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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 54/2025 & CRL.M.A. 3774/2025, CRL.M.A. 3772/2025, CRL.M.A. 3773/2025

SUNIL

.....Petitioner

Through: Mr. Milan Laskar, Mr. Ajay Sharma,
Mr. Prabhjot Singh, Ms. Smita Bose
Dutta, Advocates with Petitioner in
person

versus

PINKI RANI

.....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
07.02.2025

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1. The present revision petition filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 397 of the Code of Criminal Procedure, 1973²) is directed against judgment dated 26th November, 2024, passed by the Principal District and Sessions Judge,³ in Criminal Appeal No. 88/2024. By the impugned judgment, the Appellate Court set aside order dated 23rd April 2024, passed by the Metropolitan Magistrate (Mahila Court),⁴ dismissing the Respondent's request for award of interim maintenance. The Appellate Court has directed the Petitioner and

¹ "BNSS"

² "Cr.P.C."

³ "Appellate Court"

⁴ "Trial Court"



Respondent to contribute a total interim maintenance of INR 20,000/- per month for their minor child, with INR 5,000/- to be paid by the Respondent and INR 15,000/- by the Petitioner.

2. The brief facts of the case, leading to the filing of the present petition, are as follows:

2.1 The Petitioner and the Respondent married on 7th July, 2014, and from this union, they were blessed with a son on 30th June, 2015. However, due to temperamental differences, the parties eventually separated.

2.2 The Respondent filed an application for interim maintenance under the Protection of Women from Domestic Violence Act, 2005,⁵ however, the same was dismissed by the Trial Court *vide* order dated 23rd April, 2024.

2.3 Aggrieved, the Respondent preferred an appeal (Criminal Appeal No. 88/2024) before the Appellate Court, which was partly allowed by the impugned order, with following observations:

“5. Ld. Counsel for the respondent submits that father’s name of minor child has been mentioned wrongly in the school record, although somewhere it is mentioned as “Sunil Kumar” i.e. name of the respondent, but in the document, photograph of somebody else has been affixed, which shows that prima facie child has been handed over to some other couple. However, this fact cannot be decided at this stage, as appeal has been filed against order whereby application for interim maintenance has been dismissed.

6. It is admitted by the parties, present in the court, that minor child ‘Abhiman’ is their son. Therefore, it is duty of both the parties to maintain the minor child for giving him good education and proper upbringing. The respondent is having government job and earning around Rs.90,000/- per month, whereas appellant Pinki is a contractual worker and earning between Rs.25,000-30,000/- per month, depending on the contract. As submitted by the appellant, minor child is studying and she is spending Rs. 7,000/- per month towards his school fee and bearing other expenses for his well-being and proper upbringing. It is thus prayed that interim maintenance of Rs.25,000/- be awarded to the

⁵ “DV Act”



minor child towards his upbringing, education and future development.

7. Considering the submissions of Ld. Counsel for parties & parties present in the Court, I am of the opinion that minor child 'Abhiman', being son of parties, is entitled to be maintained by them. It is also admitted by respondent/father that he is having visitation with his son, thus it cannot be said that his rights are not being exercised by him, hence, he should also be responsible for his duty towards minor child. I am of the opinion that both the parties are under duty to maintain minor child Abhiman. Hence, considering all the facts and circumstances, salary of the parties, in my considered view that interim maintenance of Rs.20,000/- will be required for minor child Abhiman towards his education, upbringing and well being.

8. Accordingly, impugned order dated 23.04.2024 is set aside and present appeal stands allowed. Interim maintenance of Rs.20,000/- per month is granted to the minor child "Abhiman" from the date of interim maintenance application. Out of interim maintenance of Rs.20,000/-, Rs.5,000/- shall be paid by appellant Pinki and Rs.15,000 /- shall be paid by the respondent Sunil Kumar. Arrears of maintenance to minor child shall be paid within two months from today and monthly interim maintenance shall be paid by 10th of each English calendar month. Arrears of interim maintenance and monthly interim maintenance shall be paid in the bank account of minor son 'Abhiman', which if not opened, be opened within 15 days from today under guardianship of appellant 'Pinki'. Appellant Pinki shall operate said bank account of minor 'Abhiman' for meeting his educational and other expenses towards his well-being and future development. Appellant Pinki shall furnish details of the bank account of minor Abhiman within three days after opening. While computing arrears of interim maintenance, any amount of maintenance paid by respondent Sunil Kumar to appellant Pinki, be adjusted from arrears. With these observations, present appeal stands partly allowed."

2.4 Aggrieved with the aforementioned directions, the present revision petition has been filed.

3. Counsel for the Petitioner argues that the Appellate Court failed to appreciate the facts and erroneously relied on a false affidavit filed by the Respondent. He argues that the Appellate Court exceeded its jurisdiction by awarding maintenance for the minor child, despite no such relief being sought by the Respondent in the original application. He emphasizes that the



minor child was not a party to the proceedings, and therefore, the Appellate Court's directions in this regard are beyond the scope of adjudication.

4. It is further contended that the Trial Court after a careful evaluation of the evidence, had rightly dismissed the Respondent's application for interim maintenance. The Appellate Court, however, arbitrarily overturned this well-reasoned decision without due consideration of the material on record. The Petitioner asserts that the Respondent's conduct has not only led to multiple ongoing litigations between the parties but has also deprived him of the opportunity to actively participate in the upbringing of the minor child. In this regard, this Court has already granted the Petitioner visitation rights of the minor child *vide* order dated 4th July, 2023 in MAT.APP.(F.C.) 129/2023. Furthermore, the Petitioner submits that the Respondent deliberately misrepresented her employment status, initially claiming to be unemployed in order to secure maintenance. It was only when her misrepresentation was exposed that she admitted to being gainfully employed. The Respondent is earning between INR 25,000/- to INR 30,000/- per month, which is sufficient for her to sustain herself and independently provide for the minor child, who remains in her custody. Given these facts, the Petitioner asserts that the impugned order is legally unsustainable and warrants interference by this Court.

5. The Court has considered the aforementioned contentions. At the outset, it must be noted that the impugned order pertains solely to the award of interim maintenance. The final determination of the parties' respective rights and obligations remains pending, where both sides will have the opportunity to present evidence in support of their claims.

6. In the opinion of the Court, the reasoning adopted by the Appellate



Court in granting interim maintenance to the minor child is both practical and reasonable. The child, who is in the Respondent's custody, is of school-going age, and it is undisputed that the Respondent is solely bearing the expenses related to his education and overall well-being. The financial disparity between the parties is also evident. While the Petitioner, in response to a query from the Court, has acknowledged earning approximately INR 1,00,000/- per month, the Respondent's income is only a quarter of that amount, ranging between INR 25,000/- to INR 30,000/- per month. Considering this significant income gap, it is entirely reasonable to expect that the Petitioner, as the father, contributes proportionately towards the upbringing of his son. The obligation to provide for a child's welfare is a shared parental responsibility, and in circumstances where one parent has a substantially higher income, it is only just that they bear a proportionate share of the child's financial needs. Therefore, the allocation of INR 15,000/- to be borne by the Petitioner and INR 5,000/- by the Respondent reflects a fair and equitable apportionment, ensuring that the child's educational and essential expenses are adequately met.

7. The Petitioner's contention that the Appellate Court exceeded the scope of the proceedings, as the minor child was neither a party to the petition nor the subject of any prayer in the appeal, is misconceived in law. Section 20 of the DV Act expressly empowers the court to direct monetary relief not only to the aggrieved person, but also to her child. The minor child in the present case falls squarely within the protective ambit of this provision. The intent behind Section 20 of the DV Act is to ensure that children are not deprived of financial support due to disputes between their parents, and the Appellate Court's decision aligns with this objective.



Furthermore, the principle of shared parental responsibility dictates that both parents bear an equal duty in securing the child's financial well-being, irrespective of their personal disputes. The marital discord between the Petitioner and the Respondent cannot serve as a justification for depriving the minor child of adequate financial support. The child's right to maintenance is independent and inalienable, recognized under multiple statutory provisions, including Section 125 of the CrPC and provisions of the DV Act. Additionally, while the Petitioner does not dispute his paternity, he seeks to rely on discrepancies in the child's school records, where his name allegedly does not appear as the father. However, such an argument is also untenable. The duty of a parent to maintain their child arises not from documentary formalities, but from the inherent and legal obligation of parenthood. The best interests of the child must remain paramount, and the financial burden of litigation between the parents cannot be unfairly transferred onto the child.

8. In light of the foregoing, the Court finds no infirmity in the view taken by the Appellate Court in the impugned order.

9. In view of the foregoing, the petition is dismissed.

SANJEEV NARULA, J

FEBRUARY 7, 2025/ab