



\$~75

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

+ **CRL.REV.P. 258/2024, CRL.M.A. 5804/2024**

GAURAV SAHNI

.....Petitioner

Through: Mr.Sumeet Sedhi , Advocate through
VC, Ms Bhawna Mapwal Mr. Ashish
Negi, advocates

versus

SONIA SAHNI

.....Respondent

Through: Mr. Vikas Arora, MS Radhika Arora
advocate

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

25.07.2024

%

1. Present revision petition has been filed under Section 397 read with Section 401 Cr.P.C. against the impugned order and judgment dated 21.12.2023 passed by learned Additional Sessions Judge, South, Saket Courts, Delhi in Criminal Appeal No.217/2023 "*GAURAV SAHNI VS SONIA SAHNI*" and 270/2023 tilted as "*SONIA SAHNI VS GAURAV SAHNI*". The petitioner has also challenged the order dated 04.08.2023 passed by the learned M.M.-02 (Mahila Court), South Saket Courts, New Delhi in complaint case no.5361/2020 tilted as "*SONIA SAHNI VS GAURAV SAHNI & Ors.*"
2. Learned counsel for the petitioner submits that learned MM vide order dated 4.8.2023 directed the petitioner to pay 100% of the school fees of



the minor child and to pay ₹40,000 per month (₹10,000 for the complainant and ₹30,000 for the minor child) as interim maintenance with the effect from the date of filing of the petition case i.e. 17.09.2020.

3. Learned counsel for the petitioner submits that the learning ASJ vide common order and judgement dated 21.12.2023 has wrongly modified the order dated 4.8.2023 and enhanced the interim maintenance to a lump sum ₹1,00,000/- to the wife and ₹1,00,000/- to the minor child. Learned counsel for the petitioner submits that the conduct of the respondent since the time of marriage was very disrespectful towards the petitioner and members of his family. It has also been submitted that the respondent had always been demanding. It has also been submitted that the petitioner had no earnings of his own and therefore was not able to meet the ever-increasing demands of the respondent. Learned counsel submits that the respondent filed a false and frivolous complaint under section 23 of the Domestic Violence Act and sought interim maintenance amongst the other reliefs.
4. Both the parties have filed their affidavits of income. Learned counsel submits that the respondent in her income affidavit, dated 01.12.2021 admitted that she was earning ₹92,000/- per month. She was also getting a rent of ₹14,000/- per month from a flat in Delhi and ₹20,000/- per month from stocks. Thus, the total income of the respondent was ₹15,20,000/- annually. Learned counsel submits that the respondent disclosed in her affidavit regarding certain loans and payment of EMI



for a home loan intended for her parents who were not dependent upon her.

5. Learned counsel for the petitioner submits that the petitioner has honestly and earnestly disclosed all his bank accounts to the learned court. Learned counsel submits that except two bank accounts all income generating bank accounts were joint accounts with the father of the petitioner where income is generating through farming by his father in the ancestral land. Learned counsel submits that the petitioner managed the account due to old age of the father. It has further been submitted that two accounts were of maternal uncle and aunt's income and are belonged to respective uncle and aunt. It has been submitted that remaining five accounts which are located in Delhi were being used for convenience of the family since the family resides in Delhi. Learned counsel submitted that income that was credited in Gokarnath accounts were thereafter transferred to Delhi accounts for convenience. It is pertinent to mention that the agricultural land is situated at Gola Gokarnath. Learned counsel submits that he has filed detailed statement of accounts with the certificate of the chartered accountant. Learned counsel submits that at best, one fourth of the total income could be attributed to the petitioner, which is ranging from ₹2.7 lakhs to ₹5.5 lakhs per annum.
6. Learned counsel submits that initially learned M.M. vide order dated 19.11.2022 directed the petitioner to pay 100% of the school fee of the minor child directly to the school (which is about Rs.48,000 per month) and further directed to pay the respondent an amount of ₹40,000/-



towards interim maintenance of the respondent and the child. This order was assailed vide appeal being C.A.313/2022 titled as “*GAURAV SAHNI VS SONIA SAHNI*”. The appeal was disposed of vide order dated 5.6.2023 and the matter was remanded back to the learned trial court for deciding the application under section 23 of the Domestic Violence Act afresh. Learned counsel submits that the learned trial court again passed the near identical interim maintenance order vide order dated 4.8.2023. Thus, this order was again challenged by the petitioner.

7. Learned counsel submits that while issuing notice on the said appeal, learned appellate court modified the directions passed by the learned Trial and directed the petitioner to pay 50% of school fee instead of 100% and Rs.40,000/- as interim maintenance vide order dated 10.8.2023. This order was challenged before this court in Criminal Revision Petition Number 908/2023, which was later on withdrawn by the petitioner. In the meanwhile, the respondent also filed CA No.270 of 2023 titled as *Sonia Sahani versus Gaurav Sahni*. Learned counsel submits that the learned Sessions Court vide order dated 21.12.2023 enhanced the interim maintenance to the amount ₹1,00,000/- to the wife and ₹1,00,00 to the minor child in a highly mechanical manner by calculating the income of the petitioner three times, his actual earnings. Learned counsel submits that the impugned order is erroneous and is liable to be set aside. It has been submitted that the order granting interim maintenance in a punitive form, being completely inconsistent with the earning of the appellant. Learned counsel submits that the



petitioner is only assisting his father who is totally dependent upon him. The findings of the learned Sessions Court are stated to be based on surmises and conjunctures. Learned counsel submits that there are four members including the petitioner who have right in the ancestral property and by extension of logic that every co-parcener has a right in any income generated from such property (though not admitted), the share of the husband is anywhere between Rs.25,000/- to Rs.45,000/- per month. Learned counsel submits that the division of the presumed income into 2 parts for the petitioner and four for the remaining families is totally wrong. It has also been submitted that the income transferred from own account or other account cannot be considered as income. It has also been submitted that the learned court has taken into account the fact that the income of the respondent wife is around Rs.1.5 lakhs.

8. Before advertng to the facts in the present case, it is necessary to examine the scope of revisional jurisdiction is very limited. It has been held in various cases that the revisional jurisdiction can be exercised only when there is illegality or perversity of the Ld. Trial Court.

In **V.K. Verma v. CBI** CRL.REV.P. 830/2017 it has been inter alia held as under:

“66. The revisional jurisdiction is not meant to test the waters of what might happen in the trial. The Revisional Court has to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of the court below. While doing so, the Revisional Court does not dwell at length upon the facts and evidence of the case, rather it considers the material only to



satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence. In the instant case, the Petitioner has failed to make out a case for exercise of the revisional jurisdiction since there is no patent error in the impugned order on the face of record.

67. Further, as per the settled position of law the jurisdiction under Section 482 has to be exercised sparingly, with circumspection and in rarest of the rare cases, only to prevent abuse of the process of any Court or to secure the ends of justice. In the instant case, there is no such abuse of process or that the ends of justice warrant the exercise of the said jurisdiction, therefore there is no cogent reason warranting the exercise of the jurisdiction.”

and in ***Sunil v. State*** CRL.REV.P 514/2022 it was inter alia held as under

“7. The scope of revisional jurisdiction is very limited. The Courts can exercise its revisional jurisdiction only if there is patent illegality, perversity, jurisdictional error, or an error apparent on the face of the record. In revisional jurisdiction, the Courts cannot substitute its opinion with that of the Courts below. Where two views are possible and the trial court has taken one view which is a plausible view, merely because another view is possible, the High Court should not interfere, and would be in error in interfering with the findings of the trial court in its revisional jurisdiction. High Courts cannot reappraise evidence and come to a different conclusion. The revisional jurisdiction operates within narrow contours and can be exercised only in exceptional cases where the interest of public justice so requires such an interference, to rectify a gross miscarriage of justice. In absence of any manifest error of law or procedural defects, the High Courts should refrain from interfering with the order of trial court in its revisional jurisdiction. The revisional court does not function as a court of appeal and the Court cannot reappraise evidence. Revisional jurisdiction is normally exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of law and



consequently there has been a flagrant miscarriage of justice. The High Court cannot interfere with findings of fact of the learned trial Court which have been arrived at after due consideration and appreciation of evidence and material on record.”

9. The bare perusal of these judgments makes it clear that revisional jurisdiction is very limited. The revisional jurisdiction can only be exercised if there is glaring infirmity, incorrectness, or perversity, in the order of the trial court. The impugned order cannot be set aside in the revisional jurisdiction only if there is an alternative view available. The view taken in the impugned order should be of a plausible view. If the view is not plausible or is not born out of the record, it is certainly open to be modified..
10. In this regard, the finding of the trial court is very relevant. The trial court in the impugned order after taking into account the pleadings on the record has inter alia held as under:
 9. *It is relevant to note that matrimonial alliance between the parties is not disputed and that the marriage was performed according to Hindu rites and ceremonies. After marriage the respondent joined the company of the appellant in her matrimonial home. It is also not disputed that due marital discord, the parties are not cohabiting since 08.09.2020 and are residing separately since then. The birth of the female child is also not disputed. The respondent has attributed various allegations of dowry demands, domestic violence including physical and mental by the appellant and his family members. As per respondent, having no other option, she then resorted to legal help for redressal of her grievances.*
 10. *In matrimonial matters, on the issue of maintenance/other monetary reliefs honest disclosure of facts and figures by parties is rarely seen. The husband, wherever possible, tends to conceal his income and assets whereas wife tends to put forth unrealistic and excessive claim for such reliefs. The court is required to adopt a balance approach in view of given facts and material on record.*



11. *The law is well settled that the test for determination of maintenance / monetary relief contemplated under the Act depend upon the financial status of the parties and the standard of living of the husband to which the wife was accustomed to in her matrimonial home. The monitory reliefs should neither be too extravagant which may become oppressive and unbearable for the respondent nor it should be so meager so as to derive the wife to destitution and hardship. A careful and just balance has to be drawn between the relevant factors pertaining to financial position and status of both the parties.*
12. *In the present case, the Ld. Trial Court has reproduced the income & expenditure affidavits of the parties and the submissions made by them but has not made an effort to work out the actual/ estimated income of the appellant while awarding the maintenance of Rs.40,000/- per month as well as directing him to pay 100% of the school fee of the minor child.*
13. *The Ld. Trial Court has observed that the respondent is drawing a salary of Rs.92,000/- per month while working as a Senior Manager in Genpact India Pvt. Ltd. Apart from that she is having rental income from the flats amounting to Rs.14,000/- per month and she is also having an income of around Rs.20,000/- per month from stock trading on an average. However, the documents pertaining to rental income or stock trading have not been procured. Moreover, the Ld. Trial Court has taken into account the fact that the respondent has availed certain loans for which she has been paying EMIs but the related documents are also not brought on record.*
14. *Whereas, the appellant has refuted the contention of the respondent that his monthly income is of Rs.5 Lacs per month or that he is the owner of 70 acres of land in U.P. He has pleaded that he is earning around Rs.10-15,000/- per month which he receives from his father as his pocket expenses. He has admitted that he is maintaining 12 bank accounts in different banks some of which are joint bank accounts. He has claimed to have 1/4th undivided share in the ancestral property and is owner of a house which is a benami transaction executed by his father in his name. Thus, relevantly on the basis of the deposition made by the parties in the income & expenditure affidavits and the related documents placed on record, the Ld. Trial Court has granted interim maintenance but the Ld. Trial Court failed to note the income of the respondent on the basis of which the interim maintenance is awarded.*



Moreover, the complete documents have not been furnished by the parties so as to ascertain their financial status.

15. It is pertinent to mention here that the learned trial court has merely granted the interim maintenance. The factors for the determination of the maintenance includes the right of the respondent wife to live a similar lifestyle as she enjoyed in the matrimonial home. It is also not no longer *res integra* that merely if the wife is earning, she cannot be held entitled for the maintenance. The income of the wife should be sufficient to enable her to maintain herself in accordance with the lifestyle of her husband in the matrimonial home. The court has taken a consistent view that sustenance does not mean and cannot be allowed to mean mere survival. Since the case is at the stage of interim maintenance and the final view is yet to be taken by the learned trial court after appreciating the evidence on record, it would not be in the interest of the parties to appreciate the material on record minutely. I consider that prima facie the learned session court has taken a plausible view. The court does not consider that the view taken by the learn trial court suffers from perversity in any manner.

16. Hence, the petition along with the pending application is dismissed.

DINESH KUMAR SHARMA, J

JULY 25, 2024

rb/dg