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

+ CRL.REV.P. 46/2021, CRL.M.A. 1584/2021, CRL.M.A. 1586/2021,
CRL.M.A. 11541/2024 & CRL.M.A. 23877/2024

DEVENDER RANA

.....Petitioner

Through: Ms. Riya Srivastava, Advocate

versus

RASHMI RANA

.....Respondent

Through: Ms. Juhi Arora, DHCLSC (VC)

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

31.01.2025

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1. The present revision petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973¹, is directed against order dated 30th November, 2019², passed in CA No. 289/2019 titled “*Rashmi Rana vs. Devender Rana*”.

2. The essential facts leading to filing of the present petition are as follows:

2.1 The Respondent filed an application under Section 23 of the Protection of Women and Domestic Violence Act, 2005³, seeking interim maintenance. However, the Mahila Court, Dwarka Courts, Delhi in Cr. Case No. 7064/2017, *vide* order dated 04th January, 2019, declined the relief sought, holding that the Respondent had failed to establish a *prima facie*

¹ “CrPC”

² “Impugned order”

³ “DV Act”



case warranting interim maintenance.

2.2 Aggrieved by the said order, the Respondent preferred an appeal under Section 29 of the DV Act, being CA 298/2019. The said appeal was decided *vide* the impugned order dated 30th November, 2019, whereby the order of Mahila Court was set aside with the following observations:

“10. Coming to the merit of the case, a perusal of the impugned order dated 04.01.2019 shows that the Ld. MM had observed therein that the factum of marriage between the parties had not been disputed. There were allegations and counter allegations leveled against each other by both the parties which could not be decided at that stage and could only be determined after leading evidence by the petitioner.

11. In the application u/s 23 of the Protection of Women from Domestic Violence Act, 2005, the appellant had prayed for protection order u/s 18 of DV Act and residence order under section 19 of DV Act, however, no order in this respect was passed by Ld. MM. Even nothing has been seen brought forth which would warrant an order at this stage and the matter is still to be finally decided.

12. With regard to prayer for maintenance of Rs.70,000/- per month in favour of the appellant the Ld. MM in the impugned order had noted that it was submitted by Ld. Counsel for appellant that appellant was residing in the same house where respondent was residing, however, both were residing in separate rooms and respondent had not provided any maintenance to appellant and her minor daughter. It was submitted that appellant was maintaining herself and her daughter from her previous savings and from the help of her colleagues. The Ld. Counsel for the respondent had submitted that electricity expenses, water expenses and the rent of the premises in which the parties were residing were being borne by the respondent. It was also stated that the respondent was also paying the school fees and bearing the expenses of books and school uniform of his minor daughter which was admitted by the appellant.

*13. During the course of arguments before this Court, it was submitted that the respondent had borne all the expenses till April 2019 and the child had returned in April 2019 to the appellant, as such admittedly the child who was to stay with the respondent as per the settlement was now residing with the appellant. **Under these circumstances, the respondent is directed to continue bearing the electricity, water expenses and rent of premises in which the***



appellant is residing which is stated to be Rs.7000/- per month. Respondent is also directed to pay school fees, expenses of books and school uniform of the minor daughter.

14. The Ld. MM had considered the submission of Ld. Counsel for the respondent that the appellant was living in adultery that is why her parents were not supporting her and that appellant was still working in Naraina and had referred to the judgment relied upon by Ld. Counsel for respondent in Harihar Raj Vs. Kalingaryar Vs. Aarti & Anr. 2018(3) JCC 1951 and Omar Abdulla Vs. Payal Abdulla 2018 (1) JCC 632. Thereafter the Ld. MM had observed that the appellant was equally qualified to the respondent and had working experience also and she had not given any reason for leaving her job in the year 2014. Ld. MM had observed that the appellant was capable to work and earn sufficiently to sustain herself and her daughter and that respondent was already bearing the necessary expenses of the appellant and her minor daughter and as such maintenance was declined to the appellant. **However, it is pertinent that the daughter was stated to be born in the year 2010 and in the year 2014, when the appellant left her job, she would be a minor and the appellant would be required to look after her minor child as such there is no merit in the contention that being qualified and having working experience, she was capable to earn and sustain herself. It is also not the case that she appellant had been working since 2014 till the date of filing of the petition and in these circumstances to expect the appellant to get another job and start earning immediately would not be appropriate.** The Ld. Counsel for the appellant had also relied on the judgment of the Hon'ble High Court of Delhi in Kanupriya Sharma Vs. State & Anr. 2019 (2) LRC 577 (Del) wherein it was observed as under:

“27. The Appellate Court had further erred in holding that the judgment in Shailja & Anr. Vs. Khobbanna (2018) 12 SCC 199 of the Supreme Court cannot be made applicable to the facts of the present case. The Supreme Court in Shailja & Ors Vs. Khobbanna has categorically held that whether the wife is capable of earning or whether she is actually earning are two different requirements. The legal principle laid down by the Supreme Court in Shailja & Ors. V. Khabbanna squarely applied to the facts of the present case.

28. Further, it may be seen that claim of maintenance by a wife under section 125 Cr. P.C. is qualified by the expression “unable to maintain herself.”

29. There are no such qualifying words under the DV Act. Under section 12 of DV Act, an aggrieved



person can approach the Magistrate seeking one or more of the reliefs under the DV Act. Under section 20 DV Act, the magistrate has powers to direct Respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may inter alia include the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 Cr. P.C, or any other law for the time being in force. Under section 20 (2) the monetary relief granted has to be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed

30. The grant of maintenance under the DV Act has not been made dependent upon the expression unable to maintain herself. Further, the expression "unable to maintain herself" does not mean capable of earning.

31. In the present case, whether Petitioner is actually earning or qualified and capable of earning are again two different things. As noticed above, no material has been produced by Respondent no. 2 to show that the Petitioner is gainfully employed or receiving any salary and actually earning. The pleas raised by the Respondent no. 2 would be required to be established at trial. Till Respondent no. 2 established by leading cogent evidence that Petitioner is gainfully employed and receiving salary, there is no justification to deny maintenance to the Petitioner-wife."

The same is the position in the instant case and in these circumstances the impugned order declining maintenance to the appellant cannot be sustained

15. The respondent in his income affidavit had stated his monthly income to be Rs.25,000/- and expenditure to be Rs. 42000/-. However, it is not unbelievable that a person who is earning Rs.25,000/- per month would be able to spend Rs.42,000/- per month.

16. The respondent had also not shown any document to show that the appellant was still working. Under these circumstances as well as that the parties are now residing separately, besides, above expenses, the respondent is further directed to pay maintenance of Rs.8,000/- per month towards other needs of the appellant and the child which amount shall be payable by the 10th of every month.
Appeal is accordingly allowed. Nothing stated herein shall tantamount to expression on merits of the case."



[Emphasis added]

3. Now, the Petitioner (*Respondent in the proceedings before the Appellate Court*) is aggrieved by the impugned order and has invoked this Court's revisional jurisdiction seeking to set-aside the afore-noted order. On the following grounds:

3.1 At the outset, counsel for the Petitioner draws attention to an interim order dated 26th August, 2022, passed by this Court. By virtue of this order, the Petitioner has agreed to pay the maintenance of INR 12,000/- per month, for the minor daughter, during the pendency of the present proceedings. She submits that the Petitioner is making payments regularly without any default.

3.2 The impugned order is factually and legally unsustainable, as it fails to consider material aspects that weigh against the grant of maintenance. She argues that the Respondent has been living in adultery, which, under Section 125(4) CrPC, disentitles her from claiming maintenance. The Appellate Court failed to appreciate this statutory prohibition, despite clear judicial precedents holding that a wife who engages in an adulterous relationship is not entitled to financial support from her husband. The impugned order is thus perverse and contrary to settled law.

3.3 The Respondent is financially capable of sustaining herself, given her educational qualifications and prior work experience. At the time of separation, the Respondent was gainfully employed, and there is no cogent reason why she cannot resume work to support herself. The burden of proof to establish financial incapacity rests upon the Respondent, and in the absence of such proof, the imposition of maintenance is unjustified. The daughter of the parties, who was previously under the care of the Petitioner,



is now residing with the Respondent and has grown up, currently studying in Class 10. The primary justification for the grant of maintenance to the Respondent was her caregiving responsibilities towards the child, which, at this stage, no longer present an impediment to her securing employment. In these circumstances, the Respondent cannot be permitted to rely on past unemployment to justify a continued claim for maintenance, particularly when her financial independence is well within her means. The Petitioner has continuously provided financial contributions towards the education and upbringing of the daughter, including payment of school fees, books, uniforms, and other essential expenses. The impugned order fails to account for these payments, thereby creating an undue financial liability upon the Petitioner, despite him already fulfilling his obligations as a father. Furthermore, the Petitioner has paid an excess amount of ₹2 lakhs to the Respondent, over and above the amount stipulated in the interim order of this Court.

3.4 In light of the foregoing, the Appellate Court's order suffers from a non-application of mind, overlooks key legal principles, and places an undue burden on the Petitioner despite his continuous compliance with financial obligations.

4. On the other hand, counsel for the Respondent strongly refutes the Petitioner's claim of excess payment. On the contrary, she submits that there are outstanding arrears that remain unpaid to date, and the Petitioner's assertions regarding financial overpayment are wholly misplaced. On merits, counsel for the Respondent raises the following contentions:

4.1 The allegation that the Respondent wife is in an adulterous relationship



is completely false and baseless, designed solely to harass and coerce her into relinquishing her rightful claim for maintenance. The Petitioner has failed to substantiate this serious allegation with any tangible or credible evidence, and such unverified claims ought not to be considered in maintenance proceedings, particularly when the law mandates that a husband must provide financial support to his wife and child unless clear statutory disqualifications are established.

4.2 The Respondent disputes the Petitioner's declared income, asserting that he engages in a flourishing business of customs clearance, generating monthly earnings of approximately ₹3 lakhs. The Petitioner has deliberately misrepresented his financial status before the Trial Court, falsely portraying himself as a freelancer earning merely ₹25,000 per month, in an attempt to evade his legal obligation to provide adequate maintenance. The Petitioner's actual income and lifestyle are inconsistent with his claims of financial hardship; he has intentionally suppressed material facts regarding his earnings and financial standing.

4.3 The Petitioner has failed to fulfil his parental responsibilities towards the minor daughter, who now resides with the Respondent. The Petitioner's behaviour towards the child was cruel and emotionally distressing, leading to the minor daughter refusing to reside with her father. This fact demonstrates the Petitioner's indifference towards his paternal duties, thereby further justifying the need for maintenance.

4.4 Lastly counsel for the Respondent submits that it is the Petitioner who forced the Respondent to leave her job after marriage. At the time of filing of the present revision petition, the Respondent was not able to find a job due to lay-offs during COVID-19 period. Now the Respondent is facing age



barriers in getting a gainful employment despite being qualified.

5. The Court has considered the aforementioned contentions. The impugned pertains only to interim maintenance, while the petition for final maintenance under the DV Act, along with other proceedings, remains pending before the Trial Court.

6. The maintenance has been awarded on two counts: (i) ₹8,000 per month towards the general maintenance of the Respondent and the minor daughter, and (ii) ₹7,000 per month towards the educational expenses of the minor daughter, cumulatively amounting to ₹15,000 per month. In contrast, the Petitioner has been paying only ₹12,000 per month in compliance with this Court's interim order dated 26th August, 2022.

7. The Petitioner's primary ground for assailing the maintenance award, is his allegation of adultery. This requires factual adjudication, which is beyond the scope of the impugned interim proceedings. The question of adultery and its impact on the Respondent's right to maintenance is a matter that must be established through evidence before the Trial Court, and cannot, at this interlocutory stage, serve as a basis for denying the Respondent interim maintenance. Interim maintenance is granted on a *prima facie* assessment of the material before the Court, and not on the basis of conclusive findings regarding allegations of misconduct.

8. As regards the Respondent's own ability to earn, there is merit in the submission of Respondent's counsel. She has pointed out that while the Respondent is qualified, she was compelled to leave her job after marriage due to the insistence of the Petitioner. The economic fallout of the COVID-19 pandemic further impeded her ability to secure employment, aggravating her financial dependence. Moreover, the law does not impose an absolute



obligation to seek employment in order to claim maintenance. The Supreme Court in the case of **Rajnesh v. Neha & Anr.**⁴ has held as follows:

“78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent 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. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112; (2012) 3 SCC (Civ) 290]

79. *In Manish Jain v. Akanksha Jain, (2017) 15 SCC 801, this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. **An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.***

80. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent 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. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303]*

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.*

⁴ (2021) 2 SCC 324



[Chaturbhuj v. Sita Bai, (2008) 2 SCC 316]. 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.”

[Emphasis added]

9. The Supreme Court has thus explicitly held that a wife cannot be denied maintenance merely because she is educated or was previously employed. The Court emphasized that the test is not whether she is employable, but whether she is actually earning or has independent financial means at present. In the instant case, the Respondent has alleged that she was compelled to leave her job due to marital circumstances and has since faced significant difficulty in securing employment, particularly given economic downturns and age-related issues. The burden lies on the Petitioner to establish, through cogent evidence, that the Respondent is gainfully employed and receiving a stable income. No such evidence has been presented. Therefore, the maintenance awarded by the Appellate Court is justified and does not warrant interference.

10. Furthermore, the Trial Court has considered the legal principles governing the award of maintenance under the DV Act. By placing reliance on the judgment of ***Kanupriya Sharma v. State & Anr.***⁵, the Trial Court held that the evidentiary threshold for maintenance under the DV Act is distinct from the standard required under Section 125 of CrPC. In the said case, the co-ordinate bench of this Court has categorically held that the grant of maintenance under the DV Act is not contingent upon the wife proving

⁵ 2019 SCC OnLine Del 8816



that she is unable to maintain herself. Unlike Section 125 of CrPC, the DV Act does not impose an additional burden on the aggrieved party to establish financial incapacity as a prerequisite for claiming maintenance.

11. Moreover, a husband with adequate means has a sacrosanct duty to financially support his wife and minor children, which responsibility he cannot shirk away from fulfilling⁶.

12. As far as the child's expenses are concerned, the Court finds that the maintenance awarded is a modest sum. It is well recognized that a child is entitled to the same standard of living as the parent who has the means to provide for them. The expenses of a growing child, including education, healthcare, and extracurricular activities, only escalate with time.

13. The Petitioner's claim that he has made excess payments, is strongly refuted by the Respondent. Accordingly, this Court refrains from making any conclusive observations. Such matters relate to the computation and adjustment of payments, which are best determined by the Trial Court based on the evidence on record. The Petitioner is at liberty to raise these concerns before the Trial Court.

14. In view of the foregoing reasons, this Court does not find any perversity in the impugned order for exercise of powers under Section 397 read with Section 401 of CrPC. Thus, the Court is not inclined to entertain the present petition and the same is dismissed, along with pending applications.

SANJEEV NARULA, J

JANUARY 31, 2025/ab

⁶ *Anju Garg & Anr. v. Deepak Kumar Garg*, 2022 SCC OnLine SC 1314