



2024:DHC:8595



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

% **Date of order: 7th November, 2024**

+ **CRL.REV.P. 444/2024 & CRL.M.(BAIL) 561/2024**

SMT SHALINI KAPOORPetitioner

Through: Mr.Surinder Singh and Mr.Saurabh Mathur, Advocates alongwith petitioner.

versus

SHRI HIMANSHU KAPOORRespondent

Through: Mr.Vibhor Bagga, Mrs. Esha Dogra and Mr.Sarthi Vats, Advocates.

+ **CRL.REV.P. 685/2024 & CRL.M.A. 15732/2024**

HIMANSHU KAPOORPetitioner

Through: Mr.Vibhor Bagga, Mrs. Esha Dogra and Mr.Sarthi Vats, Advocates

versus

SHALINI KAPOORRespondent

Through: Mr.Surinder Singh and Mr.Saurabh Mathur, Advocates alongwith respondent.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

CRL.REV.P. 444/2024 and other

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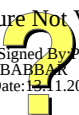


ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The revision petition bearing CRL.REV.P. No. 444/2024 has been filed on behalf of Smt. Shalini Kapoor who is wife of the revisionist in CRL.REV.P. No. 685/2024. For the sake of convenience, this Court is treating the position of parties as per the petition bearing no. 444/2024. The brief facts leading to the instant revision petitions are as follows:

- a) The petitioner and the respondent got married in the year 2010 as per the Hindu rituals and a child was born out of the wedlock in the year 2013.
- b) Thereafter, tensions arose between the couple and the petitioner and the child were allegedly forced to leave the matrimonial home leading to filing of a complaint bearing no. 8009/2017 under Section 12 of the Protection of Women from the Domestic Violence Act, 2005 (hereinafter as 'DV Act') against the respondent husband.
- c) In the said case, the learned Trial Court passed an interim order dated 15th March, 2023, whereby, the respondent husband was directed to pay a monthly compensation of Rs. 50,000/- each to the petitioner and their child.
- d) In appeal, the learned Appellate Court modified the said order *vide* order dated 8th February, 2024 and held that the petitioner wife is not entitled for any compensation, therefore, reducing the same to Rs. 50,000/- towards maintenance of the child alone.
- e) Aggrieved by the same, the petitioner has preferred the instant revision petition under Section 399 read with Sections 401/482 of the Code





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of Criminal Procedure, 1973 against the impugned order dated 8th February, 2024.

2. The learned counsel appearing on behalf of the petitioner wife submitted that the learned Trial Court erred in not appreciating the discrepancies in the affidavit filed by the respondent husband, wherein, he mentioned his monthly income to be merely Rs. 36,477/-, however, despite the same, he was paying Rs. 20,000/- towards his mother's maintenance and EMIs, thereby expending more than Rs. 32,000/-.
3. It is submitted that the learned Trial Court failed to appreciate that the respondent husband solemnized a second marriage with one namely Ms. Anshita without divorcing the petitioner and the factum that the respondent and his second wife have started a new business chain, thereby, leaving the petitioner without taking divorce.
4. It is submitted that after her marriage, the petitioner and her child were living in a lavish farm house and reduction of the maintenance would force the petitioner to live without any means to survive.
5. It is submitted that the petitioner was working in a social media company earlier and was earning approximately Rs. 38,000/- per month, however, the said contract ended in the year 2022 itself and therefore, the petitioner does not have any source of income for sustenance of both herself and the child.
6. It is, therefore, submitted that the present revision petition be allowed and the maintenance be enhanced.





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7. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant revision petition submitting to the effect that the arguments advanced by the petitioner are baseless and does not warrant interference by this Court on the said aspects.

8. It is submitted that the impugned order passed by the learned Court below warrants interference of this Court on the aspect of upholding of the findings regarding the respondent-husband's income, however, there is sufficient material to prove the contrary.

9. It is submitted that the learned Court below erred in not appreciating the fact that the petitioner wife did not disclose her real income and even if she is unemployed at the moment, the same has been done deliberately in order to extort money from the respondent husband.

10. It is submitted that as per the statement of accounts maintained by the respondent, her monthly income would be approximately around Rs. 60,000/- and therefore, there is no need for enhancement of the compensation, rather there is enough material on record to conclude that the learned Court below wrongly awarded Rs. 50,000/- as maintenance for the child.

11. Therefore, it is submitted that the present petition be dismissed and the revision petition bearing no. 685/2024 be allowed and the impugned order be set aside on the said aspects.

12. Heard the learned counsel for the parties and perused the records.





13. The present set of cross revision petitions have been filed by the parties on the different grounds where the petitioner wife is aggrieved by the reduction in the maintenance amount awarded by the learned Appellate Court and on the other hand, the respondent husband is aggrieved by the alleged wrongful calculation of his monthly income.

14. Therefore, this Court is required to adjudicate the twofold issues, *firstly*, whether the compensation reduced by the learned Appellate Court is right or not and *secondly*, if the monthly income of the respondent husband was correctly ascertained or not.

15. Delving into the first issue, in the impugned order, the learned Appellate Court held that the complainant/petitioner wife was not entitled for any maintenance on the grounds that she is well qualified and had a job till December, 2022.

16. The question of whether the husband is liable for providing maintenance to the wife has been answered by this Court and various other High Courts time and again, and the said decisions reflect that the issue in question needs to be adjudicated on the basis of the factual scenario of the particular case at hand.

17. It is not in dispute that the intent behind Section 24 of the Hindu Marriage Act, 1955 ('HMA' hereinafter) is to provide necessary financial assistance to the party to the matrimonial dispute who has no independent income of his own, sufficient for her or his support or to bear the expenses of the child born out of the wedlock. While adjudicating an application for





interim maintenance, the relevant factor is the inability of the spouse to maintain himself or herself for want of independent income or inadequacy of the income to maintain at the level of social status of the other spouse.

18. On perusal of the material on record in the present case, it is made out that the petitioner wife is living with her parents and bearing huge expenses for upbringing of the child as well as for the various litigations between the parties. Furthermore, even though she is qualified to get a job for her survival, it cannot be negated that she does not have any substantive income at the moment.

19. The material on record clearly depicts that her contractual job ended in December, 2022 itself and therefore, it is very hard for her to make the ends meet. Accordingly, it would be appropriate for this Court to restore the order dated 15th March, 2023 as passed by the learned Court below in the interim maintenance application filed by the petitioner wife.

20. Now coming to the second issue, i.e., whether the learned Appellate Court erred in upholding the monthly income of the respondent husband as Rs. 2,00,000/- or not.

21. On the said aspect, the respondent husband has placed certain documents on record to argue that the learned Court below wrongly determined his income as the income tax affidavit clearly shows that he is merely earning Rs. 35,000/-.

22. In rebuttal, the petitioner wife has contended that the said claim is untrue as the respondent has EMI liabilities of more than 32,000/- per month





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and has also entered into an agreement with his mother to pay Rs. 20,000/- per month as maintenance.

23. Furthermore, the material on record clearly shows that the respondent husband owns two four-wheeler and three two-wheeler vehicles, therefore, defying the said claim of earning such a low monthly income.

24. It is no doubt that the parties in litigation tends to show reduced income and also hide their income for the purposes of the income tax, therefore, the other metrics such as standard of life, property, possessions are to be taken into consideration to ascertain their real income.

25. As held by the Coordinate Bench of this Court in the case of ***Bharat Hedge vs Shrimati Saroj***, (2007) SCC OnLine Del 622, and reiterated by this Court in **CRL Rev. P** bearing no. **56/2022** in case titled ***Jyoti v. Rohit Sharma*** vide judgment dated 10th June, 2022, it is clear that the factors for ascertaining income of an individual are not merely based on the income proof submitted to the tax authorities rather, the same is also dependent on the multiple factors as mentioned in the foregoing paragraph.

26. Therefore, this Court is of the view that the revision petition i.e. 685/2024 filed by the respondent husband does not raise questions regarding the illegality committed by the learned Appellate Court in upholding the findings of the learned Court below with regard to his monthly income being Rs. 2,00,000/-. Accordingly, the CRL.REV.P. No. 685/2024 is dismissed being devoid of any merit.





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27. As discussed in the foregoing paragraphs, since the petitioner wife is not earning anything and the material on record clearly establishes that she is dependent on her parents, this Court deems it appropriate to allow the revision petition bearing no. 444/2024 filed by the petitioner wife and set aside the impugned order dated 8th February, 2024 to the extent of reduction of the maintenance granted by the learned Mahila Court, Rohini Court in maintenance application decided *vide* order dated 15th March, 2023 and the respondent husband is directed to pay the monthly maintenance of Rs. 50,000/- each to the petitioner wife and her child.

28. Accordingly, CRL.REV.P. No. 444/2024 is allowed and stands disposed of. In view thereof, the respondent husband is directed to pay the balance amount to the petitioner wife within a period of six months.

29. Pending applications, if any, in both the revision petitions stands disposed of.

30. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 7, 2024

gs/av/mk

