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# IN THE HIGH COURT OF DELHI AT NEW DELHI

**Date of decision: 02<sup>nd</sup> June, 2023**

+ CRL.REV.P. 1263/2019, CRL.M.A. 41818/2019 (Stay), CRL.M.A. 5817/2021 & CRL.M.A. 17934/2022

VINEET ANAND

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vikas Rathee  
and Ms. Aastha Vishwarkarma,  
Advocates.

versus

AAKANSHA ANAND & ORS.

..... Respondents

Through: Mr. Mohit Mathur Senior Advocate  
with Mr. B.K. Wadhwa, Ms. Anu  
Narula, Mr. Anmol Chadha and  
Ms. Biman Sethi, Advocates for R-1  
and 2.  
Mr. Vinayak Sawhney and Ms. Kanika  
Sawhney, Advocates for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

## **JUDGMENT**

### **AMIT SHARMA J.**

1. The present revision petition under Section 397(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), has been filed by the petitioner assailing the impugned judgment dated 29.08.2019, passed by the learned Additional Session Judge – 03, North-West District, Rohini Courts, Delhi in Criminal Appeal No.190/2018, CNR No. DLNW01-013439-2018, titled Aakanksha Anand v. Vineet Anand and Ors., and Criminal Appeal No. 10/2019, CNR No. DLNW01-000519-2019, titled Vineet Anand v. Aakanksha Anand and Ors., wherein the learned Additional Session Judge



allowed the former and dismissed the latter appeal. The learned Additional Session Judge in the impugned judgment dated 29.08.2019, modified the order dated 29.11.2018, passed by the learned Metropolitan Magistrate – 02 (Mahila Court), North-West, Rohini Courts, Delhi, and directed the petitioner and respondent no. 3 (father of the petitioner), *Karta* of the *Kiran Anand and Sons* HUF, to pay a sum of Rs. 1,25,000/- per month, as interim maintenance towards respondent no. 1, Ms. Aakanksha Anand (wife of the petitioner) and respondent no. 2, Ms. Saanvika Anand (minor daughter), from the date of filing application under Section 23 (2) of the Protection of Women from Domestic Violence Act, 2005 ('DV Act'), till final disposal of the petition under Section 12 of the DV Act.

2. The case of the petitioner is as under:

- i. The marriage between Mr. Vineet Anand (petitioner) and Ms. Aakanksha Anand (respondent no. 1) was solemnized on 23.01.2013, in accordance with Hindu rites and ceremonies. One girl child namely Ms. Saanvika Anand (respondent no. 2) was born out of the said wedlock, on 28.04.2014 and is in the custody of respondent no. 1.
- ii. On 20.05.2016, respondent no. 1 left matrimonial home with her belongings alongwith respondent no. 2.
- iii. In June 2016, petitioner had secured a job as a Labour Supervisor at SJH Interior Decoration LLC, Dubai. However, since the employer did not pay the petitioner's salary the matter was referred to Labour Court of United Arab Emirates and thereafter the petitioner returned to Delhi. On 22.06.2016, respondent no. 3 (father of the petitioner) *vide* a public notice in a daily



newspaper, disowned the petitioner and respondent no. 1 herein from all his movable and immovable properties.

- iv. On 25.08.2016, the petitioner tried to reconcile with respondent no. 1 but failed due to interference of latter's mother.
- v. The petitioner was working as a freelancer in the field of assembling and repairing of computers since 2009, without the help of respondent no. 3 and accordingly his Income Tax Return ('ITR') was filed.
- vi. The petitioner opened a proprietorship firm in the name of respondent no. 1, namely M/s Aakanksha Enterprises, which did not succeed at the phase of the startup, hence had to be shut down.
- vii. Respondent no. 1 filed a complaint in Crime Against Women Cell, Rani Bagh *qua* the petitioner and his family members. Subsequently, FIR No. 44/2018, dated 13.02.2018 under Sections 498A/406/34 of the IPC was registered at P.S. Rani Bagh. Thereafter, respondent no.1 filed a petition under Section 12 of the DV Act before the learned Metropolitan Magistrate – 02 (Mahila Court), North-West, Rohini Courts, Delhi, wherein she had filed an application under Section 23 of the DV Act and had prayed for a sum of Rs. 3,00,000/- per month, as interim maintenance for both respondent no. 1 and 2, apart from the accommodation. Another FIR bearing No. 88/2018, dated 02.04.2018, under Sections 452/506 of the IPC, registered at P.S. Rani Bagh, was filed by respondent no. 1 *qua* the present petitioner, as a result of which the latter was restrained from



meeting respondent no. 2/minor child. The petitioner was granted bail by a Co-ordinate Bench of this Court in BAIL APPLN. 3088/2019 *vide* order dated 13.12.2019, in FIR No. 44/2018, registered at P.S. Rani Bagh.

- viii. On 19.03.2018, petitioner was employed as a Sales Executive, at 4A Securities Limited, on a salary of Rs. 23,000/- per month. Since August 2019, the petitioner has been working in Dubai and is earning a sum of Rs. 36,000/- per month.
- ix. The learned Metropolitan Magistrate – 02 (Mahila Court), North-West, Rohini Courts, Delhi, *vide* order dated 29.11.2018, in CC No. 11302/2017, P.S. Rani Bagh, assessed the income of the petitioner to be a sum of Rs. 1,00,000/- per month and directed the present petitioner to pay a sum of Rs. 50,000/- per month as interim maintenance towards respondent no. 1 and 2, inclusive of food, clothing and necessities, from the date of filing of the petition under Section 12 of the DV Act, 2005, till its final disposal.
- x. Aggrieved by the aforesaid order of the learned Metropolitan Magistrate, both the petitioner and respondent no. 1 filed their respective appeals under Section 29 of the DV Act in the court of the learned Additional Session Judge-03, North-West, Rohini Courts, Delhi. The respondent no. 1 preferred appeal, bearing Criminal Appeal No.190/2018, titled Aakanksha Anand v. Vineet Anand and Ors., whereas the petitioner preferred appeal, bearing Criminal Appeal No. 10/2019, titled Vineet Anand v. Aakanksha Anand and Ors.



- xi. The petitioner had placed on record documents with regard to his employment as a Labour Supervisor with SJH Interior Decoration LLC, Dubai, but the aforesaid company got blacklisted and litigation with regard to the same ensued in the Labour Court of United Arab Emirates. Further petitioner claimed to be working at 4A Securities Limited on a salary of Rs. 23,000/- per month.
  - xii. The learned Additional Session Judge – 03, North-West District, Rohini Courts, Delhi, *vide* impugned judgment dated 29.08.2019, allowed the appeal bearing No. 190/2018, filed by respondent no. 1 herein, and modified the order dated 29.11.2018, passed by the learned Trial Court in CC No. 11302/2017, and directed the petitioner and respondent no. 3, being the *Karta* of the HUF to pay a sum of Rs. 1,25,000/- per month as interim maintenance to respondent no. 1 and 2 from the date of filing of the application under Section 23 (2) of the DV Act till final disposal of the petition under Section 12 of the DV Act, whereas appeal bearing No. 10/2019, filed by the petitioner was dismissed.
  - xiii. Aggrieved by the aforesaid judgment dated 29.08.2019, the petitioner herein has preferred the present criminal revision petition.
3. The case of the respondents is as under:
- i. The marriage between Mr. Vineet Anand (petitioner) and Ms. Aakanksha Anand (respondent no. 1) was solemnized on 23.01.2013, in accordance with Hindu rites and ceremonies. One girl child namely Ms. Saanvika Anand (respondent no. 2) was born



out of the said wedlock, on 28.04.2014 and is in the custody of the respondent no. 1.

- ii. Respondent no. 1 left the matrimonial home alongwith respondent no. 2 in August 2016 and has been residing at the former's parental home. Respondent no. 1 is a post-graduate, Masters of Arts in English and a home-maker whereas, respondent no. 2 is student in Apeejay School. The father of respondent no. 1 is a practicing advocate whereas, the mother of respondent no. 1 is employed in Delhi Higher Judicial Services.
- iii. Respondent no. 1 filed a complaint *qua* the petitioner and his family members in Crime Against Women Cell, Rani Bagh, Delhi. Subsequently, an FIR dated 13.02.2018 *qua* the petitioner and his family members bearing FIR No. 44/2018, under Sections 498A/406/34 of the IPC was registered at P.S. Rani Bagh. Thereafter, respondent no. 1 filed a petition under Section 12 of the DV Act, wherein she had filed an application under Section 23 of the DV Act and prayed for a sum of Rs. 3,00,000/- per month, as interim maintenance for both respondent no. 1 and 2, apart from the accommodation.
- iv. Another FIR dated 02.04.2018, bearing FIR No. 88/2018, under Sections 452/506 of the IPC, was registered at P.S. Rani Bagh, by respondent no. 1 *qua* the petitioner.
- v. The learned Metropolitan Magistrate – 02 (Mahila Court), North-West, Rohini Courts, Delhi, *vide* order dated 29.11.2018, in CC No. 11302/2017, assessed the income of the petitioner to be Rs. 1,00,000/- per month and directed the petitioner to pay a sum of Rs.



50,000/- as interim maintenance towards respondent no. 1 and 2, inclusive of food, clothing and necessities, from the date of filing of the petition under Section 12 of the DV Act, 2005, till its final disposal.

- vi. Aggrieved by the aforesaid order of the learned Metropolitan Magistrate, the petitioner and respondent no. 1 filed their respective appeals under Section 29 of the DV Act in the court of the learned Additional Session Judge-03, North-West, Rohini Courts, Delhi. The respondent no. 1 preferred appeal bearing Criminal Appeal No.190/2018, titled Aakanksha Anand v. Vineet Anand and Ors., wherein respondent no. 1 contended that the learned Trial Court erred in assessing interim maintenance granted to respondent no. 1 and 2.
- vii. A ledger of respondent no. 3 (father of the petitioner) namely *Kiran Anand and Sons* Hindu Undivided Family ('HUF'), was placed on record by the petitioner, which recorded that a sum of Rs. 21,00,000/-, was paid to respondent no. 1 from the HUF. A perusal of bank account statement of the petitioner does not indicate any deposit of salary. The Income Tax Return (ITR) filed of Financial Year 2012-2017, also does not reflect that the petitioner is a salaried employee.
- viii. The Income Tax Return ('ITR') of the petitioner and respondent no. 1 was placed on record of Financial Year ('FY') 2012-2013, 2013-2014, 2014-2015 and 2015-2016, which indicated that the ITRs were filed from the same IP address which were managed by the petitioner through his chartered accountant. In order to reduce the



tax liability respondent no. 1 was shown to be earning. The joint bank account of the petitioner and respondent no. 1, in Andhara Bank, bearing account no. 310100017371, indicated that a huge amount of cash was deposited and withdrawn from the aforesaid bank account. Hence, respondent no. 1 did not have any source of income.

- ix.** The ITRs filed on behalf of the respondent no. 1 from Financial Year 2012-2016, were filed from the same IP address as for the petitioner, through the chartered accountant of the petitioner. It is alleged that the ITRs filed were a tax saving mechanism as respondent no. 1 was a home-maker.
- x.** Prior to the birth of respondent no. 2/minor child, respondent no. 3 (father of the petitioner) was paying a sum of Rs. 50,000/- per month, to respondent no. 1 as pocket money for daily and miscellaneous expenses.
- xi.** The petitioner and respondent no. 1 after marriage were living a luxurious life, which included a 5-bedroom apartment and 4 luxury cars. The former was involved in the business of manufacturing pressure cookers with manpower of approximately 50 employees working in the factory.
- xii.** Another FIR bearing FIR no. 337/2016, was registered at P.S. K.N. Katju Marg, at the instance of the mother of the petitioner indicating that the latter had indulged in illegal activities of gambling and had lost a sum to the tune of Rs. 10,00,000/- alongwith jewellery articles belonging to respondent no. 3.
- xiii.** The case against the petitioner of cheque bouncing in Dubai, United



Arab Emirates, indicated that he is not under any employment in Dubai. Respondent no. 1 had placed on record various documents claiming that the petitioner is running two ambient restaurants, has an office situated opposite Burj Khalifa and has been seen enjoying and throwing parties in Dubai.

**xiv.** The petitioner and respondent no. 1 went on various international trips which included their honeymoon to London, Paris, Switzerland and Dubai as well as various domestic trips, which contradicts the petitioner's stand that he earns a sum of Rs. 23,000/- per month.

**4.** Learned counsel for the petitioner submitted that the impugned order dated 29.08.2019, passed by the learned Additional Session Judge is arbitrary inasmuch as the same was passed on assumptions without examining the records of the case.

**5.** It has been submitted that the respondent no. 1 had deserted the petitioner on 20.05.2016 and after 14 months has filed a complaint before the CAW Cell, Rani Bagh, Delhi in 2018. It is submitted that due to the temperament of respondent no. 1, she could not get along with the family members of the petitioner and because of the circumstances created by her, respondent no. 3 had to take the extreme decision of disowning the petitioner and respondent no. 1, on 22.06.2016.

**6.** Learned counsel appearing on behalf of the petitioner submitted that the latter got a job in Dubai in 2016. In 2018 he started working in India in 4A Securities Limited on a salary of Rs. 23,000/- per month. It is pointed out that petitioner is presently working in Dubai, drawing a salary of Rs. 36,000/- per month and therefore is not in a position to pay the maintenance amount awarded by the learned Trial Court which was enhanced by the learned ASJ.



It is submitted that the petitioner is presently living alone in one bed space accommodation in Dubai and is not able to generate any income which would justify awarding the amount of maintenance to respondent no. 1. It is pointed out that respondent no. 1 is a post-graduate and daughter of a sitting Judicial Officer and therefore, it is unreasonable to believe that she can not survive by herself. It is submitted that respondent no. 1 had operated a joint locker individually on 19.08.2016 and had taken away all the jewellery from the said locker, which also included petitioner's ancestral jewellery, without his knowledge and in his absence. It is further pointed out that respondent no. 1 is having her own independent income and according to the ITR, the income from investment of Rs. 25 lakhs, out of which she had taken Rs. 21 lakhs from respondent no. 3, which was never disclosed by her in her affidavit.

7. *Per contra*, learned Senior Counsel appearing on behalf of respondent no. 1 and 2 submitted that the present petition is liable to be dismissed as the learned ASJ had minutely examined the records of the case and has applied the correct law with respect to determining quantum of interim maintenance to the said respondents. In support of his submissions, the learned Senior Counsel for respondent no. 1 and 2 has relied upon the following judgments:-

- (i) Bharat Hegde v. Smt. Saroj Hegde, 140(2007) DLT 16.
- (ii) Sanjeev Sangwan v. Smt. Sangeeta Sangwan, 1(2008) DMC 108.
- (iii) Manmohan Kohli v. Natasha Kohli, 2013 SCC OnLine Del 6582.

8. The learned Senior Counsel further submitted that the various bank statements filed by the petitioner shows transactions/deposits/transfer in lakhs of rupees in accounts of respondent no. 1 and thereafter withdrawal of the same by the petitioner. It is pointed out that the bank statement of petitioner does not show any deposit of alleged salary and thus falsifying his claim of



being an employee. Similarly, it is argued, that the petitioner's ITR from 2012 to 2017, does not reflect that he is a salaried employee. It is further pointed out that the alleged ITR of respondent no. 1 for the financial year 2012-2016, show that they were filed on the same date and by the same IP address, thus, demonstrating that they were under control of petitioner and the said ITRs were a tax saving mechanism.

9. It is further submitted that the pleadings/replies of both the petitioner as well as respondent no. 3, admit the lifestyle enjoyed by respondent no. 1 as provided by them, including the receipt of sum of Rs. 21 lakhs, foreign trips, shopping, stay at 5 Star hotels, etc. It is also pointed out that respondent no. 3 has admitted that he was paying a sum of Rs. 50,000/- per month to respondent no. 1 as pocket money. It is further pointed out that it is the admitted case of the petitioner that he took respondent no. 1 on various international trips including honeymoon trip to London, Paris, Switzerland, Dubai as well as on domestic trips to Goa, Kashmir, etc., which is not possible for a person earning merely a sum of Rs. 23,000/- per month. It is further argued that the petitioner and respondent no. 1 after marriage stayed in a 5-bed room flat apartment and that the family owned 4 luxury cars. Similarly, factum of owing 22 commercial premises and having a rental income of Rs. 7 lakhs has not been denied by respondent no. 3.

10. Learned Senior Counsel submitted that the disownment of petitioner by his parents is a farce and relies on **Smt. Preeti Satija v. Sh. Sudhir Mendiratta, 2014 SCC OnLine Del 188**. Relevant portion of the same is reproduced as under:-

“23. The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out.



He allegedly disappeared and was “disowned” by his mother. The appellant's mother-in law then instituted the suit, to dispossess the daughter in law and her grand-children, claiming that she no longer has any relationship with her son or her daughter in law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor has it been proved in probate proceedings. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases “disown” them after the son moves out from the common or “joint” premises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs' daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. **In fact, the strategy of “disowning” sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband's family, on the basis of such tentative facts.** To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act.” (emphasis supplied)

11. It has also been argued by the learned Senior Counsel that the revisional jurisdiction of the High Court is to be exercised in exceptional cases against concurrent findings of the Subordinate Courts and for the said proposition relies on the following judgments:-

- (i) State v. Manimaran, (2019) 13 SCC 670.
- (ii) State of Haryana v. Rajmal, (2011) 14 SCC 326.



(iii) State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452.

(iv) Mohd. Shakeel @ Shakeel Ahemad v. Mst. Sabia Begum & Ors., 2022 SCC OnLine Del 271.

(v) Jaspreet Singh v. Swaneet Kukreja, 2022 SCC OnLine Del 636.

12. Heard the learned counsel appearing on behalf of the parties.

13. The learned Additional Session Judge while disposing of the appeals observed as under:-

“57. How to assess the income of Vineet Anand and that of the HUF. Kiran Anand and other respondents did not place on record anything to show that amount of Rs 50,000/- which was paid to Aakanksha per month as pocket money was paid to her from personal account and income of respondent No.2 Kiiran Anand. Further, since Kiran and Son HUF is in existence therefore it means that household expenses are being maintained from this HUF. Hence, no option is left with Court but to assume that this amount of Rs 50,000/- pm was paid to Aakanksha from Kiran Anand and Son HUF. Generally pocket money given to concerned person are very small fraction of house hold expenses i.e. to say even much below 1% of house hold expenses. Now if Aakanksha was given Rs. 50,000/- pm as pocket money then one can easily estimate what could be monthly house hold expense of the respondents.

58. It has been seriously contended that Aakanksha is earning Rs 25,000/- pm by giving tuitions and it has been alternatively argued that she being qualified cannot afford to sit idle as law does not favour the same as was held in Smt Mamta Jaiswal (supra) and thus she is not entitled to maintenance. Nothing was placed on record to suggest that she had ever worked as teacher in Lancer Convent School before marriage. The statement of various bank account of Aakanksha also do not borne out any source of income either before marriage or after marriage. Nothing has been placed on record to suggest that she is giving tuition. In any case even if it is assumed that she is earning Rs 25,000/- pm from tuition then also said amount is not sufficient even for her own maintenance given the standard of living she was accustomed and then law entitles her to seek maintenance so that she could reach that standard of living to which she was accustomed to.



59. It is the contention of the Ld Counsels for respondents that onus is upon Aakanksha to bring sufficient material to infer income of the Vineet. It is true that prima facie onus is upon Aakanksha to bring sufficient material on record to help this Court assess the income of Vineet but such proposition is not applicable when there is admission of payment of Rs 50,000/- pm. as pocket money and existence of an HUF coupled with hiding of earning of HUF and documents of business of manufacturing of cooker and its parts. The details of earning of HUF, business of manufacturing of cooker, its composition etc are within the special knowledge of the respondents but they failed to place on record these important information with documents and thus an adverse inference is to be drawn against them as discussed above.

60. So far as the contention that there is prima facie material on record that Aakanksha herself had left the matrimonial home and was not thrown out of the matrimonial home, is concerned suffice it to say that expression "throwing out of the matrimonial home" does not mean only physical throwing out. It also includes makings such an environment within the matrimonial home which makes it difficult for the lady to live in matrimonial home. Hence, only on the basis of CCTV footage it cannot be concluded that whether such an environment existed or not. Such fact has got to be decided on the basis of evidence led by the parties. Hence, the allegations made by Aakanksha Anand in her application are prima facie sufficient to say that commission of domestic violence upon the petitioner is made out and therefore, the contention that since prima facie there is no domestic violence upon Aakanksha, her prayer for monetary relief cannot be entertained is untenable.

61. Now keeping at the center the sum of Rs 50,000/- per month given as pocket money to Aakanksha and taking this amount to be 1% of the total expenditure of house hold expense than the house hold expensed of Kiran Anand and Sons HUF comes to Rs 50,00,000/- pm and keeping in mind that only 2/3rd of the income is spent as house hold expenses then monthly income becomes around Rs 75,00,000/- pm and if pocket money was 5% of the total house hold expense then corresponding figures becomes Rs 10,00,000/- and Rs. 15,00,000/- pm and therefore claim of Rs 3,00,000/- pm does not appear to be unreasonable and unrealistic.

62. But keeping in mind that income of Vineet and his HUF is being assessed only on the basis of monthly pocket money given to Aakanksha



and also keeping in mind that certain amount of guess work is inevitable when there is concealment of income an attempt should be made to be on the lower side of all the calculation. Given the standard of living Aakanksha and her child were accustomed to, the cost of decent 2BHK accommodation in decent residential colony would cost minimum of Rs 25,000/- to 35,000/- pm, education expenses as on day in private convent school is Rs 10,000 to 15,000/- pm including transportation charges. Here, it is to be kept in mind that parents being the overall protector of the child have to bear entire expense of education. They cannot absolve themselves by providing only tuition fees as many employer does in case of its employee. Electricity expenses would be around 2,500/- to Rs. 3,000/- pm, one 24 hours domestic help would cost Rs. 18,000/- pm, one driver would cost 15,000/- pm, food, grocery, milk etc. of her standard would cost Rs. 25,000/- pm, fuel for car and its maintenance would cost around around Rs. 6,000/- pm to 7,000/- pm, clothings etc would cost Rs 10,000/- a month given the prices of decent ladies cloth starting at Rs. 2,500/- pm, medical expense would be around Rs. 5000/- pm given the fees of established private doctor on an average being Rs 1,000/- per visit and cost of test if prescribed are also high. Person of the standard of parties, to the present petition often visit mall, multiplex, parties at high-fi restaurants/hotel, costly costumes, toiletries, perfumes, slippers, shoes etc. Thus keeping in mind all these and keeping in mind that figures cannot be reached with mathematical calculation and precision as that is not possible given the variety of choices and cost of articles available in the market, this Court is of the view that a sum of Rs 1,25,000/- pm would be necessary for Aakanksha and her child to maintain same level of living they were accustomed to prior to dispute arose between the parties. This amount would be needed by her even if she earns Rs 25,000/- pm from tuition though such claim of the respondents stands rejected as nothing was placed on record where from it could be inferred that Aakanksha is earning.

63. Hence, in view of the the above discussion and reasoning, appeal filed by Aakanksha Anand bearing No. 190/2018 titled as Aakanksha Anand v. Vineet Anand & ors." is accepted and appeal filed by the Vineet Anand bearing No. 10/2019 titled as "Vineet Anand v. Aakanksha Anand & Ors." is hereby dismissed and order of the Ld Trial Court dt. 29.11.2018 is modified and respondents no. 1 being husband and 'respondent no. 2 being Karta of abovenamed HUF are directed to pay a sum of Rs 1,25,000/- pm as interim maintenance for maintenance of Aakanksha Anand and her daughter Saanvika Anand, from the date of application under Section 23(2) DV Act till the final disposal of the



petition under Section 12 of DV Act.”

**14.** The aforesaid observations were made by the learned ASJ while disposing of the appeals filed by the respective parties, it is relevant to note that the primary reason for the learned ASJ to increase the amount of interim maintenance awarded to respondent no. 1 and 2 herein, was the existence of Kiran Anand & Sons HUF. The calculation for increasing the interim maintenance to Rs. 1,25,000/-, was on the basis of the income supposedly being earned by the aforesaid HUF. The aforesaid amount of Rs. 1,25,000/- was ordered to be jointly paid by the present petitioner and respondent no. 3 herein, being *karta* of the said HUF.

**15.** It is pertinent to note that a Co-ordinate Bench of this Court in CRL.REV.P. 1243/2019, titled ‘Kiran Kumar Anand v. Aakanksha Anand & Ors.’ with respect to a petition filed on behalf of the respondent no. 3 herein, observed as under:-

“11. The learned Additional Sessions Judge in paragraph No.29 of its order has noted that husband of respondent No.1 himself had filed on record a ledger of Kiran Anand & Sons HUF. The ledger reflected entry of Rs.21,00,000/- in the name of respondent No.1 from the said HUF. No record of the HUF was placed before the Appellate Court. The existence of HUF was noted. The petitioner and the respondent No.2 did not disclose as to who are the coparcener and its members and what was the annual income of HUF, and what are the source of income. No details of the properties held by HUF were brought on record. The Appellate Court, therefore, concluded that the respondent No.2-husband is concealing his real income and, therefore, adverse inference was drawn. It has been also noted that the name of HUF itself suggested that respondent No.2/husband and the petitioner being father are the coparceners. It is under these circumstances that the Appellate Court has concluded that the respondent No.1/Aakansha-wife and her daughter automatically became members of the HUF. Under such circumstances, the maintenance amount was directed to be recovered from the respondent No.2 and the petitioner being Karta of HUF.



12. Thus, the sole basis on which the liability has been fastened on the petitioner (father-in-law) is that he is the Karta of the HUF but this is a case of award of interim maintenance and in the complaint, the respondent No.1 has not made any averments regarding the HUF nor she has claimed the monetary relief from the funds of HUF. Only on the basis of certain documents filed by the husband, the ASJ has presumed the existence of the HUF and the respondent No.1 and her daughter being coparceners. Hence, in absence of specific averments in the complaint regarding the existence of HUF and the complainants being members of HUF, the learned ASJ has exceeded in its power by passing the impugned order in so far as it relates to the payment of interim maintenance by the petitioner.”

16. In view of the aforesaid, the primary ground for enhancing the interim maintenance to the respondent no. 1 and 2 has been in fact stayed by the aforesaid judgment of a Co-ordinate Bench. It is further noted that the initial interim maintenance that was awarded to the respondent no. 1 and 2 herein, by the learned Metropolitan Magistrate was on the basis of an admitted position that respondent no. 1 was being paid a pocket money of Rs. 50,000/-. While awarding the said amount of Rs. 50,000/-, the learned Metropolitan Magistrate observed as under:-

“Appreciation of submissions: To begin with, petitioner has not filed any concrete documentary proof of the alleged monthly income of Respondent no. 1. Now Respondent no. 1 has denied that he has any role in the business of his father and averred that he has always been employed in various companies. I have perused the offer letters/letters of appointment filed by Respondent no. 1 in support of this submission. The letters from Serco and Aegis pertain to 2009. Similarly, the letter from HCL also pertains to 2009 while the letter from IBM pertains to 2010. A close perusal shows that these letters are not letters of employment but offers of internship. For example, the letter from Serco states that, the Respondent no. 1 was to join from 22/10/2009 and was being offered a stipend of 9000/- and he would be under training for a period of 6 months. Similarly, the letter from HCL states that the Respondent no, 1 would be under training for a period of 3 months and he was to join from 30/10/2009. In his income affidavit, the Respondent no.1 is stated to be



28 years old and hence at the time he purportedly received these offers, he was 18/19/20 years old and an undergraduate. This also proves that these are not offers of employment but offers of internship. Further, the letters from Serco, Aegis and HCL are all offer letters and do not actually prove that the Respondent no. 1 actually accepted any of them and joined any of these organisations as an intern/trainee or subsequently as an employee. This is also proved by the fact that as per the letters from Serco, Aegis and HCL, Respondent no.1 was required to join these organizations w.e.f. 22/10/09, 8/10/09 and 30/10/09 respectively and naturally Respondent no.1 could not have been working in all the three organizations at the same time. The fact remains that, even though Respondent no. 1 has averred in his pleadings that he has never been engaged in his father's business and has throughout been employed in various companies, he has not placed on record any documentary proof to this effect and he has conveniently not disclosed as to what was he doing for a living, if not working with his father. Therefore it is presumed that he is involved in the business of his father. The Respondent no. 1 also contended that in Dubai he was working as a labour supervisor and he subsequently returned from there as his company got blacklisted. However, he has not filed any letter of appointment or his employment contract with his alleged employer in Dubai.

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In the present case, evidently, the respondents are quite well off. This is reflected from their own pleadings. Each of the relevant averments need not be reproduced at this stage, But to give a gist, some of the averments may be noticed. Admittedly, the couple had a lavish wedding. Further, the respondents are residing in a five bedroom flat in Khurkain Apartments sector 13 Rohini which as per the Respondent no.1 belongs to his father and they own four cars. Admittedly, the couple went for their honeymoon to Europe. In November 2013, the couple went for a trip to Kashmir. In 2014, a lohri function was celebrated by the respondents at Hotel Tulip, Wazirpur. The first birthday of the minor daughter was celebrated in Hotel Cherish Waziipur. As per his own reply, the Respondent no. 1 and the petitioner were planning to shift to Dubai. In his reply, the Respondent no. 1 has also stated that in 2015, on the occasion of the birthday of the petitioner, the Respondent no.1 made arrangements to celebrate the same at Jaipur. It is also stated in his reply that in 2016, he planned a trip specially for the petitioner to celebrate her birthday in Dubai. The photographs which have been filed by the Respondent no.1 on record also reflect the pomp and show with which



the parties have celebrated various functions and occasions. Lastly albeit, the respondent no. 1 denied ownership/interest in the list of properties mentioned in point 2 (ii) of the petitioner's application u/s 23(2) DV Act, the remaining respondents have not denied ownership/ interest in the same.

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It is the case of Respondent no. 1 that he has been disowned by his parents in June, 2016 and now he is on his own working as sales executive in a private company and earning only 23000/- per month. However, this submission has to be accepted with a pinch of salt as it is common knowledge that after a matrimonial dispute crops up, the estranged spouse tends to get disowned by his parents. To substantiate his averment registered his current income, The Respondent no.1 has placed on record his offer letter and salary slip. But the salary slip cannot be relied upon as it is bereft of crucial details like ESIC code, PAM and bank account no. The Ld. Counsel for respondent no.1 also placed great emphasis upon the ITRs of Respondent no.1 to contend that his monthly income is alleged by him. However, it has been held in a catena of judgments that the income reflected in the- ITR cannot be accepted at face value in a country like India, where compliance with Tax norms is a rarity as there is a tendency to conceal income. The Respondent no.1 would contend that a similar argument can also be made for the ITRs of the petitioner but the difference is that it is nowhere the case of the Respondent no.1 that petitioner was working after marriage and hence having a regular source of independent income. The ITRs of the petitioner coupled with the 26 AS forms filed by the Respondent no.1 also only show that the petitioner is having income from her bank deposits. The Respondent no.1 also contended that a sum of 21 lacs has already been transferred by his father into the bank account of the petitioner in 2015. But firstly, this amount was transferred in 2015 when the parties were still residing together. Secondly, as per the respondents, this amount was transferred as allegedly the parents of the petitioner were compelling them to buy a particular property and not towards maintenance and is apparently already the subject of a civil suit.”

**17. Section 20(2) of the Domestic Violence Act, 2005 provides as under:-**

“20. Monetary reliefs-

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(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.”



18. The reading of the aforesaid provision demonstrates that the monetary relief to be awarded under the said provision should be consistent with the standard of living to which the aggrieved person is accustomed to. The claim of the petitioner is that he was working on a salary of Rs. 23,000/- as a Labour Supervisor in SJH Interior Decoration LLC, Dubai and apart from that he had no other source of income has been disbelieved by the learned Metropolitan Magistrate, as admittedly the petitioner and respondent no. 1 were living jointly with the former's family and the fact that after the dispute arose the petitioner went and took job in Dubai could be seen as a strategy to avoid maintenance to respondent no. 1 and 2. The observation and finding of the learned Metropolitan Magistrate cannot be faulted with. The status and lifestyle of the parties is an important consideration as held by the learned Metropolitan Magistrate. The stand taken by the petitioner with regard to his salary is not convincing in view of the documents placed on record by respondent no. 1 showing his lavish lifestyle. As already noted by the learned Metropolitan Magistrate, the ITRs relied upon by the petitioner in view of the surrounding circumstances do not inspire confidence. In **Anupam Gupta v. Sumeet Gupta, in CM(M) 1718/2004**, learned single Judge of this Court in similar facts had observed and held as under:-

“24. A Reference may be made to a Division Bench decision of the Bombay High Court in Vinod Dulerai Mehta v. Kanak Vinod Mehta reported at AIR1990Bom120 wherein the court held that the income tax returns could not be taken as a sole basis to assess the income of a party. The relevant text is quoted herein under:

*“The learned Judge therefore has come to the conclusion that the Income Tax returns filed by the husband are not conclusive of the true income of the husband and his income has to be assessed in the light of the said other consideration*



*as well. We do not see anything wrong in this approach. As is common knowledge, Income Tax returns do not reflect the true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining it in proceedings such as the present one”.*

25. The judgment of the Division Bench is fully applicable to the facts of the present case. In today's time age tax avoidance and tax evasion is the norm. The income tax returns of a person must correspond to the status which is being enjoyed by a person and the luxury being enjoyed by him. In the instant case I find that the income tax returns do not reflect the clear picture of the income of the petitioner. The Income Tax Return shows that petitioner has suppressed the real income especially in view of the status and the lifestyle of the parties.

26. Additionally, it is trite law that every averment must be specifically admitted or denied or dealt with. A vague denial cannot absolve the non applicant from his or her liability to pay maintenance. In the instant case the averments of the respondent with regard to the status, lifestyle etc of the parties have to be given some consideration as the parties have resided together for a considerable period of time and it is expected that during the time the parties were staying together the respondent would be aware of the income/status of the petitioner and would have enjoyed the fruits of the same. I find force in the submission of the counsel for the respondent that taking into account the lifestyle enjoyed by the parties after marriage, the husband staying in three/five star hotels in Mumbai, frequent air travels in business class it is clear that the parties were leading a luxurious life. There appears to be some concealment on part of the petitioner.

27. As held by the Supreme Court of India in the case of Jasbir Kaur (Smt.) (supra), Courts have also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “*considering the diverse claims 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*”.”

19. In the present case, the stand taken by the petitioner that he is earning a sum of Rs. 23,000/- per month, cannot be taken at its face value especially



when the record reflects that the job taken by the petitioner was post separation between the parties. The learned Metropolitan Magistrate, while examining the records, had rightly concluded that the defence of the petitioner being a salaried person cannot be believed at this stage. The learned Metropolitan Magistrate has further noted that even though petitioner had averred in his pleadings that he had never engaged in his father's business and was employed in various companies but had chosen not place any document with regard to the same on record. During the time when the couple were residing together, the petitioner had not disclosed as to what he was doing for his livelihood. In these circumstances, it can be reasonably presumed that the petitioner was involved in his father's business and after the separation between the parties, it has been shown that he took employment in Dubai, thereafter in India and now again presently employed in Dubai. As mentioned hereinbefore, the quantum of maintenance on the basis of earnings of HUF has already been dealt with by a Co-ordinate bench of this Court. It has already been noted by a Co-ordinate Bench of this Court in CRL.REV.P. 1243/2019, titled 'Kiran Kumar Anand v. Aakanksha Anand & Ors.' that the existence of the HUF and the income being earned would be a matter of trial and if the income and assets as claimed by the respondent no. 1 is proved then the quantum of maintenance would be determined in accordance thereof.

**20.** So far as the interim maintenance awarded by the learned Metropolitan Magistrate is concerned, the same suffers from no infirmity. It is further pertinent to note that the admitted pocket money being given to respondent no. 1 and respondent no. 2/minor daughter, was a sum of Rs. 50,000/- when she lived alongwith the petitioner and his family and the said pocket money was enhanced after the birth of respondent no. 2/minor daughter. The



respondent no. 1 is living with respondent no. 2/minor daughter, separately.

**21.** In view of the aforesaid facts and circumstances of the case, the sum of Rs. 1,25,000/- awarded by the learned ASJ is modified and a sum of Rs. 75,000/- is awarded as interim maintenance to respondent no. 1 and 2. It is pointed out that the stay granted by a Co-ordinate bench of this Court *vide* order dated 28.11.2019 in CRL.REV.P 1243/2019 against the impugned judgment dated 29.08.2019 passed by the learned ASJ was later modified on 08.01.2021 to the extent that the petitioner herein shall continue to pay the interim maintenance of Rs. 50,000/- per month as awarded by the learned Metropolitan Magistrate, instead of respondent no. 3, herein. The petitioner is directed to pay a sum of Rs. 75,000/- per month, to respondent no. 1 and 2, instead of Rs.1,25,000/- per month from the date of application under Section 23(2) of the DV Act till the final disposal of the petition under Section 12 of the DV Act. The amount awarded in any other proceeding shall be adjusted. The interim maintenance amount shall be payable on 10<sup>th</sup> of every month and arrears of maintenance shall be cleared within three months of passing of this order.

**22.** The present petition is party allowed in the aforesaid terms and disposed of.

**23.** Pending application(s), if any, also stand disposed of.

**24.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.

**AMIT SHARMA**  
**JUDGE**

**JUNE 02, 2023/sn**