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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRIMINAL REVISION PETITION NO. 796 OF 2019 &
CRL.M.A. 32406/2019**

Between:-

**SH. KALIKA BUX SINGH
S/O LATE SH, DADAN SINGH
PERMANENT RESIDENT OF
VILLAGE (GAO) DHANA PUR,
THANA SANGRAMPUR,
DISTRICT AND TEHSIL AMETHI,
UTTAR PRADESH.**

**PRESENTY AT:
C/O SH. HARISH BHARDWAJ
R/O 359/1, CHIRAGH DELHI,
NEW DELHI.**

.....PETITIONER

*(Through: Mr. Saurabh Kansal, Ms. Pallavi Sharma and Ms.
Ashu Chaudhary, Advocates.)*

AND

**KUMARI NIDHI SINGH
D/O SH. KALIKA BUX SINGH
THROUGH HER NATURAL GUARDIAN
MS. MEENAKSHI SHARMA
W/O SH. KALIKA BUX SINGH
R/O J-677, KALI BARI,**

**MANDIR MARG, NEW DELHI-110001.****.....RESPONDENT***(Through: Mr. Pramod K. Singh, Advocate.)*-----
%Pronounced on : 27.09.2022
-----**J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J.**

1. This revision is directed against impugned judgment dated 22.03.2019 passed by the Principle Judge, Family Court, Patiala House Courts, Delhi, in case No. MT 124/2018, whereby, an application under Section 125 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') filed by respondent-daughter has been allowed and also against interim order dated 05.08.2016 passed by the said court granting interim maintenance during the pendency of the main petition.

2. The facts of the case in short are that the respondent is the daughter of petitioner and of *Ms. Meenakshi Sharma*, who is the wife of the petitioner. On 01.05.2002, the marriage of the petitioner was solemnized with the mother of the respondent as per Hindu rites and rituals. On 06.08.2003, out of their wedlock, the respondent was born. It is stated that since June, 2004 the wife of the petitioner left the matrimonial home and the petitioner thereafter since June, 2013 started living at his native village in Sultanpur, Uttar Pradesh. In the year 2013, the petitioner was served with the notice of the petition under Section 125 of the Cr.P.C. filed by the respondent and thereafter he filed the reply and *vide* first impugned order dated 05.08.2016, the learned Family



Court granted interim maintenance of a sum of Rs.5,000/- per month. However, vide final impugned order dated 22.03.2019 which is the second impugned order, the learned Family Court granted a maintenance of Rs.6,000/- per month to the respondent w.e.f. the date of filing of the petition i.e. 05.09.2013 with the condition that the maintenance amount shall be enhanced by 5% every year.

3. Learned counsel appearing for the petitioner submits that the impugned order is illegal and improper and the same has been passed in utter violation of the settled legal position. According to her, the petitioner had to shift to his village in Dhanapur, Amethi, Uttar Pradesh and he is somehow managing his family. According to her the school fees of the respondent has been wrongly shown to be Rs.2,400/-, quarterly, whereas, she was getting a rebate of Rs.1,800/- per month. It has also been stated that the mother of the respondent is getting a sum of Rs.48,000/- per month as salary from Ghaziabad Development Authority whereas, the total income of the petitioner is about Rs.7,800/- per month as he is working as a tutor. According to learned counsel for the petitioner, the monthly income of the petitioner has been assessed as per minimum wages of Delhi Government @ Rs.16,482/- and accordingly maintenance for sum of Rs.6,000/- has been awarded to respondent whereas, the minimum wages applicable to the petitioner is of Uttar Pradesh, which is Rs.8,000/- per month for unskilled worker. The learned counsel appearing on behalf of the petitioner has placed reliance on a decision of this Court in the case of *Sarita Bakshi v. State & Anr.*¹ CrI. Rev. P.792/2018 decided on 03.06.2022.

¹ (2022) SCC OnLine Del 1707



4. The learned counsel appearing on behalf of the respondent submits that submissions made by the learned counsel for the petitioner are meritless and the impugned order does not call for any interference. It is stated that the petitioner is residing in Delhi for the last twenty years and is working as a property dealer and also running a coaching institute. According to him, the petitioner is earning a sum of Rs.1,20,000/- per month from coaching, home tutoring & property dealing business. It has also been submitted that the petitioner is maintaining four bank accounts in four different banks. It is, therefore, submitted that the monthly income of the petitioner can by no stretch of imagination be less than even if, assessed by the court below Rs.16,482/-. It is stated that even the said income has been assessed to be on a lower side and under the circumstances no interference is called for.

5. I have heard learned counsel for the parties and have perused the record.

6. The provision under Section 125 of the Cr.P.C. is to safeguard the wife, minor child, father or mother from financial suffering due to lack of money. The aim is to ensure that there should be no financial hardship and the wife, minor child, father or mother should be able to enjoy the same status and comfort as enjoyed by husband.

7. It has been held in various judgments by the Hon'ble Supreme Court that the provisions under Section 125 of the Cr.P.C. fall within the Constitutional sweep of Article 15 (3) and Article 39 of the Constitution of India. The object is to ensure social justice towards women and children.



8. In the instant case if the material available on record is perused the same would indicate that the petitioner has not disputed the marriage with respondent-wife. The birth of respondent is also not disputed from out of their wedlock. It is also an admitted position that the respondent is living with mother since her birth. The facts further show that the petitioner himself has admitted in evidence that he is a tutor by profession. He, however, denied his monthly income of Rs.1,20,000/- per month or of running a coaching center. The court below however, in absence of any specific evidence had to do the guess work and has accordingly opined that in any case petitioner would not be earning less than the minimum wages applicable to Delhi Government. It is a settled legal position that an able bodied young man has to be presumed to be capable of earning sufficient money so as to reasonably maintain his wife and children. He cannot be heard to say that he is not in a position to earn enough to be able to maintain them.

9. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education, etc. Educational expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionality between the parties. In the instant case, even assuming that the mother of the respondent is also earning but taking into consideration, cost of living, education etc. in daily life, the monthly expenses of respondent No.2 cannot be less than Rs.15,000/- per month. If the court below has directed for a sum of Rs.6,000/- per month as maintenance to the respondent-wife the same cannot be termed to be exorbitant or unreasonable. The petitioner is also not truthful in disclosing his actual monthly income.



10. Under the aforesaid circumstances, this court is not inclined to interfere into the order passed by the Family court. Accordingly, the instant revision along with pending application is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 27, 2022

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