$~

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

% ***Reserved on: 17.03.2023***
Pronounced on: 06.04.2023

\+ **CRL.REV.P. 666/2018**

MARRYAMMA@MARYAMAL ..... Petitioner

Through: Ms. Shweta Patel, Advocate

versus

SHRI MANI ..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner assails the order dated 05.05.2018 passed by learned Principal Judge, Family Court, Patiala House Court, New Delhi ('Family Court') in M.No.101/2016, whereby the amount of maintenance was enhanced and the respondent was directed to pay a sum of Rs. 5,000/- per month as maintenance to the petitioner.

2. The relevant facts, leading to the filing of present petition are that the marriage between the parties was solemnized in the year 1985. After differences having arisen between the parties, the petitioner had

filed a petition for grant of maintenance under Section 125 of Cr.P.C. and *vide* order dated 31.08.1999, the respondent had been directed to pay a sum of Rs.400/- per month to the petitioner and Rs.300/- each to the three children born from the wedlock. The income of the respondent at the relevant time in the year 1999 had been assessed as Rs.3,000/- per month. The petitioner, in the year 2016, had preferred a petition under Section 127 Cr.P.C. before the learned Family Court on the ground that she was unemployed and unable to maintain herself, and that the salary of respondent had increased manifold over the years 2005-06, 2006-07 and 2007-08. She had stated that respondent had not paid her any amount and despite having sufficient means, had refused and neglected to maintain her. It was also the case of petitioner that respondent had no other liability but to maintain himself and her according to his status. She had also stated that respondent was a government employee, working in NDMC Palika Kendra, Sansad Marg and his monthly salary was Rs.37,549/- as per his salary slip for the month of November, 2015. The petitioner had prayed for grant of Rs.25,000/- per month as maintenance and Rs.55,000/- as litigation expenses by way of her application under Section 127 of Cr.P.C. for enhancement of maintenance before the learned Family Court.

3. In reply to the application filed by the petitioner before the learned Family Court, the respondent had stated that petitioner had left the matrimonial home out of her own free will and without any reason. He also stated that the petitioner had concealed her income that she was earning by housekeeping work. He also stated that he had been getting only about Rs.20,000/- as salary after reasonable deductions

and that he was regularly paying Rs.400/- per month as per order dated 31.08.1999 passed by learned Metropolitan Magistrate, Patiala House Court, Delhi. He also pleaded that he had on many occasions deposited handsome amount in the bank account of the petitioner. It was stated that he was working as a labourer and therefore, petition was prayed to be dismissed.

4. After considering and examining the case of both the parties, learned Family Court passed the order dated 05.05.2018 which has been impugned before this Court. The operative portion of the said order reads as under:

> "13. In the present case, the petitioner in her detailed income, assets and expenditure affidavit stated that her date of marriage as year 1985 and date of separation as year 1998. She has shown her educational, professional qualification and occupation as Nil. She has also shown her monthly income as Nil. In para No. 28 of part-II of her affidavit she has mentioned Rs. 50,000/- pm approximately as income of her spouse. In part-V of her affidavit, she has mentioned household expenditure as Rs. 25000/- and Rs. 500/- pm on telephone/mobile. In Part-VIII of her income affidavit, she has mentioned expenditure ordinarily incurred on family functions including birthday of the children as Rs. 1000/-, expenditure ordinarily incurred on festivals as Rs. 2000/- and expenditure incurred on marriage of family members as Rs. 1000/-.
>
> 14. The respondent in his detailed income, assets and expenditure affidavit stated his date of marriage in the year 1982-83 and date of separation from 1997. As per his affidavit, he is illiterate and his professional qualification is Nil. His occupation is of Beldar. In column No. 10, he has mentioned that he is assessed to

Income Tax. In his member of the family, he has shown as self and no dependent and no independent. As per para No. 21 of affidavit, he is paying maintenance of Rs. 1300/- pm including Rs. 400/- to the petitioner and Rs. 3000/- each for three children. In Part-Ill of the affidavit, he has mentioned that all the three children are major. He has further stated that Rs. 1,40,000/- approximately as expenditure incurred on the children's maintenance and their education. The expenditure on education is Rs. 60,000/-. In part-IV, he has shown gross income of Rs. 44,456/- pm as per salary slip of August 2017. Deductions from the gross income is Rs. 11959/-, income tax as Rs. 5000/- approximately and net income as Rs. 32450/- approximately pm. In Part-V of the income affidavit, he has mentioned Rs. 1,50,000/- on repairs and maintenance in para No. 1. In household expenditure, he has mentioned Rs. 9000/- pm on groceries/food/personal care/clothing, Rs. 300-400/ pm on water, Rs. 1000-1100/- pm on electricity, Rs. 746/- pm on gas, Rs. 100-200 pm on telephone and Rs. 350/- pm on TV Cable/set top box charges Sc Internet services. He has TVS Scooty and shown Rs. 2000/- pm on fuel, Rs. 500/- pm on repair/maintenance, Rs. 800-900 per year on insurance, Rs. 500- 70 pm on Bus as public transport, Rs. 500-700 pm on metro, Rs. 1000-1200 pm approximately on doctor, Rs. 546/- on life insurance, Rs. 8500/- on litigation expenses. He has also mentioned the expenses of Rs. 300/-pm on newspaper, magazines, books, Rs. 100-200 pm on religious contributions/charities and Rs. 10158/- pm on loan and total expenditures as Rs. 27500/- approximately pm. In Part-VI, has mentioned RS. 3564/- as current balance in saving bank account and Rs. 7000/- -8000/- as cash in hand. In Part-VIII of the affidavit, he has mentioned the loan of Rs. 3,73,904/- from HDFC Bank and paying Rs. 10,158/- pm by ECS from Bank account. In part IX, he has mentioned Rs. 20,000/- - 25000/- as average monthly withdrawal from bank. He has mentioned Rs.

2,50,000/- approximately as expenditure incurred on three marriages of family members.

15. It is evident from the testimony of PW1/petitioner and RW1/respondent on record and above discussed detailed income affidavits of the parties as well as the documents placed on record that the petitioner is earning an amount of Rs. 25/- per day on daily wages in the agriculture work. She is living separately for about 25 years from the respondent. Whereas, the respondent stated that he got married with the petitioner in the year 1983 and three children were born out of the wedlock of the parties. All the aforesaid children have attained the age of majority i.e. 31 years, 29 years and, 24 years respectively. The respondent has admitted that his children are residing with the petitioner since 1997 i.e. from the day of his separation from the petitioner. The respondent has admitted that marriage of all the three children was got solemnized by the petitioner. However, he also incurred some expenses in the marriage of his children. Respondent admitted in his cross-examination that he is receiving an amount of Rs. 44,456/- pm approximately as gross salary and net salary is Rs. 32,497/- pm. However, the respondent stated that he had taken loan of Rs. 3,73,904/- from HDFC Bank for repairing of his house. The respondent has also stated that his parents have already expired. He has two sisters. His younger sister is residing with him and his elder sister is residing in her matrimonial home at Gurugram. Respondent denied in his cross-examination that he has not incurred any expenses on the marriage of his any child or the study of his children.

16. Thus, it has been proved on record that the respondent has means of income and he has no liability except his wife and his younger sister. Whereas, the petitioner does not have sufficient source of income and she is dependent upon her husband for day to day expenses for herself. Therefore, the petitioner by way of evidence has established the reasons for enhancement in

the maintenance. It is settled proposition of law that wife is entitled to the maintenance equal to the status and stature of her husband and it is also the legal and moral duty of her husband to maintain her according to his means and capacity. The petitioner needed money as per the status of her husband to meet out her day to day expenses including food, clothing, medical, education and other expenses. In my opinion, the respondent cannot shirk his responsibility and he is duty bound to maintain his wife. Having discussed my findings on the above issue and also the facts and circumstances of the case, the petitioner is entitled to enhancement in maintenance. Accordingly, the maintenance of Rs. 400/- pm already granted to the petitioner in the petition u/s 125 CrCP is enhanced to Rs.5000/- pm from the date of filing of this petition tiU the petitioner gets remarried or alive. Accordingly, this issue is decided.

RELIEF:

17. Keeping in view the aforesaid facts and circumstances of the case, the judgement, the income affidavits of the parties and evidence led by them, the petitioner Smt. Mairyamma is entitled to enhancement in maintenance from Rs. 400/- pm to Rs.5000/- pm from the respondent. Hence, the petitioner shall be entitled to enhanced maintenance of Rs. 5000/- pm from the date of filing of the present petition u/s 127 CrPC i.e. 18.07.2016 till she gets remarried or alive. It is made dear by this order that the amount awarded herein shall be adjusted against the amount already awarded in any other proceedings / case as maintenance / interim maintenance / ad interim maintenance to the petitioner. The monthly payment shall be made to the petitioner by the respondent on or before 7th day of each English Calender month. The arrears shall be paid within the period of six months from today. The respondent shall also pay an amount of Rs. 11,000/- towards litigation expenses. If any amount already paid for litigation

> expenses shall be adjusted towards the litigation expenses. Accordingly, this petition is allowed in the above discussed terms.…"

5. The petitioner has impugned the aforesaid order before this Court on the ground that learned Family Court has failed to appreciate that the application for enhancement of maintenance was filed in July, 2016 and the impugned order was passed on 05.05.2018 by way of which the respondent was directed to pay a sum of Rs.5,000/- only. It is stated that learned Family Court has failed to consider that after the 7th Pay Commission, the gross salary of the respondent had increased to Rs.50,000/- and respondent had admitted in his cross-examination that he received an amount Rs.44,456/- per month as gross salary and Rs.32,497/- per month as net salary, however, he had not produced his latest salary slip before the learned Family Court. It is argued that the Court failed to consider that respondent did not pay educational charges and marriage expenses of all the children which were borne by the parents of the petitioner. It is also stated that learned Family Court did not appreciate that the petitioner was entitled to same status and standard of living as that of the respondent and that it was not possible for her to lead a decent life with meager amount of Rs.5,000/- per month. It is prayed that the respondent be also directed to pay an amount of Rs.25,000/- per month from 31.08.1999 till June, 2016 as he had paid only Rs.5,000/- per month as maintenance.

6. Learned counsel for the respondent, on the other hand, had argued that there was no infirmity in the order of learned Family Court as it was a detailed and well-reasoned order. It was stated that no

further enhancement of maintenance was warranted in the present case since the respondent also has liability to maintain his widowed sister and her daughter. It was also argued that the respondent had taken loan of Rs.3,73,904/- from HDFC Bank for repair of his house and was liable to pay EMI of Rs.10,158/- per month. It was also stated that he had taken a loan of Rs.50,000/- for paying arrears of maintenance to the petitioner in compliance of order dated 05.05.2018, and that respondent had been regularly paying Rs.5000/- per month to the petitioner. It was further stated that the petitioner had admitted in her cross-examination that she was earning daily wages by doing agricultural work.

7. This Court has heard arguments and has gone through the material on record.

8. Before adverting to merits of the case, it will be appropriate to take note of Section 127 of Cr.P.C. which provides for alteration in maintenance provided under Section 125 of Cr.P.C. Section 127 of Cr.P.C. reads as under:

> "**127. Alteration in allowance**.
>
> (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.
>
> (2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be

cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on Which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order…"

9. This Bench in ***Sarita Bakshi v. State*** *2022 SCC OnLine Del 1707* had discussed the aim, object and scheme of Section 127 Cr.P.C. as under:

> "13. The objective is to ensure that fair share according to changed income or changed circumstances is granted to the wife. In case the income of husband has increased or decreased, the amount of maintenance has to be modified accordingly. It is to ensure that if income has decreased, the husband is not put to any hardship. In case the income has increased, it ensures that wife receives fair share according to increased income of husband. Similarly, income of wife can also be considered if it accrues after grant of maintenance under Section 125 Cr.P.C. The assessment and apportionment of the maintenance has to be done as per the Judgment of *Rajnesh v. Neha, (2021) 2 SCC 324* while deciding maintenance under Section 125 Cr.P.C.
>
> 14. It is clear from a plain reading of sub-section (1) of Section 127 Cr.P.C. that it is a provision for increase or decrease of maintenance as granted under Section 125, consequent upon any change in the circumstances of the parties concerned at the time of filing of application for alteration/modification of the original order of maintenance. It means that it must be shown by the party concerned that there has been a change in the circumstances of either the husband or of the wife.

10. As far as question regarding determination of amount of maintenance is concerned, the same has been discussed and illustrated by Hon'ble Apex Court in catena of judgments. In ***Rajnesh v. Neha*** *(2021) 2 SCC 324*, the Hon'ble Apex Court had summarised the criteria to be kept in mind by the Courts while deciding the quantum of maintenance, and the relevant observations in this regard are as under:

> "77. The objective of granting interim / permanent alimony is to ensure that the dependant 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 dependant 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.

****

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. 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. 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. In the present case, a perusal of the impugned order reveals that salary slip of the respondent filed before the learned Family Court for the month of August 2017 indicated his gross income as Rs.44,456/- per month, deductions from the gross income as Rs.11,959/-, income tax as Rs.5000/- approximately, and net income as Rs.32,450/- approximately per month. Further, learned Family Court in the impugned order also observed as under:

> "...**Respondent admitted in his cross-examination that he is receiving an amount of Rs. 44,456/- pm approximately as gross salary and net salary is Rs. 32,497/- pm.** However, the respondent stated that he had taken loan of Rs. 3,73,904/- from HDFC Bank for repairing of his house. The respondent has also stated that his parents have already expired. He has two sisters. His younger sister is residing with him and his elder sister is residing in her matrimonial home at Gurugram. Respondent denied in his cross-examination that he has not incurred any expenses on the marriage of his any child or the study of his children."
>
> (Emphasis supplied)

12. Admittedly, the net salary of respondent stood at Rs.32,497/- per month in August 2017, whereas the quantum of maintenance fixed by the learned Family Court after considering the overall circumstances was only Rs.5,000/- per month. The Court had taken into account two main factors, *firstly*, the fact that respondent had stated that he had availed a loan of Rs.3,73,904/- from HDFC Bank for repairing of his house, and *secondly*, that respondent had to look after her younger sister who was residing with him.

13. Learned counsel for respondent had argued that learned Family Court had rightly assessed the overall circumstances, expenditures, and liabilities of the respondent.

14. In the opinion of this Court, the contention of the learned counsel for respondent that while assessing the income of the respondent, the Court has to consider that he is making payment of more than Rs.10,000/- per month towards EMI of the loan that he has taken towards repair of his house is bereft of any merit since it has been categorically laid down by the Hon'ble Apex Court that only mandatory, statutory deductions are permitted to be deducted for the purpose of assessment of income of the husband. In this regard, reference can 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 has been 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 and **of 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..."

(Emphasis supplied)

15. A Co-ordinate Bench of this Court in ***Nitin Sharma v. Sunita Sharma*** *2021 SCC OnLine Del 694* also, after considering several judicial precedents, had observed that only mandatory deductions and compulsory contributions are to be taken into account while ascertaining the amount of maintenance. The relevant observations read as under:

> 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.** On this aspect, the pertinent observations of Hon'ble Supreme Court in *Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129*, which have been followed by a Bench of Punjab & Haryana High Court in *Seema v. Gourav Juneja 2018 SCC OnLine P&H 3045*, are as under:—
>
> "12. Section 125 Cr.P.C. stipulates that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate minor

child, who are otherwise unable to maintain themselves, shall be obligated to do so. A moral duty and a statutory obligation is cast upon the husband to maintain his wife, minor children, parents who otherwise are not capable of maintaining themselves. **A person cannot be permitted to wriggle out of his statutory liability by way of availing huge loans and reducing a substantial amount of his salary for repayment of the same every month. Deductions that are made from the gross salary towards long term savings, which a person would get back at the end of his service and such as deductions towards Provident Fund, General Group Insurance Scheme, L.I.C. Premium, State Life Insurance can be deemed to be an asset that he is creating for himself. In arriving at the income of a party only involuntary deductions like income tax, provident fund contribution etc. are to be excluded. Therefore, such deductions cannot be deducted or excluded from his salary while computing his "means" to pay maintenance.** In the case of Dr. Kulbhushan Kunwar v. Raj Kumari (1970) 3 SCC 129 : (1970) 3 SCC 129 : AIR 1971 SC 234 while deciding the question of quantum of maintenance to be paid, the argument raised that deduction not only 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 was not allowed. Only deductions towards income-tax and contributions to provident fund which had to be made compulsorily were allowed. The relevant portion of Dr. Kulbhushan Kunwar's case (supra) reads as under:—

"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."

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**."

(Emphasis supplied)

16. As observed in preceding discussion, the respondent cannot deny enhanced amount of maintenance to his wife under the garb of his liability to pay loan which he has taken for repairing his house.

17. Another contention of the learned counsel for respondent was that respondent has responsibility to maintain his widowed sister and her daughter also. However, there is nothing on record to show as to whether his sister has any income of her own or not. Even otherwise, only a limited portion of the income of respondent may be kept aside

towards his obligation to maintain his sister and the same cannot be a ground to deny maintenance to the petitioner/wife.

18. As observed in preceding paragraphs also, the gross income of respondent in August 2017 was Rs.44,456/- per month, whereas his net income was Rs.32,450/- approximately per month, and the petitioner was awarded a maintenance of Rs.5,000/- per month. As per the salary slip of February, 2019, filed by the respondent alongwith the reply to present petition, the gross salary of the respondent as on that date stood at Rs.55,764/- per month.

19. Since the settled law noted above regarding payment of EMI towards housing loan etc. and deduction under other heads and reasons discussed in preceding paragraphs have not been taken into account by the learned Family Court at the time of deciding grant of interim 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 learned Family Court shall decide the same within a period of three months from receipt of copy of this judgment.

20. In the meanwhile, considering the overall facts and circumstances of the case and the preceding discussion, this Court directs the respondent to pay Rs.10,000/- per month to the petitioner, till learned Family Court disposes of the matter regarding interim maintenance. Any excess or lesser amount paid by the respondent after the order is announced on interim maintenance shall be adjusted in the future amount of maintenance payable to the petitioner.

21. Accordingly, the present petition stands disposed of in above terms.

22. A copy of this order be forwarded by the Registry to the learned Family Court for taking note and ensuring compliance.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 06, 2023/zp