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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 73/2022, CRL.M.A. 24053/2023**

SANJAY SHARMA

.....Petitioner

Through: Mr. Arush Khanna and Mr. Akarsh
Pandey, Advocates.

versus

GEETA & ANR.

.....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
21.11.2025

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1. This petition under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973¹ (corresponding to Sections 438, 442 and 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023²) is directed against judgment dated 29th September, 2020, passed by the Principal Judge, Family Court, North East District, Karkardooma Courts, Delhi in MT No. 1202/2018 titled ***Geeta & Anr. v. Sanjay***. By the impugned judgment, the Family Court allowed the maintenance petition filed by the Respondents under Section 125 CrPC and directed the Petitioner to pay a monthly maintenance amount of INR 4,000/- to Respondent No. 1 and INR 3,000/- to Respondent No. 2.
2. The marriage between the parties was solemnized on 25th November,

¹ "Cr.P.C."

² "BNSS"



2016, according to Hindu rites and ceremonies. From their marriage, the parties have a minor daughter, whose custody is presently with Respondent No. 1. On account of matrimonial discord and temperamental differences, the parties have been living separately since 2017 and have since been involved in multiple *inter se* proceedings. The present challenge relates to an order arising out of a petition under 125 CrPC.

3. The Petitioner presses the following grounds in challenge:

3.1. The order is erroneous, unsupported by evidence, and based on conjectures rather than on a fair appraisal of material on record. The testimonies of RW2, RW3, and RW4, supporting the Petitioner's version that he neither committed cruelty nor was the aggressor, but was assaulted by Respondent No. 1's father and brother, were discarded without any cogent justification. Conversely, the sole testimony of Respondent No. 1 was accorded undue weight despite being uncorroborated and riddled with inconsistencies.

3.2. The Family Court inverted the burden of proof by proceeding on perceived weaknesses in Petitioner's defence, instead of requiring Respondent No. 1 to affirmatively establish neglect or refusal to maintain. Her allegations are vague and unsubstantiated, and only an attempt to gain leverage in the *inter se* disputes, including the pending defamation proceedings and FIR lodged at the instance of his brother's wife. Attention is also drawn to the fact that the domestic violence complaint filed by Respondent No. 1 has recently been dismissed, which fortifies that the allegations of cruelty were false, motivated, and intended to exert pressure rather than to seek genuine redress.

3.3. The Petitioner is a daily wager with no fixed source of income and



that the Family Court failed to properly assess his financial capacity while directing payment of maintenance. Despite his consistent willingness to support his wife and minor daughter, including providing Respondent No. 1 with employment assistance, the Court did not consider his *bona fides* nor the fact that Respondent No. 1 voluntarily left the matrimonial home without sufficient cause.

3.4. Relying on Section 125(4) CrPC, the Petitioner argues that a wife who deserts the husband without just cause is disentitled to maintenance. Respondent No. 1's departure was wilful and self-motivated, and she failed to produce any credible proof of cruelty or neglect attributable to the Petitioner. Reference is placed on ***Deb Narayan Halder v. Anushree Halder*** (2003) 11 SCC 303, to contend that when a wife declines to live with husband without any just cause and there is no evidence of ill-treatment by the husband, the wife is not entitled to maintenance. The Family Court based its findings on surmises, rather than on the evidence led, contrary to the settled principle that findings under Section 125 CrPC must rest on the material on record.

3.5. Without prejudice to the above, it is also submitted that the Family Court ought, at the very least, to have considered and decided the Petitioner's request for visitation rights, particularly when he has consistently expressed willingness to maintain his minor daughter. Reliance is placed on ***Manpreet Singh Bharia v. Sumita Bhatia*** 2016 SCC OnLine Del 5598, to contend that a father who is prepared to shoulder financial responsibility for his child should ordinarily not be denied an opportunity to maintain contact with her. On this basis too, it is urged that the impugned order warrants interference.



Analysis

4. The Court has considered the submissions advanced and perused the material placed on record. The marital relationship between the parties and the parentage of Respondent No. 2 are undisputed. The impugned order is the result of a final adjudication after appreciation of the evidence led by both sides. The Petitioner's grievance essentially concerns four issues: (i) the weight accorded to the sole testimony of Respondent No. 1 despite alleged inconsistencies and lack of corroboration; (ii) the contention that Respondent No. 1 voluntarily left the matrimonial home without sufficient cause, thereby attracting the bar under Section 125(4) CrPC; (iii) the alleged failure of the Family Court to realistically assess the Petitioner's limited earning capacity as a daily wage while fixing maintenance; and (iv) the omission to consider his request for visitation with the minor daughter.

5. On a holistic reading of the impugned judgment, this Court finds that the Family Court undertook a reasoned appraisal of the oral and documentary evidence. It gave cogent reasons for treating Respondent No.1's deposition as credible and materially consistent, drawing support from surrounding circumstances indicative of neglect/refusal to maintain. In proceedings under Section 125 CrPC, which are summary and turn on a preponderance of probabilities, the court need not insist on formal corroboration if credible testimony is otherwise supported by circumstances; minor discrepancies do not, by themselves, vitiate the finding. The evidence of RW2, RW3 and RW4 was considered and evaluated but correctly found to be general and lacking particulars, and therefore insufficient to dislodge the conclusion on neglect by the Petitioner. Irrespective of current custody arrangements, the Petitioner's statutory duty to maintain his minor daughter



subsists; the Family Court was justified in factoring the child's needs while determining maintenance for the wife and child.

6. As to the plea under Section 125(4) CrPC, the Family Court has returned a clear and reasoned finding that Respondent No. 1 had sufficient cause to live separately. It noted that in her examination-in-chief, Respondent No. 1 (PW-1) consistently deposed to sustained cruelty, dowry-related harassment, and the specific incident of 18th June, 2017, when she alleged that the Petitioner burnt her back with a hot frying pan, after which she left the matrimonial home and began residing with her parents. Her version was supported by her contemporaneous police complaint (Ex. PW1/10) and the DD entry lodged by her father the following day, recording that he was taking her back on account of harassment over dowry demands. The Family Court also took into account her extensive cross-examination, in which she stood by her version and denied the suggestion that she had left without cause. The relevant observations in this regard are recorded in the following extract:

“25. Reverting to the evidence of the case, the petitioner no.1 in her examination-in-chief by way of affidavit Ex.PW1/A has reiterated the allegations of cruelty and inhuman treatment meted out to her in the matrimonial house. She has narrated that she was tortured physically as well as mentally by the respondent and his family members as she failed to fulfil their demands of cash and a K-10 car. She has testified in the affidavit, the respondent had burnt her back with a hot frying pan on 18.06.2017 and since then the petitioners are residing in the parental house of petitioner no.1. She has narrated various instances of harassment which took place on different dates. She has relied upon a police complaint, Ex.PW1/10, filed by her. The petitioner no. 1 has stated that she wanted to join the matrimonial life with the respondent but he completely ignored and completely failed to perform matrimonial obligations towards her and the child.

26. Petitioner No. 1 was extensively cross-examined on behalf of the respondent. During her cross-examination, the Petitioner No. 1 has deposed that she is living separately from the respondent since



18.06.2017. Her father had brought her from the police station in the mid-night after a call was made. on 100 number. She has denied the suggestion that she is residing separately from the respondent without any cause. She admitted that on 18.06.2017, there was a quarrel between her and the respondent. She deposed that the Bhabhi of the respondent used to instigate him to beat petitioner no.1. She denied the suggestion that on 18.06.2017 as she did not prepare food, therefore, there was dispute between the parties. She deposed that she had prepared food on 18.06.2017. She further denied that respondent had prepared Maggi for her and she had refused to eat the Maggi and while giving the Maggi to her, it got spilled on her back and she sustained burn from the same. She further denied that respondent did not try to cause burn injury to her.

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31. The respondent has deposed that the petitioner no.1 has falsely alleged that on 18.06.2017, there was an attempt to burn her and her allegation is false, baseless and contradictory. As per the respondent, the petitioner no.1 had no cogent reason for deserting him and she had left his company on the instigation of her parents. Respondent has deposed that petitioner no.1 deserted his company on 18.06.2017 at her own sweet will in a pre-planned manner as his family had refused to accept her demand and of her family to transfer and register the entire third floor in her name. The respondent has also deposed that he is not in a habit of consuming liquor rather he does not consume tea or coffee. The respondent has reiterated that on 18.06.2017, brother and father of petitioner no.1 had assaulted his Bhabhi who at that time was eight months pregnant. registered He has relied upon the FIR NO.307/17 in police station Karawal Nagar u/s 323/504/506/509 which is Ex.RW1/G. IPC He has further relied upon a civil suit for defamation filed by his Bhabhi which is Ex.RW1/H.

32. To support the allegation that petitioner no.1 had deserted him without any reason and had refused to join his company, the respondent has relied upon two Compact Discs regarding a telephonic conversation made between him and petitioner no.1 on 05.08.2017 and an audio-video recording of some mediation proceedings held between the parties on 31.08.2017. He has also filed the transcripts of the telephonic conversation as well as of the audio-video recording along with certificates under Section 65 of Indian Evidence Act which are Ex.RW1/B (colly). He has also relied upon his own medical documents of IHBAS as Ex.RW1/C. He has further relied upon a complaint lodged by him on 22.08.2017 recorded as DD No.E-415/PP/KKD/233 which is Ex. RW1/F (colly).

33. During his cross-examination, the respondent has denied that a quarrel took place between him and petitioner no.1 on 18.06.2017 before she left the matrimonial house. He volunteered that on the said



day, father and brother of petitioner no.1 had come to his house and raised false allegations of illicit relations, they gave beatings to him, his brother and his father. His Bhabhi had called the police after the incident. He also deposed that petitioner no.1 had locked him in the kitchen. He denied the suggestion that he has levelled false allegations against the petitioner no.1 in his written statement and in his evidence affidavit. He also denied that he had physically assaulted the petitioner no. 1 by burning her with a frying pan.

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46. The evidence on record shows, Petitioner No. 1 and the respondent had bitter matrimonial relationship. The things took a major turn on 18.06.2017 when a quarrel took place in the matrimonial house. The Bhabhi of the respondent had got registered Ex .RW 1/G regarding the incident, whereas father of the petitioner had got registered a complaint vide DD NO.44 dated 19.06.2017, Ex. RW1/E (Ex.PW1/R-1), informing that he was taking petitioner no.1 with him as after marriage, she was harassed on account of dowry demands. PW1 has categorically deposed that her father had brought her from the police station after mid night. Further, the audio recording of the telephonic conversation Ex.RW 1/B between the parties on 05.08.2017 apparently shows that they were conversing about their discord. The respondent had made the call to petitioner no.1 and recorded the conversation. The petitioner no. 1 had questioned the respondent about taking her in a tenanted house. She was insisting that Bhabhi of the respondent should withdraw the FIR Ex.RW1/G lodged against her father and brother.

47. The respondent has vociferously relied upon Ex.RW1/B (colly), also, the audio-video recording of mediation proceedings, Office of SDM, Nand Nagri, recorded on 31.08.2017 by him. He has also filed the transcript of the said recording. It is significant to note that any audio video recording of the processes of mediation is per-se inadmissible in evidence. The concept of mediation is based on the foundation of Confidentiality. The process of mediation is strictly confidential and private. There cannot be any audio or video recording of the proceedings, thus, the CD i.e. SDM 31 Aug Video & Audio Recording Movi 0006 and its transcript Ex. RW1/B cannot be read in evidence.

48. In the judgment reported as *Moti Ram & Anr. vs Ashok Kumar & Anr.* 2011 1 SCC 466, it was observed by the Hon'ble Supreme Court, "We would like to state that mediation proceedings are totally confidential proceeding. This is unlike proceedings in Court which are conducted in the public gaze".

49. From the evidence, it emerges, on account of acrimonious relationship, petitioner no.1 and the respondent are not cohabiting. Apparently, no efforts have been made from the side of the respondent



for resolution of the disputes. They are entangled into serious litigations which is a sufficient cause for them to live apart. Moreover, the present proceedings minute appreciation are summary in nature which do not require of matrimonial disputes between the parties for which their cases are pending trial at different forums.”

7. Thus, Respondent No. 1 had a sufficient and justifiable reason to live apart, and that the bar under Section 125(4) CrPC was not attracted. The findings are grounded in the evidence on record and do not disclose any perversity warranting interference in exercise of revisional jurisdiction.

8. Petitioner’s plea regarding limited income has also been addressed exhaustively. While the Petitioner projected himself as a daily-wage earner with an uncertain income, he did not produce any reliable documentary material to substantiate either unemployment or genuinely low earnings. On the contrary, the evidence led on his own behalf showed that his father runs a socks-stitching unit on the ground floor of the family house and that the Petitioner was associated with this activity. RW2 and RW4, examined as defence witnesses, admitted that the Petitioner used to work in his father’s factory, repair machines, and, on 17th June, 2017, was doing “*separate work of manufacturing socks*” there. The Petitioner did not examine his father, who was the most natural witness to support his claim of having no role in the family business, nor did he place any cogent proof of having been disowned by his family or of residing in a tenanted premises. Against this backdrop, the Family Court rightly held that his assertion of being a mere “*Dehari Majdoor*” in Uttar Pradesh, with no stable income, was vague and uncorroborated. To this effect, the relevant findings are as follows:

“57. It was next urged on behalf of the petitioners that the respondent is a man of means and is leading a luxurious life. He is having fixed deposits and immovable properties. But he deliberately neglected and refused to pay any maintenance to the petitioners. He is having a factory of stitching socks. He is owner of 2-3 houses and is



enjoying income of more than Rs.50,000/- per month from all the sources. It was also argued that respondent: has raised a false plea that he has been disowned by his parents and is not residing with them. He has not filed any proof to support the submissions. Moreover, RW3, Sh. Chander Prakash has admitted that respondent was residing with his family. Also, he has not filed any rent agreement to show that he is residing in a tenanted premises.

58. Conversely, it was urged on behalf of the respondent, the petitioners have raised bald and vague allegations regarding occupation, earnings, movable and immovable assets of the respondent. He does not have income, huge bank balance and fixed deposits, as alleged which is not substantiated by any proof. The respondent is working as a Dehari Majdoor in the State of UP earning daily wages and has no fixed monthly income. When he is unable to work due to various litigations pending against him, it results in loss of wages to the respondent. He is working as a daily wager in the factory of stitching therefore, socks. Moreover, he gets salary on per piece basis, his income is not fixed. He is willing to maintain petitioner no.2 as per his status. It was submitted that due to the lockdown because of Covid-19 crisis, the respondent has lost his source of income and at present he is unemployed, thus, not in a position to pay maintenance.

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71. Nonetheless, it is apparently clear that the respondent is involved in the work of stitching socks. The respondent has deposed that he used to work in the factories in Loni, UP. However, he has made vague deposition as he has not mentioned about any name of particulars of the factories where he was or is working. He has not adduced any evidence to prove that he was working as a daily wager in the factories.

72. Respondent has deposed that he was having no permanent source of income and he was not participating or engaging in the work of his father in any manner. In contradiction to his testimony, RW2 has testified that respondent used to sometimes work in the factory of his father, sometimes he was not coming to the factory as he was studying. But he could not tell about the kind of study that respondent was doing. He further deposed, after marriage, the respondent used to go to the factory on some days and he used to repair machines when there used to some fault. Most importantly, RW4 has deposed that on 17.06.2017, the manufacturing respondent was doing his separate work of socks in the factory of his father. Admittedly, the father of the respondent is having a factory of stitching of socks on the ground floor of his house. The respondent has not examined his father, being an important witness to prove that he is not working in his factory Moreso, the respondent debarred could not



even prove that he is debarred by his father as alleged by him. Whereas RW4 has specifically deposed that respondent has doing his separate work of manufacturing socks in the factory of his father. Thus, it emerges that the respondent has been working in the factory of his father, may be with his father or doing his independent work in the same factory.

73. Needless to say, it is not uncommon that being biased with paying for child support and alimony, a spouse may decide to earn a little less or eliminate his income entirely, so as to defeat the legal right of the other spouse or the children for financial support. Similarly, being lured by the possibility of receiving maintenance; and not having to work, other spouse may desire to exaggerate about the income of the husband. Nonetheless, this kind of attitude of a spouse - will not relieve him from his obligation to pay for the child support or for the maintenance of the other spouse.

74. The meaning of terminology "sufficient means" is not limited to the actual earnings only but it refers to the earning capacity of an able and prudent man. The respondent cannot be allowed to take the plea of unemployment or less income to deny maintenance to the petitioners: The respondent being bodily able person is duty bound to maintain the petitioners who are unable to maintain themselves. The true income of the earning spouse is within his personal knowledge and the onus to prove the true income is on the earning spouse as per Section 106 of Indian Evidence Act, 1872."

9. This Court finds no infirmity in that approach. The Family Court's reasoning is in line with settled principles governing assessment of "means" in maintenance proceedings. Where there is incomplete or unreliable disclosure by the earning spouse, the Court is entitled, and often compelled, to proceed on a reasonable estimation of income and earning capacity rather than accept bare assertions at face value. This approach finds support in **Rajnish v. Neha**³ and **Bharat Hegde v. Saroj Hegde**⁴, where it has been emphasised that for assessing "means", the Court is entitled to look beyond bare assertions of income and consider indicators such as educational qualifications, professional skills, past employment, lifestyle, assets and

³ (2021) 2 SCC 324.

⁴ 2007 SCC OnLine Del 622.



liabilities, and the overall standard of living, rather than placing unquestioning reliance on self-serving affidavits. The Supreme Court, in *Chaturbhuj v. Sita Bai*⁵, further clarified that maintenance must be reasonable and realistic; it should neither be oppressive to the payer, nor so insignificant as to reduce dependents to a state of destitution.⁶ In the present case, the Petitioner, being an able-bodied adult with no demonstrated physical incapacity, cannot be permitted to evade his statutory obligation to maintain his spouse and minor child. He did not discharge the burden cast upon him under Section 106 of the Indian Evidence Act to establish genuine lack of means, nor did he produce any documentary material substantiating his alleged financial hardship. Viewed thus, the maintenance awarded is commensurate with the essential needs of Respondent No. 1 and the minor child and warrants no interference.

10. As regards visitation rights, this Court finds no error in the Family Court's approach. Proceedings under Section 125 CrPC are limited to determining neglect and award of maintenance. Matters pertaining to custody and visitation fall outside the statutory scope of Section 125 CrPC. The omission to separately adjudicate visitation cannot render the impugned order unsustainable. Needless to state, the Petitioner remains at liberty to seek appropriate relief before the competent court.

11. In view of the foregoing, this Court is satisfied that the determination of earning capacity and the quantum of maintenance awarded by the Family Court is reasonable, based on sound appreciation of evidence and established legal principles. The subsequent dismissal of the domestic

⁵ (2008) 2 SCC 316.

⁶ *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705; *Anju Garg v. Deepak Kumar Garg* (2022) 4



violence complaint does not, by itself, dilute or extinguish the statutory remedy under Section 125 CrPC, which is a summary, welfare-oriented provision aimed at preventing destitution.

12. The Court must emphasise the limited scope of interference at the stage of revision. Under Section 442 BNSS (corresponding to Section 401 of CrPC), interference lies only for jurisdictional error, patent perversity, or manifest miscarriage of justice, and not to substitute an alternative view on quantum if the Family Court's view is reasonably open on the record.⁷ The impugned order applies the correct tests, marshals the material, and fashions relief proportionate to need and capacity. No ground for exercising the revisional jurisdiction of this Court is made out.

13. It is, however, noted that on account of non-compliance with the maintenance order, the Petitioner had remained in custody for some time and was released only after furnishing an undertaking to pay a sum of INR 4,000/- per month towards arrears. A copy of the affidavit has been handed over across the board and taken on record. On this basis, it is argued that Respondent No. 1 has, by implication, agreed to INR 4,000/- as the appropriate quantum of maintenance. This contention cannot be accepted. The affidavit was filed in execution proceedings solely to secure the Petitioner's release from custody and to indicate an arrangement for clearing arrears. It was not part of the adjudicatory process determining entitlement or quantum under Section 125 CrPC, nor does it record any conscious waiver or revision of rights by Respondent No. 1. The undertaking in execution, therefore, cannot curtail the operative findings of the Family

SCC 443.

⁷ *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (1999) 2 SCC 452.



Court on the issue of maintenance and has no bearing on the present challenge to the original judgment.

14. The petition is dismissed along with pending application.

SANJEEV NARULA, J

NOVEMBER 21, 2025/nk