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

\+ CRL.REV.P.(MAT.) 44/2025 & CRL.M.A. 2515/2025, CRL.M.A. 2516/2025

NIRMALA ..... Petitioner

Through: Ms. Juhi Arora, Advocate.

versus

SH ISHWAR SINGH ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **28.01.2025**

CRL.M.A. 2517/2025 *(seeking condonation of delay in filing petition)*

1. For the grounds and reasons stated in the application, the same is allowed. Delay of 48 days in filing the present petition is condoned.

2. Disposed of.

CRL.REV.P.(MAT.) 44/2025

3. The present revision petition under Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (erstwhile Section 401 of Criminal Procedure Code, 1973[2]), impugns the order dated 07th September, 2024[3], passed by the Principal Judge-Family Court, Patiala House Courts, New Delhi[4], in Maintenance Petition No. 39/2020, titled as '***Nirmala v. Ishwar Singh***'.

[1] "BNSS"
[2] "CrPC"
[3] "the Impugned order"

4. The Petitioner, aged about 59 years, claims that she has been deserted and is facing severe financial hardships. She has, therefore approached this Court, seeking an enhancement of the maintenance awarded to her under Section 125 of the CrPC.

5. Briefly stated, the facts of the present case are as follows:

5.1. The Petitioner and Respondent married on 10th May, 1983 and have two children - a son and a daughter. The Petitioner has been living separately since 11th September, 1992. Their marital relationship was embroiled in litigation, culminating in a decree of divorce granted in favour of the Respondent on 12th March, 2012, on grounds of cruelty and desertion. The Petitioner has challenged the divorce decree before the Allahabad High Court by way of an appeal, which remains pending.

5.2. Be that as it may, the present proceedings emanate from an application filed by the Petitioner under Section 125 of CrPC, seeking maintenance for herself and her two minor children. While interim maintenance was granted in the initial stages, the petition was ultimately dismissed on 27th June, 1997. Aggrieved by the dismissal, the Petitioner preferred a revision petition, which was allowed on 18th February, 1998. The revisional court awarded maintenance of INR 400/- per month to the Petitioner and INR 400/- each to both children, totalling INR 1,200/- per month.

5.3. Few years later, in 2009, the Petitioner preferred an application under Section 127 of CrPC seeking enhancement of the maintenance amount. However, the request was declined. Aggrieved by the decision, she preferred a revision petition, under Section 397 read with Section 127 of CrPC, which

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[4] "the Trial Court"

ultimately resulted in the enhancement of the maintenance amount to INR 5,500/- per month, as per order dated 28th February, 2009. Out of this amount, INR 3,500/- per month was awarded to the Petitioner, while INR 2,000/- per month was allocated for her daughter.

5.4. Subsequently, the Petitioner and her daughter filed another application under Section 127 of CrPC, which was allowed by order dated 17th December, 2013, leading to enhancement of maintenance from INR 3,500/- to INR 6,000/- per month. Further, at her instance, another enhancement was granted by order dated 20th December, 2018, raising the amount from INR 6,000/- to INR 8,000/- per month.

5.5. The Petitioner later filed yet another application under Section 127 of the CrPC, seeking an increase in maintenance to INR 20,000/- per month. The said application has been decided through the Impugned order, whereby enhancement of INR 5,000/- was granted from the date of institution of petition till the date of retirement of Respondent on 31st August, 2022. The Court specifically limited the enhanced maintenance to the period prior to the Respondent's retirement. It is pertinent to note that by the time the Impugned order was passed, the Respondent had already retired from service.

5.6. Dissatisfied, the Petitioner filed the present petition seeking quashing of the Impugned order and enhancement in the monthly maintenance amount.

6. Counsel for the Petitioner submits that while the Impugned order does grant an enhancement in maintenance, it is limited in scope, as it applies only to the period preceding the Respondent's retirement—i.e., from 28th February, 2020, to 31st August, 2022. The order, therefore, fails to account

for the Petitioner's present financial difficulties and escalating living expenses. It is argued that the Trial Court overlooked the evolving circumstances of the parties and, in doing so, failed to uphold the intent of Section 127 of the CrPC, which allows for modification of maintenance based on changed circumstances. Counsel further contends that the Petitioner, now 59 years old, has no independent source of income and is compelled to rely entirely on the maintenance received from the Respondent. With no means of financial sustenance, she is forced to reside at her mother's house, making it imperative that she receives an adequate amount to maintain a life of dignity.

7. Counsel for Petitioner further argues that the Trial Court erred in restricting the enhancement only up to the date of the Respondent's retirement, despite his continued receipt of a regular and substantial pension. It is pointed out that the Respondent's total pension, prior to commutation, amounts to approximately INR 20,000/- per month, and even post-commutation, he continues to receive INR 18,000/- per month. Additionally, he has an agricultural income of INR 1,20,000/- per annum and has also received a significant sum as retirement benefits. Given these financial resources, it is contended that the Respondent is well capable of providing continued support to the Petitioner. Counsel emphasizes that the Petitioner has a right to live with dignity, and the maintenance awarded must reflect this fundamental principle. However, the Trial Court, while passing the Impugned order, disregarded the Respondent's financial standing post-retirement and failed to take his pension and other sources of income into account.

8. The Court has carefully considered the submissions advanced by

counsel for Petitioner and has examined the Impugned order in light of the settled principles governing revisional jurisdiction.

9. At the outset, it is necessary to reiterate that the scope of revisional jurisdiction under Section 442 of BNSS, 2023 (erstwhile Section 401 of CrPC) is extremely limited. As held by the Supreme Court in ***Amit Kapoor v. Ramesh Chander***,[5] revisional jurisdiction is not an appellate remedy and can only be exercised where the decision under challenge suffers from gross illegality, non-compliance with the provisions of law, reliance on no evidence, or arbitrary or perverse exercise of judicial discretion. The High Court, while exercising revisional powers, does not sit as a court of appeal to reappreciate evidence or substitute its own conclusions merely because another view is possible. The revisional court can only interfere if there is a miscarriage of justice, a manifest error of law, or a serious procedural irregularity that vitiates the order. The relevant extract of the aforementioned judgment reads as follows:

> "*12. ...If one looks into the various judgments of this Court, it emerges that* ***the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits****.*
> *13.* ***Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner****. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie...*"
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> *(Emphasis Supplied)*

10. The Petitioner's primary grievance is that the Trial Court, while

enhancing the maintenance amount, has arbitrarily restricted the enhancement to the period prior to the Respondent's retirement and has failed to consider the financial hardships faced by the Petitioner for the period post Respondent's retirement. However, upon perusal of the reasoning adopted by the Trial Court, it is evident that the decision was based on an extensive assessment of the financial capacity of both parties. It would thus be appropriate to refer to the reasoning given by the Trial Court for enhancing the maintenance amount, which reads as follows:

> *"**ENTITLEMENT***
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> *17. At the outset, the issues raised by the respondent with regard to the concealment pertaining to the divorce granted to the respondent on the ground of cruelty and desertion and the plea taken by the petitioner that the respondent has the agricultural land are not new grounds since the divorce was admittedly granted on 12.03.2012 and it is not the plea that the petitioner came to know about the agricultural land of the respondent after the order dated 20.12.2018 and hence have already been considered at the time of enhancing the maintenance vide order dated 20.12.2018.*
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> *18. In the facts and circumstances, the scope of the instant petition is limited to the enhancement in the salary of the respondent after the institution of the present petition.*
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> *19. While deciding the earlier petition under Section 127 Cr.P.C. the net salary of the respondent was taken as Rs.36,000/- after mandatory deductions.*
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> *20. The petitioner has claimed that the salary of the respondent at the time of institution of instant petition was Rs.54,760/- per month i.e. total gross salary of respondent was Rs.70,000/- per month. The respondent though in his cross-examination has deposed that his last drawn salary was Rs.55,000/- per month, however, he admitted that Rs.63,298/- was credited in his account on 29.07.2022 and 31.08.2022 as a salary. He has not produced his salary certificate/salary slip of March, 2020 when the instant petition is filed. Considering the admission i.e. carry home salary in July, 2022 and August 2022 was Rs.63,298/-, in the absence of any other evidence on record there is no reason to disbelieve the claim made by the petitioner that the income of the respondent after deductions at the time of institution of petition was Rs.54,760/-. Further, it is admitted that the net*

[5] MANU/SC/0746/2012 : (2012) 9 SCC 460

salary of the respondent in the month of August, 2022 i.e. immediately before his superannuation was Rs.63,298/-. Hence, there is sufficient evidence on record to establish enhancement in salary of respondent at the time of institution of petition was Rs.18,760/- and enhancement immediately before his retirement was Rs.27,298/-. Hence, on an average the enhancement in the salary of respondent is considered as Rs.23,000/-.

21. Though the respondent has deposed that the petitioner is getting rent of Rs.20,000/- from Flat No. C-1 UG/F, Property Na 2A/9, Ward No. 9, Kishan Ganj, Mehrauli, however, no cogent evidence has been produced to prove the same. The petitioner in her cross-examination has deposed that the said house is fetching @ of Rs.8,000/- per month, however, she deposed that the said rent is being received by her daughter. She denied the suggestion that the rent is being received by her. There is no explanation as to why the rent is being received by the daughter of the petitioner if the property is in her name. Hence, the testimony of petitioner in that regard does not inspire confidence and it is established by preponderance if probability that petitioner has rental income of Rs.8,000/- per month.

22. Further, the respondent has also claimed that the petitioner is working as a clerk of an advocate in New Delhi Bar Association, New Delhi and earns Rs.20,000/- per month. He has also placed reliance on the copy of ID card of the petitioner Mark-E. However, the petitioner in her cross-examination has deposed that she used to work as a munshi in Patiala House Court in past, however, presently she is not working as a clerk with any advocate. She admitted that the ID card Mark-E belongs to the advocate with whom she worked as clerk in the past, however, immediately she clarified that she had not worked as munshi with the advocate mentioned in the ID card and had only associated with him to get pass in the court in covid period. She denied the suggestion that she was still working as a clerk with the said advocate. Apart from the copy of ID card issued by an advocate no other evidence has been produced by the respondent to establish that the petitioner is still working as a clerk with any advocate. She has not even been cross-examined to inquire the petitioner as to why she left the job as a clerk. Hence, the averment made by the respondent could not be established.

23. As there is enhancement of only Rs.8,000/- in the income of the petitioner whereas there is average enhancement of Rs. 23,000/- in the income of the respondent.

24. The petitioner is entitled for enhancement of maintenance before the date the respondent had retired from his job.

QUANTUM

25. There is no dispute that the petitioner is already getting regular interim maintenance @ Rs.8,000/- per month. She is also getting distress pension of Rs.2500/- per month as mentioned in her income affidavit. Apart from that she also has rental income of Rs.8,000/- per month as discussed above.

26. In the facts and circumstances, I am of the view it will be just and reasonable to grant enhancement of Rs.5,000/- in the maintenance allowance from the date of institution of the instant petition till the date of retirement of the respondent on 31.08.2022.

27. In respect of the enhancement for the subsequent period, the pension payment order Ex.RW-1/P3 needs to be considered. From Ex.RW-1/3, it is established the total amount of monthly pension of the respondent before commutation was fixed as Rs.18,200/- per month. It is further revealed that the respondent got 40% of pension i.e. Rs.7,280 commuted. Hence, the reduced monthly pension after commutation was Rs. 10,920/- per month. The respondent in his income affidavit sworn on 02.05.2024 has reflected his monthly income as pension of Rs.20,000/- per month. The respondent in his evidence by way of affidavit has deposed that at present he is getting Rs.18,000/- in hand as pension and that is the only source of his income. Hence, the total pension of the respondent as on the date is about Rs.20,000/- Had he not got his pension commuted even in that eventuality his total pension would not have exceeded Rs.30,000/- per, month. It is relevant to mention here that at the time of enhancement of maintenance from Rs.6,000/- to Rs.8,000/, the net income of the respondent was taken as Rs.36,000/- per month. Hence, the petitioner is not entitled for any enhancement after the retirement of the respondent on 31.08.2022.

28. In view of above discussion, petitioner is entitled for enhancement of Rs.5,000/- in the maintenance allowance from, the date of institution of the instant petition till the date of retirement of the respondent on 31.08.2022 whereas she is not entitled for any enhancement after retirement of the respondent.

Issue No.l is decided accordingly,

Relief

29. In view of my findings in the issues above, the petition u/s 127 Cr.P.C is. partly allowed. The respondent is directed to pay arrears of enhancement of maintenance at the rate as mentioned above to the petitioner or deposit the same in the bank account of petitioner after adjustment of the amount shown to have been paid on record, within twelve weeks from today.

File be consigned to the Record Room."

11. The Trial Court has duly considered the submissions made by the

Petitioner, with respect to the increase in income of the Respondent. The Trial Court, after assessing the evidence on record, noted that at the time of institution of the proceedings, the Respondent's net monthly salary had increased to INR 54,760/-, reflecting an increment of INR 18,760/- from the last recorded salary in 2018. By the time of his superannuation, his net salary had further risen to INR 63,298/- per month, marking a total increase of INR 27,298/-. On this basis, the Trial Court computed the average enhancement in the Respondent's net salary to be INR 23,000/- per month. In contrast, the Petitioner's income was recorded as INR 8,000/- per month. Considering this disparity, the Trial Court deemed it appropriate to enhance the maintenance amount for the period preceding the Respondent's retirement. As regards, the maintenance amount post-retirement, the Court took into account the Respondent's salary at the time of filing the petition and just before retirement; Petitioner's own sources of income, including rental income of INR 8,000/- per month and distress pension of INR 2,500/- per month; the fact that the Petitioner has been receiving incremental maintenance enhancements over the years; and the quantum of pension received by the Respondent after retirement;

12. The crux of the Petitioner's challenge is that the Trial Court failed to appreciate that the Respondent continues to receive a regular pension and remains financially capable of providing continued support. However, a careful reading of the Impugned order indicates that the Trial Court did, in fact, examine the pension payment order (Ex. RW-1/P3) and noted that the Respondent's net pension after commutation was INR 10,920/- per month. Even taking the highest possible figure into account, the Respondent's total pension would not have exceeded INR 30,000/- per month. The Court

further noted that the last enhancement of maintenance from INR 6,000/- to INR 8,000/- per month, was granted when the Respondent's salary was INR 36,000/-, and since his post-retirement pension is significantly lower, further enhancement would not be warranted.

13. Additionally, while the Petitioner asserts that the Trial Court overlooked her financial distress, the order clearly records that she has independent sources of income. The Petitioner's cross-examination confirmed that she owns rental property generating INR 8,000/- per month. Thus, the Court rightly concluded that the Petitioner has at least some independent means of sustenance.

14. While this Court acknowledges the fact that the Petitioner is entitled to maintenance, however, at the same time, the Court must also take note of the Respondent's financial position. Following his retirement, the Respondent now receives a pension, which is significantly lower than his previous salary. The Trial Court has carefully assessed the material and evidence on record, before granting a conditional enhancement of maintenance. Given the facts and circumstances of the present case, as well as the available records, there is no basis to conclude that the Impugned order is unjustified, arbitrary, or suffers from any apparent infirmity.

15. In light of the foregoing, this Court finds no reason to interfere with the findings of the Trial Court. The enhancement of INR 5,000/- in the maintenance allowance for the period prior to the Respondent's retirement is justified based on the increased salary at that time. The refusal to grant further enhancement post-retirement is also supported by a cogent rationale, taking into account the Respondent's reduced earnings and the Petitioner's independent income sources. The Impugned order does not suffer from any

manifest illegality, perversity, or procedural irregularity warranting interference under revisional jurisdiction.

16. Accordingly, the present revision petition is dismissed, along with pending applications.

SANJEEV NARULA, J

JANUARY 28, 2025
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