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

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***Reserved on: 24.04.2023  
Pronounced on: 08.05.2023***

+ **CRL.REV.P. 1004/2018**

SMT. RITU MANOJ PRITHIANI ..... Petitioner

Through: Mr. Navdeep Jain, Advocate

versus

SH. MANOJ DHARAMDAS PRITHIANI ..... Respondent

Through: Mr. K.C. Jain and Mr. Ansh  
Goel, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The petitioner has filed the present petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C.'*) seeking enhancement of maintenance by modification of impugned order dated 27.08.2018 passed by learned Principal Judge, Family Courts, Patiala House Courts, New Delhi (*hereinafter 'Family Court'*) in M.No. 72/2016 titled as 'Ritu Manoj Prithiani vs. Manoj Dharamdas Prithiani' wherein the application of petitioner for interim maintenance had been disposed of.

2. Brief facts, leading to filing of present petition, are that on 09.07.2011, the petitioner and respondent had got married as per Hindu rites and ceremonies. However, differences between the parties had

arisen and the petitioner had filed an application under Section 125 Cr.P.C for grant of interim maintenance. By virtue of order dated 27.08.2018, learned Principal Judge had awarded interim maintenance of Rs. 18,000/- per month to the present petitioner. The relevant portion of the said order reads as under:

“8. 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 die legal and moral duty of her husband to maintain her according to his means and capacity. Considering the reasons mentioned in the application, objections raised in the reply, details and status of the parties mentioned in their detailed income affidavits, arguments of the Ld. Counsel for the parties and judgments relied upon by the Ld. Counsel for the parties, I am of the considered opinion that the respondent is earning the amount as discussed above he has the liability of his old and aged mother suffering from Polio and further the other expenses mentioned in the income affidavit are to be deducted from the salary of the respondent, therefore, the ends of justice would be met if the petitioner is granted interim maintenance of 18,000/- pm. Accordingly, the petitioner is granted interim maintenance of Rs. 18000/- pm by the respondent from the date of filing of the present application till the disposal of the present petition u/s 125 CrPC. It is made clear by this order that the amount awarded herein shall be adjusted against the amount already awarded in this case as ad interim maintenance, any other proceedings / case as maintenance/interim maintenance to the petitioner. The monthly payment shall be made to the petitioner by the respondent on or before 7<sup>th</sup> day of each English Calender month. The arrears shall be paid within the period of six months from today in six equal installments. Accordingly, the aforesaid application is disposed off in the above discussed terms”.

3. Aggrieved by the said order, the present petition has been filed for enhancement of the interim maintenance on the ground that learned

Family Court had failed to appreciate that the respondent was earning Rs. 97,399/- per month as per his salary slip filed before the Court and his carry home salary was Rs. 82,330/- per month after deductions.

4. It is argued by learned counsel for petitioner that learned Judge, Family Court failed to appreciate that the respondent also has rental income from his residential house which is valued at about Rs. 70 lakhs. It is stated that the Court has erroneously assumed that respondent has liability of his old mother, although there is no document to support the said claim. It is also stated that the mother of respondent has separate rental income from the property she owns in her name and is able to maintain herself. It is also stated that petitioner is not working and is suffering from several ailments and requires constant medical treatment. It is further the case of petitioner that she is living in a one room rented accommodation with her old father whereas the respondent is living in a lavish locality of Mumbai. It is argued on behalf of petitioner that she is entitled to same status and facilities as enjoyed by the respondent.

5. It is also stated by learned counsel for petitioner that learned Family Court, in para 6 of impugned order, had observed as under:

"However for medical treatment, the company of the respondent is providing the facilities of medical treatment to the respondent as well as the petitioner. The respondent has also given the mediclaim card issued in the name of the petitioner to her in the court today by which she may avail the medical facilities."

6. However, it is stated that petitioner had been suffering from 'Vertigo' due to which she had become unconscious and had vomited

several times on 11.09.2018. Thereafter, she was admitted in the hospital wherein she had handed over the aforesaid mediclaim card to the hospital staff for cashless facility, however, the petitioner was shocked and surprised when the concerned company had rejected the cashless claim for medical treatment on the ground that the mediclaim policy had not been renewed for the petitioner by the company. It is stated that the medical treatment was given to the petitioner only when amount of Rs.7,000/- was deposited by her in the hospital and the same amount was borrowed by the aged father of the petitioner from the some known persons. Thereafter, the petitioner was discharged on 12.09.2018 due to non-availability of funds, however, doctor had suggested several medical tests but the same could not be conducted due to the financial problem. It is further stated that on 29.09.2018, the petitioner was diagnosed at Apollo Hospital from Neuro Specialist and then on 01.10.2018, she was diagnosed from E.N.T Specialist, and she has been advised to undergo urgent Ear Nerve Surgery, but she is unable to undergo the same due to financial problems. It is, thus, submitted that the conduct of respondent before the learned Family Court itself shows that he had falsely informed the Court about the mediclaim facility provided to the petitioner from the respondent's company and had handed over an expired mediclaim card only to misguide the learned Family Court and to get the favourable orders of lesser maintenance amount. It is, therefore, stated that the impugned order be set aside.

7. Learned counsel for respondent, on the other hand, states that respondent is working at 'Capgemini Solutions India Pvt. Ltd.' and it is

false that the respondent is earning more than Rs. 1,50,000/- as has been claimed in the petition, and that his earnings are much less than what has been claimed. It is argued that respondent also has several liabilities and has the responsibility towards his old mother who is in constant need of medical care. It is also stated that respondent has not been able to progress in his career since marriage due to the mental harassment faced by him. It is also stated that the petitioner is capable of earning and can maintain herself. It is stated that petitioner had deserted the respondent and she is guilty of committing cruelty upon the respondent.

8. I have heard arguments of both learned counsels for petitioner as well as respondent and have gone through the material available on record.

9. At the outset, a reference can be made to Section 125 Cr.P.C., being the provision of law involved in the present case, which reads 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 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:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

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) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(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, issue 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 months allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, 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 wives refusal to live with him.

(4) No wife shall be entitled to receive an 5[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] 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 in 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 intent of Section 125 Cr.P.C. and the objects which it aims to achieve were discussed by Hon’ble Apex Court in case of *Bhuwan Mohan Singh v. Meena* (2015) 6 SCC 353 with the following observations:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

11. It is also a settled proposition of law that wife is entitled to same status and to enjoy same facilities as enjoyed by husband. In ***Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386***, it was observed by Hon’ble Supreme Court that the wife should be in a position to maintain a standard of living which is consistent with the status of her marital family, neither luxurious nor penurious in comparison.

12. Further, as regards contention of learned counsel for respondent

that petitioner is capable of earning sufficient amount of income, this Court takes note of the decision of Hon'ble Apex Court in *Shailja v. Khobbanna* (2018) 12 SCC 199 and *Sunita Kachwaha v. Anil Kachwaha* (2014) 16 SCC 715 whereby it was categorically held that capability of earning money is different from actual earnings and the former cannot be a ground to deny maintenance to the wife. These observations were reiterated by the Hon'ble Apex Court in *Rajnish v. Neha* (2021) 2 SCC 324 in the following manner:

“...90. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

90.1. In *Shailja v. Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

90.2. In *Sunita Kachwaha v. Anil Kachwaha*, the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance...”

13. In the case of *Rajnesh v. Neha (supra)*, the Hon'ble Apex Court has categorically given the guidelines and principles which are to guide all the Courts across the country for the purpose of grant of interim maintenance and maintenance at the final stage of trial. It is mentioned in the said judgment that the Affidavits of Disclosure of Assets and Liabilities to be filed by both the parties have to become criteria to decide grant of interim maintenance. Further, the factors to be kept in mind while deciding such a question have also been discussed in the said judgment. The relevant observations of Hon'ble Apex Court in this regard are reproduced herein-under:

“63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents / relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

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65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, alongwith an Affidavit of Disclosure of Assets and Liabilities before

the concerned court, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

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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.

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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.”

14. In the present case, learned Family Court has come to the conclusion that the net salary of the respondent, after statutory and essential deduction, is Rs.82,330/-, which is also not disputed by the respondent. The Court has also mentioned in the order itself that wife is entitled to maintenance equal to status and stature of her husband. Therefore, from the impugned order itself, it is not clear that though the learned Family Court had come to such a conclusion, as to why only Rs. 18,000/- per month had been granted as interim maintenance to petitioner. In this regard, a reference can be made to the decision of this

Court in *Annurita Vohra v. Sandeep Vohra* 2004 SCC OnLine Del 192, wherein it was observed as under:

“1. This revision petition is directed against the Order dated 20.8.2001 whereby the Additional District Judge had granted maintenance at the rate of Rs. 6,000/- per month to the Petitioner/Applicant/Wife for herself and her minor children. The Court had come to the conclusion that the net disposable income of the Respondent/Husband is about Rs. 32,000/- per month which is exclusive of his perks and reimbursements. It had also been found that there were no dependents other than the wife and children. In *Jasbir Kaur Sehgal v. District Judge, Dehradun and others*, (1997) 7 SCC 7, it has been observed that - “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. At the same time, the amount so fixed cannot be excessive or extortionate”.

2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any

authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.”

15. The respondent has not disputed that the petitioner is suffering from several ailments and needs medical treatment. Learned Family Court has mentioned in para no. 6 of its order that mediclaim card has been provided to her and she can avail the facilities free of cost and therefore, any amount for grant of medical treatment was not granted or considered while granting interim maintenance. The petitioner has categorically stated in her petition that when she had used the same mediclaim card at a hospital on 11.09.2018, after she had suffered from ‘Vertigo’, she was not able to use the said card since it was not renewed and premium for the same had not been paid and, therefore, she had to spent the amount for her medical treatment by borrowing money. In this context, it becomes essential that some provision is made for the purpose of medical treatment of the petitioner also.

16. As far as the provision regarding looking after the needs of mother of the respondent is concerned, this Court is of the opinion that though the learned counsel for petitioner stated that respondent's mother has rental income from properties in her name, no such evidence as of now is on record. It is not disputed that she is suffering from Polio since long and needs to be looked after. It is not clear from the record as to whether there are any other persons, like siblings of petitioner to look after her. In such circumstances, this Court cannot hold that respondent should neglect his mother or not spend anything for her as he is living with him which is not disputed by the petitioner herself. Looking after one's mother or old age parents is also a moral duty of a man. Considering the same, learned Family Court did not commit any error by keeping some amount from the salary of the respondent for looking after the needs of the mother of petitioner.

17. Needless to say in case at the end of the trial, if the petitioner is able to place on record any evidence that mother of the respondent has her own income which was not disclosed by the respondent, the learned Family Court may take the decision on the same as per law.

18. Considering the overall facts & circumstances of the case, this Court is of the opinion that since the net income of the respondent as per the affidavit and as per finding of the learned Family Court is Rs.82,330/- which was not disputed before the learned Family Court and a salary slip in this regard was placed before it, the learned Family Court had committed an error by granting only Rs. 18,000/- per month as maintenance to the present petitioner.

19. In view thereof, this Court, enhances the interim maintenance

granted to petitioner from Rs. 18,000/- to Rs. 22,000/- per month, which will include all the expenses.

20. It is also noted that the petitioner was working prior to her marriage as an Accountant with Air India on contract basis and has a diploma in D.T.P. In this Court's opinion, she should also try and find some work and to not waste her time and talent sitting at home. However, since at this stage, there is no proof that she is earning, the husband, as per his duty towards his wife, is directed to pay interim maintenance of Rs. 22,000/- per month.

21. It is to be noted that the amount of maintenance granted vide this order is only interim and the final maintenance will be decided only on the basis of evidence led by both the parties before the learned Family Court.

22. Accordingly, the present petition stands disposed of.

23. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**MAY 8, 2023/kss**