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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P.(MAT.) 60/2025

JAYEETA KOLAY & ANR.

.....Petitioners

Through: Mr. Manas Verma, Mr. Anuj Aggarwal, Mr. Pradeep Kumar, Ms. Kritika Matta and Mr. Avinash, Advocates.

versus

KAUSHIK KOLAY

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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11.02.2025

CRL.M.A. 4132/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed-of.

CRL.REV.P.(MAT.) 60/2025

By way of the present criminal revision petition filed under section 438 read with section 442 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioners impugn order dated 27.11.2024 passed by the learned Judge, Family Court, Dwarka District Courts, New Delhi, whereby the petitioners' application under section 125 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), claiming interim maintenance has been dismissed.

2. A perusal of the impugned judgment shows that the learned Family Court has declined to grant the prayer for interim maintenance based on the following essential inferences :



“It is admitted fact that marriage between the petitioner no.1 and respondent, was solemnized on 06.07.2000. Petitioner no.2 is major son of petitioner no.1 and respondent. Present petition has been filed by petitioners on 17.11.2023. On the day of filing of present petition, petitioner no.2 was 20 years old.

This court is in full agreement with the plea of Ld. Counsel for respondent that petitioner no.2 being major son cannot claim maintenance from father u/s 125 Cr.P.C. Claim of petitioner no.2 for interim maintenance is declined by this court.

In her affidavit of assets and liability, petitioner no.1 have (sic : has) not placed any cogent material on record as such it cannot be concluded that respondent is earning Rs.3,00,000/- pm. Respondent, on the other hand, has claimed that petitioner no.1 is capable to maintain herself as she is a working lady.

Disputed facts related to income of the parties cannot be decided at this stage. Right and liability of parties, at this stage, is liable to be decided on the basis of their income affidavits and supporting documents.

As per affidavit, petitioner no.1 is working and earning Rs.1,02,951/- and respondent is unemployed since May 2023. Respondent is maintaining himself and his 80 years old mother on the interest amount and saving amount, which is approximately Rs.15 to 16 Lakhs only. There is no material on record to show that respondent has any other source of income.

Keeping in view of above facts and circumstances and income and liabilities of the parties, I find that petitioner no.1 is capable to maintain herself and she is also not entitled for interim maintenance from the respondent. Hence, interim maintenance application filed by the petitioners, is dismissed.”

(emphasis supplied)

3. The record shows that the issue of maintenance, if any, payable by the respondent to the petitioners under section 125 Cr.P.C. is still pending consideration before the learned Family Court and the matter is listed for completion of pleadings and settlement of issues on 17.02.2025.



4. Mr. Manas Verma, learned counsel appearing on behalf of the petitioners submits, that by declining to grant any interim maintenance the learned Family Court has lost sight of the fact that there was material on record to show, that contrary to the respondent's claim, he was still employed and was drawing a salary.
5. In support of this submission, Mr. Verma draws attention to the salary slips of the respondent from M/s. Barco Electronics System Pvt. Ltd., copies of which have been appended to the present revision petition. It is however noticed, that the salary slips in question relate to the months from December 2017 to May 2018, whereas the petition seeking maintenance under section 125 Cr.P.C. has been filed on or about 09.08.2023.
6. Learned counsel has also placed reliance on what is stated to be the bank statement of the respondent, to argue that the credit entries in that statement would show that the respondent was receiving a salary from M/s Barco Electronics System Pvt. Ltd. upto June 2023, whereas the respondent has falsely claimed in his affidavit of income filed before the learned Family Court that he had lost his job at the said company due to downsizing during the COVID-19 pandemic in January 2023.
7. However, a closer reading of the respondent's bank statement shows that the amounts credited into the respondent's account from the company are neither *regular* nor *monthly*; and it is therefore not clear if those entries reflect that the respondent was drawing a *salary*.
8. Besides, certain amounts in the bank statement of the respondent appear to reflect that they relate to credit of gratuity, which again is



indicative of the respondent's employment with the company having come to an end.

9. In any event, this court is of the view that the material that was placed before the learned Family Court is the same as the material available before this court today; and based on the said material, this court finds nothing amiss in the conclusion arrived at by the learned Family Court *i.e.*, there is no cogent material on record from which it can be concluded that the respondent was earning Rs. 3 lac per month as claimed by petitioner No.1 *at least at this stage*.
10. This court is also in agreement with the conclusion arrived at by the learned Family Court, that disputed facts relating to the income of the parties cannot be decided at the interim stage, and until evidence is led.
11. In view thereof, this court is not inclined to entertain the present petition in its revisional jurisdiction under section 438 read with section 442 of the BNSS. The petition is accordingly dismissed at the stage of issuance of notice itself.
12. It is made clear however, that no observation in this order shall be taken as an expression of opinion on the merits of the matter pending before the learned Family Court.
13. The petition stands disposed-of.
14. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 11, 2025/ak