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

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Reserved on:25.09.2023

Pronounced on: 17.10.2023

+ **CRL.REV.P. 31/2023, CRL.M.A. 738/2023**

MANISH

..... Petitioner

Through: Mr. Jairaj Singh, Advocate

versus

MEENAKSHI ALIAS MEENU

..... Respondent

Through: Mr. K.S. Singh, Ms. Tripta
Negi Singh, Ms. Jyoti Sharma,
Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf petitioner seeking setting aside of the judgment dated 10.10.2022 passed by learned Family Court, North-East, Karkardooma Courts, Delhi ('Family Court') in MT No.925/2018 filed under Section 125 of Cr.P.C.

2. Briefly stated, facts of the case are that the petitioner and the respondent had got married on 01.05.2011 in Delhi as per Hindu rites



and ceremonies. Thereafter, the mother-in-law of the respondent/wife had started demanding dowry from her, as alleged. It is alleged by the respondent that the petitioner had physically and mentally tortured her on 15.05.2016 on account of demand of dowry. Thereafter, the respondent had filed a written complaint in Police Station Mubarakpur, Delhi, but the matter was settled. However, the petitioner and his family had continued to torture and demand dowry even after the matter being settled, after which, the respondent had filed a written complaint in CAW Cell on 03.08.2016.

3. Thereafter, the respondent had filed a petition under Section 125 of Cr.P.C. seeking maintenance of Rs. 50,000/- per month from the petitioner on 10.08.2016. The learned Family Court while disposing off an application seeking interim maintenance had directed the petitioner to pay a sum of Rs. 10,000/- as maintenance to the respondent *vide* order dated 15.01.2018. However, the same was increased to a sum of Rs. 40,000/- per month by way of judgment dated 10.10.2022 *vide* which the maintenance petition was disposed of after hearing both the parties and appreciating the evidence on record.

4. Aggrieved by the judgment dated 10.10.2022, *vide* which the petitioner herein has been directed to pay maintenance of Rs.40,000/- per month to the respondent, the petitioner has preferred the present petition seeking setting aside of the said judgment.

5. Learned counsel for petitioner states that the impugned order is bad in law since the learned Family Court has failed to take note of law settled by the Hon'ble Apex Court in case of **Rajnish v. Neha**



(2021) 2 SCC 324. It is also stated that the petitioner herein has studied up to 12th standard only and is unemployed. It is further stated that the learned Family Court has not considered that no child was born from the wedlock and that the petitioner herein was making payment of Rs. 10,000/- per month without any default to respondent. It is argued that the learned Family Court did not take into account the educational status of the petitioner and the fact that he has a share in the agricultural land owned by her father. It is stated that the income of petitioner was wrongly assessed to be Rs.1,20,000/- per month only on the basis of a photographs with luxury cars obtained from his Facebook account. It is further stated that learned Family Court has not considered the evidence led on record by the parties and, therefore, the impugned judgment be set aside.

6. Learned counsel for the respondent, on the other hand, states that there is no infirmity or illegality in the impugned judgment and that the learned Family Court has passed a reasoned order taking into account all the facts and the evidence led by the parties. It is also stated that the petitioner herein does not want to make payment of any maintenance despite having handsome income and despite leading a luxurious life. It is also stated that the petitioner had concealed the factum of his income and assets from the learned Family Court and thus, the Court had appreciated all the material placed on record to arrive at the correct income of the petitioner for the purpose of granting maintenance to the respondent. It is stated that since the petitioner leads a luxurious lifestyle and as his wife, respondent is also entitled to the same lifestyle. It is also argued that



the petitioner had refused to take back the respondent in her matrimonial home, and for these reasons, there is no infirmity with the impugned judgment.

7. This Court has heard arguments addressed by learned counsels appearing on behalf of both the parties and has perused the material on record.

8. The relevant portion of the impugned judgment dated 10.10.2022, *vide* which the maintenance was granted to the respondent, reads as under:

“...30. There is no objective criteria to assess the income of the respondent which can be crystallized in the strait jacket formula. The petitioner has placed on record the photograph which were collectively, exhibited as Ex. RW1/Pl. The photographs are with two or four different cars. One is Ford Ecosport, another is BMW and third is Skoda, the fourth one is not identifiable. One of the photographs is of the year 2016. It shows his way of living. It was argued that the fact that he is taking photographs with these cars does not by itself suggest that he owned these cars. The argument is attractive but liable to be rejected if the car does not belong to him why would he take photographs with these cars. There has to be some correlation. In two photographs, he is taking the support of the cars. In the other two he is seen sitting on the bonnet. The kind of clothes which the respondent is wearing in these photographs, cannot be afforded by a person who is earning Rs.8000/- to Rs.12000/- per month.

31. Ex.RW1/P2 is the statement of bank account of the respondent for the period from 01.07.2018 to 10.01.2019, which shows that there are credit entries of Rs.30,000/- to Rs.40,000/per month. It was argued that these credit entries were taken only to pay the petitioner, the interim maintenance which was fixed i.e., Rs. 10,000/- why would the respondent take entries every month for Rs.30,000/- to Rs.40,000/-.

32. The respondent has not placed on record the bank statement at the time of marriage but has placed on record the bank statement for the period 08.12.2013 till 10.04.2021. The perusal of the bank statement shows that on 10.12.2013,



08.01.2014, 07.02.2014 and 08.03.2014, cheque worth Rs.7,906/-, Rs.8,380/-, Rs.8,455/- and Rs.7,698/- were cleared. Not only this, an amount of Rs.45,000/- were deposited by way of cash on 11.03.2014. Again on 08.05.2014, 07.0.2014, 10.07.2014, August 2014, September 2014, cheque worth Rs.9,000/-, Rs.8,530/- Rs.9,370/-, Rs.8,738/-, Rs.9,678/-, Rs.9,487/- were cleared. Apart from this cash, amounting to Rs.5,000/-, Rs.5,500/-, Rs.2,000/- and Rs.15,000/- was deposited from May 2014 to September 2014. The average receipts is around Rs.15,000/- per month in the year 2014 for nine months. In the year 2015, this average has slightly reduced. In the year 2016, there is cash deposit to the extent Rs.51,500/-, on 27.12.2016, a cheque worth Rs.60,000/- has been credited in his account, although the same cheque was dishonoured. Respondent was dealing with somebody who owned him such an amount. The respondent has not been able to explain as to from where he was generating cash which he was depositing in his account. Since, September 2018 to January 2019, there are cash deposits of Rs.1,95,000/- from where was the respondent generating cash, as he was 12th pass and dependent on rental income to the extent of Rs.12,000/- per month. This definitely proves that he has hidden his true income from the Court and has not come to the court with clean hands. If average of these four months is to be taken, the income of respondent would be Rs.49,000/- per month. After, March 2019, there is not even a single cash deposit, possibly so, as this account was used only to transfer the amount of interim maintenance in the account of petitioner.

33. In his affidavit of income assets and liabilities, he claims to have share in his ancestral property to the extent of 1/8th. However, he has not disclosed as to how much property is owned by him. The area of the property or description of the ancestral property has not been disclosed.

34. Respondent had himself filed certified copy of the petition seeking divorce and the certified copy of the petition filed by under Section 10 of Hindu Marriage Act seeking judicial separation. The respondent had filed his affidavit of assets, income and expenditure in the petition under Section 10 of HMA. The perusal of part VI of the said affidavit shows that respondent has claimed 1/4th share in H.No.36, Sector 31 Faridabad, Haryana admeasuring 500 sq. yards. The value of the property increases with each passing year. Even if this Court has to make a guess work, the property would be worth Rs.5 crore as on today. This property has not been disclosed by



the respondent in the affidavit filed before this Court. How he acquired share in the property when his income was Rs.8,000/- only and his expenses was Rs.8,000/- or when his income increased to Rs.12,000/- and his expenses remained stagnant at Rs.8,000/-. These documents were filed after the cross-examination of RW1 and, therefore, petitioner had no opportunity to cross-examine RW1 on these aspects.

35. Respondent has claimed that presently he is residing at Sangam Vihar but admitted in his cross-examination that he has not filed any rent-agreement. He also admitted that in his income affidavit, the address is of Kotla Mubarkpur which is H.No.181, Bapu Park, Kotla Mubarkpur. It is the respondent own case, in petition seeking divorce, that his father had disowned him, and petitioner vide public notice dated 01.05.2015. In the said public notice, the residential address of the father is 291 Joor Bagh, Kotla Mubarkpur. It suggests that house No.181 at Kotla Mubarkpur is different from his father's house. Respondent has not disclosed whether the same is self acquired, ancestral or whether it has been sold off. It so appears that respondent has number of properties and he himself does not know the properties owned by him or he is lying with impunity on affidavit. Whatever be the case, respondent has at least own's two houses, one in Delhi and the other in Faridabad.

36. Respondent got married at the age of 22 years, as he has claimed himself to be of 32 years in the year 2021 in his affidavit, the marriage took place in 2011. No girl father would gift a Toyota Altis car to a boy who is unemployed and marry her daughter to such a young person. This shows the status, the lifestyle of the respondent.

37. Considering all the facts and circumstances and the material which has been placed in record, even if a conservative view is taken by this Court, it can be safely presumed that income of the respondent would be approximately Rs.1,20,000/per month at the time of filing of petition. He has not claimed any dependency, therefore, the income is to be divided only amongst the petitioner and the respondent.

40. Having assessed the income of the respondent @ Rs.1,20,000/-, the petitioner is awarded a lump sum maintenance of Rs.40,000/- per month w.e.f. the date of filing of the present petition, till the petitioner gets remarried or



gainfully employed. The respondent is further directed to clear the arrears within a period of three months from today and shall continue to pay the amount of maintenance to the petitioner, by 5th day of every English Calendar month.”

9. Since the maintenance petition was filed under Section 125 of Cr.P.C., it shall be appropriate to first refer to the said provision, which provides 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 not exceeding five hundred rupees in the whole, 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.

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) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(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, issued 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 month's allowances 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 wife's refusal to live with him.

(4) No Wife shall be entitled to receive an allowance 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 is 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..."

10. The Hon'ble Apex Court in case of ***Rajnish v. Neha(supra)*** had discussed the criteria for determining quantum of maintenance, and the relevant observations are extracted as under:

“III. Criteria for determining quantum of maintenance



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.

79. In *Manish Jain v. Akanksha Jain*, 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.

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.



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.³⁶ 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...”

11. This Court in case of *Bharat Hegde v. Saroj Hegde* 2007 SCC OnLine Del 622 had laid down certain factors to be considered while deciding an application seeking maintenance. The relevant portion of the decision reads as under:

- “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. P.C. is adjustable against the amount awarded u/s. 24 of the Act.”



12. In light of the aforesaid judicial precedents and the rival contentions raised before this Court, this Court now proceeds to examine the decision impugned before this Court.

13. In present case, respondent had filed a petition seeking maintenance of Rs.50,000/- from the petitioner herein, stating that he has an income of Rs. 80,000/- per month along with a rental income of Rs. 30,000/- and has been living a luxurious life. The learned Family Court had initially granted a sum of Rs. 10,000/- per month as interim maintenance *vide* order dated 15.01.2018. In reply, the petitioner had stated before the learned Family Court that he was jobless and he had appeared for second semester of diploma in civil engineering, and his income was around Rs.8-9,000/- per month.

14. During the course of arguments, it was argued on behalf of respondent/wife that petitioner was a means of man and was having income of about Rs.3 to 4 lakhs. On behalf of petitioner, it was argued that he had studied only till class 12th and was jobless, and somehow, he was managing to pay interim maintenance. After the evidence was led by both the parties, the learned Family Court had granted Ra.40,000/- as maintenance amount payable as maintenance to the respondent was increased to Rs. 40,000/- per month.

15. Having perused the records of the case and the impugned judgment, this Court is of the view that the contention raised on behalf of the petitioner that he does not possess any source of income *ipso facto* does not exonerate him from his moral duty to maintain his wife if he is able bodied man, capable enough of earning, as held by Hon'ble Apex Court in catena of judgments.



16. In the impugned order, the learned Family Court has in detail discussed the Bank Account statement of the petitioner herein for the period between 01.07.2018 to 10.01.2019 and has given detailed reasons regarding credit entries of Rs.30,000/- to Rs.40,000/- per month, and at the same time, the Court has also noted that this account was probably being used to pay the interim maintenance to the respondent herein, which had been fixed as Rs.10,000/-. Learned Family Court has also taken note of the fact that the petitioner had failed to place on record the bank statements at the time of marriage, however, the Court has duly taken into account the bank account statements for the period between 08.12.2013 to 10.04.2021. The learned Family Court has in detail again passed a reasonable order regarding the bank account statement pertaining between the period 10.12.2013, 08.01.2014, 07.02.2014 and 08.03.2014 and has mentioned that there are regular income entries of Rs.7,906/-, Rs.8,380/-, Rs.8,455/- and Rs.7,698/-. The Court has also taken note of the fact that an amount of Rs.45,000/- were deposited by way of cash on 11.03.2014. Again on 08.05.2014, 07.0.2014, 10.07.2014, August 2014, September 2014, cheques worth Rs.9,000/-, Rs.8,530/- Rs.9,370/-, Rs.8,738/-, Rs.9,678/-, Rs.9,487/- were cleared in the accounts of petitioner and apart from this, there were cash entries also during the period from May, 2014 to September, 2014, and the average receipts was around Rs.15,000/- per month in the year 2014 for nine months. Learned Family Court has also noted that in the year 2016, there was cash deposit to the extent Rs.51,500/- in the bank account and a cheque of Rs.60,000/- had also been credited in his



account, although the same cheque had then got dishonoured. It is also noted that the respondent was dealing with somebody who owed him such an amount, and he was not able to explain as to from where he was generating cash which he was depositing in his account. Learned Family Court has also taken note of the fact that the bank statements of the petitioner revealed that from September 2018 to January 2019, there were cash deposits of Rs. 1,95,000/-, and if average of these four months is taken, the income of respondent would be Rs.49,000/- per month. It was, thus, evident that the petitioner has been earning much more than Rs. 8,000/- to Rs. 12,000/- as averred by him. Thus, the reasoning of the learned Family Court in para nos. 31 and 32 of the impugned order cannot be found at fault with.

17. Moving ahead, the learned Family Court has rightly noted in para no. 33 and 34 of the order that the petitioner had stated in his income affidavit about having 1/8th share in the ancestral property, however, he had not disclosed the value of the property. It was also noted that the respondent had himself filed certified copy of the petition seeking divorce and certified copy of the petition filed by him under Section 10 of Hindu Marriage Act seeking judicial separation wherein he had filed affidavit of assets, income and expenditure under Section 10 of HMA and a perusal of the same had revealed that petitioner also has a share of 1/4th portion in a house ad-measuring 500 sq. yards situated at Faridabad, Haryana, the market value of which could be estimated to be Rs.5 crores. However, this property was not disclosed by the petitioner in the affidavit filed



before the Family Court. Therefore, the petitioner herein had not disclosed his entire income, assets and expenditure honestly/correctly before the learned Trial Court and therefore, the learned Trial Court was within its jurisdiction to have made some guess work.

18. It has further been observed by learned Family Court in para no. 35 of the impugned order that the petitioner had claimed that he had been residing at Sangam Vihar, Delhi, but had not filed any rent agreement to corroborate the said fact. On the other hand, in the income affidavit, the petitioner had stated that his address was of a house situated at Kotla Mubarakpur, Delhi. The petitioner had also stated that his father had disowned him *vide* public notice dated 01.05.2015, and as noted by the learned Family Court, the address of the petitioner was different from the address of his father and thus, there were material contradictions in regard to the properties owned by the petitioner and it was not illegal on the part of learned Family Court to factually assume that the petitioner/husband had more than one property in his name.

19. However, this Court is also of the opinion that the learned Family Court has overestimated the petitioner's income even by doing guess work by relying on certain superficial factors, such as photographs of the petitioner leaning on a luxury car. The learned Family Court in para no. 30 of the impugned order has given a reasoning that is neither legal nor reasonable and it is based on merely an assumption that why would petitioner herein click photographs with cars if they did not belong to him. In order to establish some co-relation between the cars and petitioner herein,



there is no ownership proof and there is nothing on record to indicate that petitioner herein in fact owns the cars shown in the photographs. This Court further notes that the learned Family Court has also presumed that no father would provide an Toyota Altis car in dowry to an unemployed man, which cannot also be criteria for assessing the income of the petitioner for the purpose of grant of maintenance.

20. To sum up, the learned Family Court itself noted that on the basis of the average income reflected in the bank account statements of the petitioner, his income could not have been less than Rs.49,000/- per month, but thereafter in subsequent paras of the impugned order, the learned Family Court had taken note of the conduct of petitioner which reflected that he had not disclosed his correct income before the Court. Though the learned Family Court was well within its jurisdiction to have done some guess work regarding the income of the petitioner herein in the given circumstances, however at the same time, there should have been some rational for the guess work also and there is no reasoning as to how the learned Family Court had reached the conclusion that petitioner must be earning Rs.1,20,000/- per month at the time of filing of the petition.

21. However, in such circumstances, this Court is of the opinion that on the basis of material placed on record before this Court and the learned Family Court and even considering the contradictions in the versions of the petitioner and the other evidence brought on



record, at best, the learned Family Court could have guessed the income of the petitioner to be Rs.90,000/- per month.

22. Thus, in view of foregoing discussion and considering the income of petitioner to be Rs.90,000/- per month, alongwith the fact that respondent is also educated and can work and earn for herself and also the fact that here is no child born from the wedlock, this Court is inclined to modify the impugned order to the extent that amount of maintenance awarded to the respondent and payable by the petitioner be reduced from Rs.40,000.- per month to Rs.30,000/- per month. The amount paid already by the petitioner to the respondent shall stand adjusted in future maintenance amount payable to the respondent.

23. Accordingly, the present petition stands disposed of in above terms alongwith pending application.

24. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 17, 2023/ns