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

% ***Reserved on: 25.07.2023***
Pronounced on: 21.08.2023

\+ **<u>CRL.REV.P. 611/2018</u>**

UMA GOGIA ..... Petitioner

Through: Mr. K.K. Sharma, Advocate

versus

KIRAN KUMAR ..... Respondent

Through: Mr. Pradyumna Singh, Advocate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>JUDGMENT</u>

<u>SWARANA KANTA SHARMA, J.</u>

1. The present revision petition under Section 397 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner praying for modification of the order dated 20.01.2018 passed by learned Principal Judge, Family Court, Shahdara, Karkardooma Courts, Delhi in CC No. 459/2014 by enhancing the amount of maintenance awarded to the petitioner under Section 125 Cr.P.C.

2. Brief facts of the case, as disclosed in the petition, are that the petitioner herein and the respondent had got married to each other on

11.12.2010 and all the marriage expenses were borne by the brother and mother of petitioner. The petitioner had alleged that after 34 days of marriage, respondent had taken away all her jewellery articles and the petitioner had been directed to take over the responsibility of the kitchen and ensure that the food was served to all the family members in their respective rooms. Thereafter, the petitioner had detailed out several instances of the year 2011 when she was mentally or physically harassed for one reason or the other, including for the purpose of bringing more dowry. The last such incident, as alleged, is of 20.11.2011 where the petitioner was subjected to demand of dowry and was thereafter abused and beaten, as a result of which she had become semi-conscious and could regain consciousness only on the next day. Thereafter, she had made a call to her brother who had come to her matrimonial home and had called the PCR and the petitioner had been taken to hospital on 21.11.2011, and since then, the petitioner has been living in her parental house.

3. Denying all these allegations before the learned Family Court, the respondent had stated that the entire allegations levelled by the petitioner were false and that she had herself left the matrimonial home without there being any demand of dowry or cruelty committed by the respondent or his family members. Thereafter, both the parties had led their evidence before the learned Family Court and the Court had concluded that from the evidence so adduced, it stood established that the petitioner had some differences with the respondent and his family members and there existed marital discord between both of them, as a result of which she had left her matrimonial home and thus, the

petitioner being legally wedded wife of respondent was held entitled to claim maintenance. The learned Family Court had then calculated the amount of maintenance to be awarded to the petitioner and after perusing the material placed on record, evidence adduced before it, the salary slip of the respondent, etc., the Court had arrived at a conclusion that the petitioner was entitled to maintenance of Rs.9,000/- per month from the date of filing of the petition under Section 125 Cr.P.C. till 31.06.2017 and with the implementation of 7th Pay Commission due to which the salary of respondent would have increased, the petitioner was held entitled to maintenance of Rs.15,000/- per month from 01.07.2017 onwards.

4. By way of present petition, it is submitted on behalf of petitioner that the learned Family Court has passed the impugned order on assumptions and presumptions by ignoring the real income of respondent which was more than Rs.1,00,000/- per month i.e. gross salary of Rs.78,000/- and in addition to that Rs.17,000/- as value of government quarter which petitioner was going to surrender and about Rs.6,500/- as tax free interest on General Provident Fund (GPF). It is also stated that the respondent was drawing a salary of Rs.45,000/- per month at the time of filing the petition. It is further stated that the learned Family Court also wrongly came to the conclusion that 7th Pay Commission was implemented with effect from 01.07.2017 whereas the same had been implemented with effect from 01.01.2016. It is also stated that there are certain mandatory deductions which an employee is required to make and there are certain deductions which employee chooses voluntarily to make from his salary depending upon his

requirement and that the learned Family Court failed to consider that the respondent cannot take the benefit of deductions from salary which are not mandatory as per law. It is also stated that as per settled law, the petitioner is entitled to maintenance as per the status and income of respondent/husband which as per petitioner is not less than Rs.1,00,000/- per month. It is also stated that though the learned Family Court had observed that there was no evidence on record to infer as to what was the salary of respondent in the year 2012 and as to how and in what proportions it had increased every year, as per the records, the gross salary of respondent at the time of filing the case under Section 125 Cr.P.C. was about Rs.48,000/- per month, Rs.53,000/- per month in January 2014 and about Rs.77,000/- per month in December 2017. It is also stated that as per other records, it is evident that between the year 2012 and 2013, the average salary of respondent per month was Rs.49,500/- and between 2013-14, the average gross salary was about Rs.52,000/- per month. It is thus stated that present petition be allowed.

5. On the other hand, learned counsel for the respondent submits that there is no illegality or infirmity with the impugned order and the learned Family Court, after carefully examining the entire evidence and the records of the case, had determined the amount of maintenance to be paid to the petitioner, also keeping in mind the net salary of the respondent. It is also stated by learned counsel that petitioner in the present petition has referred to a self-created probable salary slip for the month of May, 2018 whereas the maintenance was determined by the learned Family Court in January, 2018 on the basis of salary slip of respondent of December, 2017. It is thus stated that there are no

reasons to interfere with the impugned order.

6. This Court has heard arguments addressed by both the learned counsel for petitioner and learned counsel for respondent and has perused the material placed on record.

7. The short issue before this Court is whether the quantum of maintenance fixed by the learned Family Court is just and fair in the facts and circumstances of the present case.

8. As regards the income of the respondent, the learned Family Court had taken note of the following points in the impugned order dated 20.01.2018:

i. As per salary slip of December, 2017, his gross salary was Rs.77,280/- whereas his net salary was Rs.28,636/- and it appeared that respondent had deliberately planned huge deductions from his salary to reduce his net income

ii. As mentioned in order dated 22.04.2013 passed by learned ASJ, in a revision petition challenging grant of interim maintenance of Rs.7,000/-, the net salary of respondent at that time was Rs.28,000/- while his gross salary was Rs.47,333/-

iii. There was no other evidence on record to show as to in what proportions that salary of respondent had increased between the period 2013 and 2017.

9. Upon perusal of the trial court record, it emerges that the petitioner was earlier granted interim maintenance by the court of learned Metropolitan Magistrate (Mahila Court-01), North East District, Karkardooma Courts, Delhi vide order dated 12.02.2013 in Case No. 253/2012 titled *"Uma Gogia vs. Kiran Kumar"* whereby it

was observed that the respondent, who was a government employee, had a carry home salary of Rs.28,000/- per month. Against the said order, the husband i.e. respondent herein had preferred a criminal revision petition which was dismissed by the court of learned ASJ and in the order dated 22.04.2013, it was observed that the gross salary of respondent as per information obtained through RTI was Rs.47,333/- per month and the net salary was Rs.29,000/-. This Court further notes that the pay slip of respondent, for January, 2014 records the gross salary of respondent as Rs.53,068/-and his net salary as Rs.33,117/-. Thereafter, as per pay slip of May 2015, the gross salary of respondent is stated to be Rs.53,314/- whereas his net salary is stated as Rs.29,849/-. Finally, the pay slip of December, 2017 of respondent mentions his gross salary as Rs.77,280/- and his net salary as Rs.28,636/-.

10. As already take note of in preceding paragraph, the learned Family Court had categorically observed that respondent had planned huge deductions from his salary to get his net pay reduced considerably. In this case, the salary slip of December, 2017 records the following major deductions: (i) GPF Subscription: Rs.16,000/-, (ii) Income tax: Rs.4,500/-, (iii) GPF Advance: Rs.12,000/- (iv) Co-operative Society: Rs.14,500/-.

11. There is no dispute on the fact that there are some mandatory deductions which an employee is required to make and there can be some voluntary deductions which an employee may choose to make. However, while ascertaining the amount of maintenance, the Courts are required to take into account only the mandatory deductions and

compulsory contributions. In case of ***Chanchal Verma v. Anurag Verma*** *2022 SCC OnLine Del 2993*, this Bench had observed as under:

> "32. It has been held categorically in the case of *Nitin Sharma v. Sunita Sharma,* 2021 SCC OnLine Del 694, that only statutory mandatory deductions from the income of the husband are permissible to be deducted for the purpose of computation of his income for the purpose of grant of maintenance. The observations of the Court read as follows:
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>> "…24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted…"
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> 33. The court further reiterated what was held by the Hon'ble Punjab & Haryana High Court in the case of *Seema v. Gourav Juneja,* 2018 SCC OnLine P&H 3045 which is stated as under:
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>> "13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary…"
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> 34. Similarly in *Dr. Kulbhushan Kunwar v. Raj Kumari,* (1970) 3 SCC 129, the Hon'ble Supreme Court while deciding the fixation of rate of maintenance, had made the following observations:
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>> "…19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice

> as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car…"

12. In the present case, the respondent, with a gross salary of Rs. 47,333/-, was receiving a net salary of approximately Rs. 29,000/- in the year 2013. Surprisingly, even after a four-year interval and a substantial increase of about Rs. 30,000/- in the respondent's gross salary, his net salary remained around Rs. 29,000/-. The sole reason for the same, as also acknowledged by the learned Family Court, was primarily due to deductions amounting to approximately Rs. 49,000/-, encompassing both voluntary and mandatory deductions, leaning towards the higher side.

13. In this context, it's crucial to note that while the mandatory contribution to GPF is fixed at 6% of the basic pay, the respondent had a high deduction of about 23% of his basic pay as GPF contribution in December 2017. Furthermore, a substantial deduction of 17% of his basic pay was made as payment towards GPF Advance. Additionally, approximately 21% of his basic pay was diverted as a contribution to the cooperative society. Even in May 2015, when the respondent's net pay was Rs. 29,849/- against a gross pay of Rs. 53,314/-, his salary slip indicated that about 86% of his basic pay was directed towards GPF contribution and GPF advance.

14. Having observed so, in view of the settled position of law, this Court is of the opinion that respondent cannot be permitted to take advantage of receiving a net salary on a lower side after getting voluntary and non-mandatory contributions deducted from the gross

salary, including amount towards repayment of loans, etc.

15. Further in this regard, while deciding the quantum of maintenance, a reference can also be made to the decision of Hon'ble Supreme Court in ***Jasbir Kaur Sehgal v. Distt. Judge, Dehradun & Ors.*** *(1997) 7 SCC* 7 whereby it was observed as under:

> "8. ...**No set formula can be laid for fixing the amount of maintenance**. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. **The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance andof those he is obliged under the law and statutory but involuntary payments or deductions.** The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case..."
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> (Emphasis supplied)

16. Since the settled law noted above regarding statutory and mandatory deductions from the salary was not entirely taken into consideration by the learned Family Court while deciding the quantum of maintenance, the case is remanded back to the learned Family Court for deciding the issue of enhanced maintenance afresh in light of these observations. The petitioner shall also be at liberty to raise the contention regarding date of implementation of 7th Pay Commission before the learned Family Court. The learned Family Court shall decide the same within a period of two months from receipt of copy of this judgment.

17. Accordingly, the present petition is disposed of in above terms.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/zp