



2024:DHC:7706



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 19th September, 2024***
+ **CRL.REV.P. 94/2023**
AVNI JAINPetitioner

Through: Mr. Piyush Gupta, Mr. R
K Shukla, Ms. Nidhi
Bhati, Mr. Prahlad Bhatt,
Mr. Akash Verma, Mr. C
P Sharma, Mr. Sanjay
Kumar, Mr. Manoj Gupta,
Mr. Manoj Mittal, Ms.
Sapna Gupta, Mr. Harshit
Juneja, Ms. Swati
Varandani, Mr. Sujeet
Kumar, Mr. Pramod
Kumar, Mr. Neeraj
Bhardwaj, Mr. Anurag
Gupta, Mr. Sunil Kumar
Goel, Ms. Lata Gupta &
Ms. Ritika Goyal,
Advocates (Through
V.C.).

versus

ABHISHEK GARGRespondent
Through: Ms. Shikha Kaushik,
Advocate (Through V.C.).

+ **CRL.REV.P. 699/2023, CRL.M.A. 16938/2023 &
CRL.M.A. 16939/2023**
ABHISHEK GARGPetitioner

Through: Ms. Shikha Kaushik,
Advocate (Through V.C.).

versus

AVNI JAINRespondent
Through: Mr. Piyush Gupta, Mr. R
K Shukla, Ms. Nidhi
Bhati, Mr. Prahlad Bhatt,
Mr. Akash Verma, Mr. C

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P Sharma, Mr. Sanjay Kumar, Mr. Manoj Gupta, Mr. Manoj Mittal, Ms. Sapna Gupta, Mr. Harshit Juneja, Ms. Swati Varandani, Mr. Sujeet Kumar, Mr. Pramod Kumar, Mr. Neeraj Bhardwaj, Mr. Anurag Gupta, Mr. Sunil Kumar Goel, Ms. Lata Gupta & Ms. Ritika Goyal, Advocates (Through V.C.).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petitions are filed against the order dated 05.12.2022 (hereafter '**impugned order**') passed by the learned Judge, Family Court, Tis Hazari Courts, Delhi in MT No. 568/2022 titled *Avni Jain vs. Abhishek Garg*.
2. By impugned order, the learned Family Court assessed the monthly income of the respondent to be SGD 17,628 per month, and directed the respondent to pay an interim maintenance of ₹75,000/- per month to the petitioner from the date of filing of the petition, and for a further period of one year, i.e., till 05.12.2023.
3. The petitioner *vide* CRL. REV. P. 94/2023 seeks an enhancement of interim maintenance. The respondent in the aforesaid petition is the petitioner in CRL. REV. P. 699/2023, and seeks setting aside of the impugned order awarding interim maintenance to the tune of ₹75,000/- per month to the petitioner

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from the date of filing of the petition, and for a further period of one year, i.e., till 05.12.2023

4. The learned counsel for the petitioner submits that the learned Family Court erred in awarding interim maintenance to the tune of ₹75,000/- per month to the petitioner. He submits that the petitioner is presently not working anywhere, and has no independent source of income. He submits that the petitioner is dependent upon her parents for her expenses. He submits that merely because the petitioner is capable of earning is no ground to deny maintenance. He submits that the relevant factor is that the petitioner is not presently earning. He further submits that the learned Family Court erred in assessing the monthly income of the respondent. He submits that the respondent is presently posted in Singapore, and is employed as Managing Director at the Bank of America. He therefore prays that the interim maintenance awarded *vide* the impugned order be enhanced to the extent of 1/3rd of the salary of the respondent.

5. *Per contra*, the learned counsel for the respondent submits that the learned Family Court erroneously awarded a sum of ₹75,000/- as interim maintenance to the petitioner. She submits that the petitioner has concealed her income, and has failed to disclose all the bank accounts maintained by her. She submits that the purpose of Section 125 of the Code of Criminal Procedure, 1973 ('CrPC') is to prevent vagrancy of the wife, and not equalize the income of the petitioner with that of the respondent. She submits that the respondent is not just earning in Singapore dollars but is also incurring expenditure in Singapore



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dollars.

6. It is common knowledge and has been observed by this Court in many cases that it is a normal tendency of the parties, especially in matrimonial disputes not to disclose their true income. The Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning. [Ref: *Bharat Hegde v. Saroj Hegde* : **2007 SCC OnLine Del 622**]

7. In the present case, the learned Family Court noted that then respondent has pursued B.Com, and is professionally qualified as a C.A. It was noted that the respondent was working in Singapore, and was staying in a rented accommodation. The learned Family Court further noted that the respondent is working as Managing Director in Bank of America, and his monthly income is SGD 17,628 per month (approximately ₹11 lakhs).

8. The learned Family Court also took into account the income affidavit filed by the petitioner. It was noted that while the petitioner claimed to be unemployed, she was a highly qualified woman possessing B.Tech, M.Ed, and M.A. (Psychology). The learned Family Court further noted that prior to her marriage, the petitioner worked with Meshyu Consultants. It was noted that the respondent was working in Singapore, and was staying in a rented accommodation. It was noted that the respondent was also taking care of his mother, and spent approximately SGD 2000 per month on his mother's medical care. The learned Family Court noted that Singapore being one



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of the most expensive cities in the world, the cost of living in Singapore cannot be compared with the cost of living in India.

9. It was noted that the respondent had not produced any material on record to show that the petitioner was professionally engaged. The learned Family Court also took into account the contention of the petitioner claiming 1/3rd of the salary of the respondent. The learned Family Court noting that the objective of Section 125 of the CrPC was to prevent vagrancy and not equalising the financial capacity of both the parties, and taking into account the financial status and living standard of the respondent, awarded an interim maintenance for a sum of ₹75,000/- per month to the petitioner for her sustenance till she found a job as per her qualifications.

10. The only question for determination at this stage is whether the interim maintenance for a sum of ₹75,000/- per month is a reasonable amount or whether the wife is entitled to enhancement of interim maintenance given that the husband is working in Singapore, and is earning in Singapore dollars.

11. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. However, that being said, it is pertinent to note that Section 125 of the CrPC is a provision designed to provide a quick remedy to those who are unable to maintain themselves. The primary objective of this section is to prevent vagrancy and destitution by ensuring that those who are dependent on another for their subsistence, such as a wife, children, or parents, receive financial support when they are unable to maintain themselves. The Supreme Court in



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Chaturbhuj v. Sita Bai : (2008) 2 SCC 316 emphasized that the object of maintenance proceedings is not to punish a person for past neglect but to ensure that those entitled to support are not left in distress. This provision embodies the social responsibility and moral duty to maintain one's dependents. Consequently, the maintenance awarded should neither be luxurious nor penurious.

12. This Court in **K.N. vs. R.G. : 2019 SCC OnLine Del 7704** when deciding the question of grant of interim maintenance to the wife whose net salary herself was around ₹1 lakh, and the husband was employed at a very senior position in a company at Singapore and was earning about ₹13 lakhs per month observed as under:

“10.We cannot agree with the contention of the appellant that merely because the respondent is earning in ‘dollars’ she is entitled to the maintenance claimed by converting his salary in dollars into Indian rupees. We agree with the respondent that his expenditure being in dollars, the salary being in dollars is a fact which cannot be overemphasized. We are supported in our view by a judgment of this court in Bindu Chaudhary v. Deepak Suga reported at (2016) 234 DLT 108 (DB), where this court has held that if a person is employed in Dubai and earns in currency of that country, then he also spends in that currency. So, it is not open to the wife to convert his income in Indian currency and seek enhancement. The relevant para of the said judgment is extracted herein:

“9. If a person is working in Dubai, he earns in the currency of that country and spends also in that currency. So it is not open to the wife to just convert his income in Indian currency and then seek enhancement. The Court has to consider the cost of living as per the living standards in country where he is employed.”

11. The respondent is thus justified in his submission that the courts will have to consider the cost of living as per the living standard in the country where he is employed and mere earning ‘dollars’ cannot be the sole criteria to award

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exorbitant maintenance in favour of other spouse. Thus, this contention of the appellant does not appeal to this court and is hereby rejected.

12. There is no doubt that the appellant has been working with reputed multinational companies. Her own income affidavit reveals that her net income is approximately Rs. 1 Lac per month. There is no child from the wedlock and she has no other liabilities. Looking at the totality of the facts, we find that this is not the case where the appellant is unable to maintain herself. In fact, the earnings of the appellant are sufficient to maintain herself and give her the required comforts of life. The law on the subject as discernible from some of the judgments mentioned above is clear that when a spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted. In a given situation, the courts have been granting some maintenance in a case where there is capacity to earn but some other factors prevent the spouse from earning despite making best efforts. However, in a case like the present, where the spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted. We do not agree with the submission of the appellant that though she is earning a good amount of salary, she should still be given interim maintenance to bring her at par with the lifestyle of the respondent. ***The provisions of this section are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to tie over the litigation expenses and to provide a comfortable life to the spouse. Where, however, both the spouses are earning and have a good salary, merely because there is some salary difference cannot be a reason for seeking maintenance. In the present case, what the appellant seeks is an equalization with the respondent which we are afraid cannot be granted under Section 24***

(emphasis supplied)

13. It is not in dispute that the husband is employed in Singapore, and is also incurring expenses in Singapore currency. Merely because the respondent is working and earning in a Singapore dollars does not mean that the same has to be



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converted in Indian rupees while deciding the claim for interim maintenance. In this regard, the learned Family Court rightly noted that Singapore is one of the most expensive cities in the world, and the husband is incurring expenditure in Singapore dollars. The standard and cost of living in Singapore cannot be equalised with that in Delhi. While this Court is cognizant that it is the sacrosanct duty of the husband to maintain his wife, the same cannot translate to mean that the salary of the husband be equalised with the maintenance to the wife. In view of the aforesaid, in the opinion of this Court, the interim maintenance for a sum of ₹75,000/- is a reasonable amount.

14. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the petitioner, along with the allegations and counter allegations, would be the subject matter of the trial, and would have to be decided after the parties have led their evidence.

15. The learned Family Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

16. In view of the above, this Court finds no reason to interfere with the impugned order, and the petitions are dismissed in the aforesaid terms.

17. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 19, 2024/ 'Aman'

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