondents.



9. Learned counsel for the respondents submitted that the revisionist has concealed the material facts regarding his conduct before the Court below. Time and again, Court has issued warrants of arrest and attachment against the revisionist for his continuous non-appearance and non-compliance of order dated 6th August 2020, but he failed to pay maintenance to his minor children.

10. It is submitted that vide order dated 6th August 2020, court below has granted maintenance only to the minor children i.e respondent no. 2 and 3 and did not grant any maintenance to Respondent no. 1. It is further submitted that the revisionist is bound by the provisions provided under Section 125 (2) of the Cr.P.C, wherein it is categorically stated that any allowance for maintenance or interim maintenance and expenses of the proceedings shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance or interim maintenance and expense of proceeding.

11. It is submitted that the Court below has passed a well-reasoned order on 6th March, 2021, wherein it is categorically held that the arrangement as stated in order dated 29th July, 2020 was not the interim maintenance order on the basis of agreement between the parties, rather it was direction given by the Court till the next date of hearing, so that education and maintenance of the children should not suffer. Interim application for maintenance was disposed of vide order dated 6th August 2020, wherein the revisionist has been directed to pay Rs. 25,000/- per month to respondent nos. 2 and 3, each.



12. It is vehemently submitted that the Court below has all the powers to make any arrangement for the welfare of the wife or children while finally disposing of any petition/application under Section 125 of the Cr.P.C and the order dated 29th July, 2020 was the one wherein direction was given for the welfare of respondent nos. 2 and 3, so that their education and necessities remain fulfilled.

13. The learned counsel appearing on behalf of the respondents submitted that the Court below has passed the orders challenged in the instant revision petition after considering the entire facts of the case as well as the evidence, documents and other material(s) available on record related to the income of the revisionist.

14. The learned counsel for the respondent/wife at the outset submitted that the principle of providing maintenance is to ensure the living conditions of the respondent/ wife and children similar to that of the revisionist/husband whereas in the present case, the respondent children are yet to receive the amount.

15. 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 illegality committed by the Court below. Therefore, the instant petition is devoid of merits and is therefore liable to be dismissed.



16. I have heard the matter at considerable length. The parties are entangled in several rounds of litigation. Mainly, allegations are counter-allegations against each other. Since proceedings under Section 125 of the Cr.P.C. are still pending, I am not inclined to go into the merits of the rival contentions as raised by the parties. The only question falling for consideration before this Court is whether the amount of Rs. 25,000/- awarded by the Court below as interim maintenance for paying school fees of the respondent no. 2 and 3 is on the higher side.

17. This Court has heard learned counsel of the parties at length and perused the record. I have also perused orders dated 6th August 2020 and 6th March 2021.

ANALYSIS AND FINDINGS

18. It is an admitted fact that marriage between the revisionist and respondent no. 1 was solemnized and out of said wedlock two children were born. But due to some differences between revisionist and respondent no.1, they stated living separately from November, 2019, pursuant to which, respondent no.1 filed petition under Section 125 of the Cr.P.C. The object behind Section 125 of the 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."

19. In the instant case, the revisionist has stated that while awarding the interim maintenance vide order dated 6th August 2020, the Court below has ignored the fact that respondent no.1 is a resourceful woman and having an income of approximately Rs. 1,00,000/- per month from her business. As per the documents filed by the revisionist before the Court below there is nothing to assess the exact income of the respondent. The learned Principal Judge, while disposing of the interim application for maintenance under Section 125 of the Cr.P.C bearing MT No. 327/2018 has observed as follows:

*"11. In **Bharat Hegde Vs. Saroj Hegde** 140 (2007) DLT 16, the Court has observed that unfortunately in India, parties do not truthfully reveal their income. For self-employed person or persons employed in unorganized sector, truthful income never surfaces. Tax avoidance is the norm and tax compliance is the exception in this Country. Further in **Jayant Bhargava vs. Priya Bhargava** (2011) 181 DLT 602, the Court has*



observed that tendency of the spouse in proceedings for maintenance is to not truthfully disclose their true-income. In such cases some guesswork on the part of the Court is permissible.

12. Keeping in view the facts and circumstances of this case and by making guess work, income of the respondent is assessed as Rs. 1,00,000/- per month. Revisionist no. 1 is also held to be earning sufficient money to suitably maintain herself. Therefore, revisionist no. 1 is not held entitled to any amount of maintenance. For maintenance of revisionist no. 2 and revisionist no. 3, respondent is directed to pay Rs, 25,000/- each to revisionist no. 2 and revisionist no. 3 per month which includes their school fee from the date of filing of this application. Any amount paid by respondent to revisionists on account of interim maintenance or towards the school fee during the pendency of this petition shall be adjusted in calculating the total amount of arrears.

13. Respondent is directed to clear the outstanding arrears of maintenance within 2 months in 2 equal monthly installments and continue to pay the current maintenance by 10th of each month henceforth.

14. Application filed on behalf of revisionists praying for Interim Maintenance stands disposed of accordingly.”

Further, there is no evidence on record that respondent no.1 is employed or earning any income and is residing with her parents along with two minor children. Merely on the basis of guess work income of the respondent is assessed as Rs. 1,00,000/-, but it cannot be presumed that she has such a regular source of income.



20. The provision for maintenance under Section 125 of the Cr.P.C reads as under: -

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain--

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:



[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of



each months allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wives refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are



living separately by mutual consent, the Magistrate shall cancel the order.”

21. Bare reading of the Section 125 of the Cr.P.C suggests that the intention of the legislature while making the provision for maintenance was to ensure that a person shall oblige with his matrimonial and family obligations of maintaining his wife and children, when they do not have sufficient means to sustain themselves. The power to adjudicate on the issue of maintenance has been given, at the first instance, to the Magistrate, who may upon being satisfied direct the concerned person to provide such maintenance/monthly allowance to his wife, children or parents. There is, therefore, a discretionary power with the Magistrate that is to be exercised while appreciating the evidence and material on record when awarding maintenance to the parties.

22. One of the material facts to be considered by the Court while entertaining a matter under Section 125 of the Cr.P.C, before adjudicating upon the quantum of maintenance, the Court may first, in light of the provision under Section 125 of the Cr.P.C, be *prima facie* satisfied on the point that there exists a lawful domestic relationship between the parties, which gives rise to the obligations and duties to maintain the family members.

SECTION 125 OF THE Cr.P.C AND REVISIONAL JURISDICTION

23. It is an established law that the Revisional Court need not re-assess or re-appreciate the material and evidence available on record before the Trial Court. A Revisional Court is to limit its jurisdiction for adjudicating upon the material illegalities and irregularities apparent in the impugned orders.



The marital status in cases of maintenance under Section 125 of the Cr.P.C, shall therefore, be declared by the Civil Court and the Revisional Court shall restrain itself to the questions before it without reopening the evidence.

24. In ***Pyla Mutyalamma v. Pyla Suri Demudu*** (2011) 12 SCC 189, the Hon'ble Supreme Court has set out the standards of revisional jurisdiction to be exercised by the High Courts in maintenance proceedings under Section 125 of the Cr.P.C, wherein it was observed as under:

“16. In a revision against the maintenance order passed in proceedings under Section 125 CrPC, the Revisional Court has no power to reassess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the Revisional Court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both the child and the woman. This was the view expressed by the Supreme Court in Santosh v. Naresh Pal [(1998) 8 SCC 447], as also in Pravati Rani Sahoo v. Bishnu pada Sahoo [(2002) 10 SCC 510: 2004 SCC (Cri) 1140]. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 CrPC



is that it should not be disturbed while exercising revisional jurisdiction.”

25. In the case of ***Deb Narayan Haldar Vs. Anushree Haldar (2003) 11 SC 303***, the Hon’ble Supreme Court held:

“20. ...We have reached this conclusion after appreciating the evidence on record since there is no discussion of the evidence in the judgment of the High Court. The counsel for the respondent posed before us a question as a part of his submission as to why the respondent should leave her matrimonial home without any reason. In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter-allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case. It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately



resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us.”

26. 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.”

27. 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 punishment to the other spouse. The financial capacity of the husband, his 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.

28. In the case of *Chaturbhuj (Supra)*, 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 revisionist, nor should it be so meager that it derives the wife to penury. The sufficiency of the quantum has to be adjudicated so that the wife and children are able to maintain themselves with reasonable comfort.

29. 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 revisionist/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.



30. 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 along with two minor children, so that some arrangements would be made to enable her to sustain herself and her children. It is the duty of the revisionist to maintain his wife and minor children by providing 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.

31. In the present case, the revisionist relies on the documents which show that the respondent is a Tarot card reader and an Astrologer who is running two websites, but has not placed on record any documents to assess her exact income from that business and to establish that she is earning more than Rs. 1 Lakh per month.

32. The revisionist has also not been able to point out any perversity in the impugned orders. The Court below i.e. learned Principal Judge, while allowing the interim maintenance under Section 125 of the Cr.P.C and granting the interim maintenance to the respondent vide order dated 6th August 2017, has taken into consideration entire facts and documents/materials on record and even this Court does not find any material on record to ascertain the exact income of the respondent.

CONCLUSION

33. Upon perusal of the impugned order, this court does not find any illegality or error apparent on record and finds no cogent reason to invoke its extra ordinary jurisdiction and interfere in the impugned order.



34. In view of the aforementioned facts, circumstances, law established, material(s) available on record and keeping in mind the limitation of revisional jurisdiction [ref: *Deb Narayan Haldar (Supra)*], this Court does not find any force in the arguments advanced by the learned counsel for the revisionist and accordingly, instant revision petition is hereby dismissed upholding orders dated 6th August 2020 and 6th March 2021. Pending application, if any, also stands disposed of.

35. It is made clear that any observations made herein are only for the purposes of the adjudication of the instant petition and shall have no bearing whatsoever on the merits of the case, at any stage in any proceedings before any Court.

36. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 31, 2022

Aj/ct