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

+ CRL.M.C. 991/2025, CRL.M.As. 4579-4580/2025

RAJAT KAPOOR

.....Petitioner

Through: Mr. Kartikiya Lal Rastogi and
Ms. Tamanna Kavdia, Advocates.

versus

MANSI SHARMA & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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13.02.2025

1. The present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ seeks partial setting aside of order dated 20th July, 2023² passed by Family Court, South District, Saket Courts in Mt. Pet. No. 138/2019.³ Through the impugned order, on an application filed by the Respondents under Section 125 Code of Criminal Procedure, 1973⁴, the Family Court has directed the Petitioner to provide interim maintenance amounting to INR 5,000/- per month to be paid to each of the Respondents from the date of filing of the application. The Petitioner's challenge is confined to the maintenance awarded to Respondent No. 1, the wife of the Petitioner.

¹ "BNSS"

² "the impugned order"

³ titled as *Mansi Sharma v. Rajat Kapoor*

⁴ "Cr.P.C."



2. At the outset, it must be noted that the Petitioner had, on a previous occasion, approached this Court through Crl. Rev. P. 1130/2023 assailing the impugned order, which was dismissed as withdrawn through order dated 26th February, 2024. The said order reads as follows:

- “1. The learned counsel for the petitioner seeks to withdraw the present petition with liberty to take all the grounds before the learned Trial Court.*
- 2. The petition is dismissed as withdrawn with the aforesaid liberty.*
- 3. The learned counsel for the respondents submits that the petitioner, pursuant to order dated 20.07.2023 passed by the learned Family Court, has not paid the maintenance amount.*
- 4. It is pointed out that a sum of ₹3,00,000/-, which is deposited by the petitioner pursuant to order dated 12.02.2024 before the Registry of this Court, is directed to be released in favour of the respondents.*
- 5. The respondents are at liberty to file an appropriate application for execution of the recovery of the balance amount, if any.*
- 6. The petition is disposed of in the aforesaid terms.”*

3. Instead of awaiting the final outcome of the petition under Section 125 of Cr.P.C., the Petitioner has filed the present petition. Upon being queried regarding the change in circumstances since the dismissal of the earlier petition, counsel for the Petitioner states that the testimony of Respondent No. 1 has now been recorded, throwing light on her income. This, he argues, constitutes a fresh cause of action for filing the present petition.

4. In the opinion of the Court, the instant petition is wholly misconceived and untenable. The testimony of Respondent No. 1 which has now been recorded, is certainly not a part of consideration in the impugned order and therefore, cannot be a basis to challenge the same. Once having challenged the impugned order and withdrawn the same with liberty to apply again necessarily means that the Petitioner has to await the final outcome.



5. Nonetheless, the Court has heard the counsel for the Petitioner.

6. Counsel for the Petitioner contends that Respondent No. 1 has deliberately suppressed the fact that she is financially independent and has been successfully running a boutique business under the name of “*Elegance by Mansi*” in Noida, Uttar Pradesh since 2017-2018. It is further contended that she has expanded her business and renamed it as “Mansi Creation” which is functional till date. He states that Respondent No. 1 possesses a Bachelor of Science degree in Fashion Design from Punjab Technical University and has been working since 2007 in various prestigious fashion design companies, including holding the position of Head Fashion Designer and Merchandiser. Respondent No. 1 has concealed her independent earnings and business operations from Family Court which has led to an erroneous assessment of the maintenance in her favour. In support, reliance is placed on certain Facebook page to demonstrate that her business has been in operation since 2017. It is further argued that in her affidavit of evidence as well as affidavit of income and assets, Respondent No. 1 has falsely deposed that she has no source of income and has misrepresented her household expenses. She has falsely stated that she has no income whereas, during cross-examination conducted on 10th January, 2025, she admitted that she has been working since last two years and earns a monthly income of INR 10,000/-.

7. The Court has considered the aforementioned contentions but remains unpersuaded. The impugned order pertains to award of interim maintenance. The consideration of evidence led by the parties, which would include the testimonies recorded, would be assessed at the stage of award of final maintenance. At the stage of grant of interim maintenance, the Family Court, has taken a *prima facie* view, observing that Respondent No. 1 does



not have any regular source of income to maintain herself and her children.

8. Moreover, in the impugned order, the Family Court assessed the income of the Petitioner to be not less than INR 40,000/- per month, as against the claim made by Respondent No. 1 that the Petitioner was earning around INR 1,00,000/- per month. The reasoning given in the impugned order for coming to the conclusion is as follows:

“17. Argument heard. Entire record perused and considered.

18. While considering the application for interim maintenance U/s 125 Cr.P.C the Court has to see whether the husband has sufficient means to maintain his wife and children but he neglects or refused to maintain them. Further the court has to see whether the wife has no means to maintain herself.

19. The respondent/husband has stated in his income affidavit that his income/salary is Rs. 10,000/- to Rs.12,000/- per month hence, it is established that he has means to give maintenance to the petitioner no.1/wife and their minor children (petitioner no.2 and 3). Even otherwise the respondent/husband is bodily abled person and it is well settled law that a bodily abled person has means to maintain his wife and children. Reliance is placed on:-

20. In Chandra Prakash Vs. Smt. Sheela Rani, AIR 1968, Delhi 174, it has been held by the Hon’ble Supreme Court as under:

“(7) An able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he can not be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.”

21. In Reema Salkan Vs. Sumer Singh Salkan (2019) 12 SCC 303, it has observed by the Hon’ble Supreme Court that the plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife.

22. The petitioner no.1/wife has stated that she was beaten up, tortured and harassed by the respondent/husband and thrown out of her matrimonial house along with both the minor children. Though the respondent/husband has denied the allegations levelled by the petitioner no.1/wife, however, considering the material on record it is prima facie established that the respondent/husband has neglected and refused to maintain the petitioner



no. 1/wife and both the minor children.

23. According to the petitioner no.1/wife she has no source of income and she is dependent on her parents. The respondent/husband has stated that the petitioner no.1/wife is running a boutique in Noida, U. P. and filed some computer print outs in the name of Manshi Creation, the fashion boutique, however, from his computer print outs it is not established that the Manshi Creation, the fashion boutique is run by the petitioner no.1/wife and it is a matter of trial whether the petitioner no.1/wife is running boutique in Noida, U.P. At this stage, the court has to take the prima facie view whether the petitioner no.1/wife is having any source of income or not. In the absence of material on record to show the income of the petitioner no.1/wife it can not be said that she is earning. The respondent/husband has also not filed any document regarding the income of the petitioner no.1/wife nor even stated her approximate monthly income. Thus, at this stage, it is established that the petitioner no.1/wife has no earning/income, therefore, it difficult for her to maintain herself and her two minor children. Presently the petitioner no.1/wife has been residing at her parental house and she is dependent upon her parents. The respondent being father of minor children (petitioner no.2 and 3) is responsible to maintain them and he can not be allowed to take the plea that the petitioner no.1/wife is earning, therefore, she can maintain the minor children from her income. The respondent/husband can also not be allowed to escape from his responsibility to maintain his minor children that he has no income or very less income or he has to maintain his old mother and physically handicapped brother. Reliance is placed on:-The Hon'ble Supreme Court in the case of Chaturbhuj Vs. Sita Bai (2008) 2 SCC 316, has held that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support.

24. The petitioner no.1/wife has stated in her income affidavit that the income of the respondent/husband is about Rs.1 lakh per month, however, she has not filed any document to substantiate her plea that the income of the respondent/husband is about Rs.1 lakh per month. The respondent/husband in his income affidavit has stated that his monthly income/salary is only Rs.10,000/- to Rs.12,000/- per month and he has done MCA (correspondence). The education/professional qualification of the respondent/husband is MCA, therefore, his income can not be Rs.10,000/- to Rs.12,000/- per month as stated by him. The respondent/husband has also stated that he took a home loan and paying Rs.17,546/- as EMIs.

25. It has been observed that- matrimonial cases the husband generally shows his income on the lower side. It is well settled law that when the parties in matrimonial cases hide their income, the Court can ascertain their income by doing some guess work on the basis of their education, nature of work, family and social status, place of residence etc.



Reliance can be placed upon “Manish Jain v. Akansha Jain (2017) 15 SCC 801 Kalyan” and “Dey Chowdhury v. Rita Choudhury Nee Nandy (2018) 14 SCC 200”.

26. *Considering the education qualification, nature of work and the social status of the parties the income of the respondent/husband can not be less than Rs.40,000/- per month. Hence, the income of the respondent/husband is taken as Rs.40,000/- per month.*

27. *In view of the above discussions I am of the considered view that the petitioner no. 1/wife is entitled to receive interim maintenance @ Rs.5,000/- per month and Rs.5,000/- per month each for both the minor children (petitioner no.2 and 3) from the date of filing of the application for interim maintenance U/s 125 Cr.P.C i.e. 18.04.2019 till disposal of the petition. The respondent/husband is further directed to give Rs.10,000/- as litigation expenses to the petitioner no.1/wife. The respondent/husband is further directed to clear arrears within three months from today i.e. 20.07.2023 in three equal installments and to pay monthly maintenance of Rs.15,000/- by way of money order or by depositing-in the bank account of the petitioner no.1/wife on or before 10th day of each calendar month. If the respondent/husband is paying any other maintenance to the petitioners under the order of the other court the same shall be adjusted from the interim maintenance awarded today to the petitioners. It is made clear that as per the settled law the petitioners shall be entitled to receive the interim maintenance to the highest amount out of the various allowances, if any, awarded to them by various courts.*

28. *Nothing stated herein above shall tantamount to any expression on the merits of the case.*

29. *The application for interim maintenance U/s 125 Cr.P.C filed on behalf of the petitioner no.1/wife is allowed accordingly.”*

9. It is well-settled that a healthy, able-bodied husband is legally obligated to provide maintenance to his wife.⁵ Thus, it is incumbent on the Petitioner, to financially support Respondent No. 1. The purpose of Section 125 Cr.P.C. is to prevent vagrancy and destitution by ensuring that the wife, who is unable to maintain herself, is provided with financial support.⁶ The Family Court, in the impugned order, has observed the financial incapacity of Respondent No. 1. The quantum of maintenance has been determined after considering the financial capacity of both parties. In view of the

⁵ *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705



foregoing, the award of maintenance of INR 5,000/- per month to Respondent No. 1, in the opinion of Court, is modest and is bare minimum to enable Respondent No. 1, to meet her expenses.

10. At this juncture, counsel for the Petitioner has drawn the attention of this Court to an order dated 30th January, 2025 passed in Ex. Petition (Crl.) No. 287/2023 filed by Respondent No. 1 seeking execution of the impugned order. In the said proceedings, the Court has passed the following order:

“Ld. counsel for the JD states that JD has got prepared a demand draft of Rs.1.5 lakhs to be given to the DH and the copy of the same has been filed along with application. Ld. counsel for the JD further states that warrants of attachment issued against the JD on the last date of hearing may kindly be stayed till the next date of hearing.

Heard. Record perused.

The present execution petition is for recovery of Rs.8,20,000/- and the JD has paid about Rs.3 lakhs till date and that only after the direction passed by Hon'ble High Court of Delhi. As the JD is not making the entire balance payment, therefore, warrants of attachment issued against the JD cannot be stayed. However, issue notice of the application to the DH on filing of PF.

Put up on date already fixed i.e. 19.03.2025.”

11. Counsel for the Petitioner requests for the stay of warrants of attachment issued against the Petitioner. On instructions, he undertakes on behalf of the Petitioner to clear the arrears of the maintenance amount payable under the impugned order before the next date of hearing fixed before the Executing Court i.e. 19th March, 2025. The statement is taken on record and shall bind the Petitioner.

12. Counsel for the Petitioner has been informed that violation of the undertaking given to the Court would entail consequence of contempt of court, to which the counsel, on instructions, confirms that the Petitioner

⁶ *Bhuwan Mohan Singh v. Meena & Ors.*, (2015) 6 SCC 353



understands the implications.

13. Accordingly, in light of the afore-noted statement made by the counsel, it is directed that the Petitioner shall file an affidavit to this effect within one week from today, confirming the statement made by the counsel.

14. Subject to the above and the Petitioner complying with the terms of undertaking, the execution of the warrants of attachment issued against the Petitioner under order dated 30th January, 2025 in Ex. Petition (Crl.) No. 287/2023 shall remain stayed.

15. It is made clear that in case the undertaking is violated, the warrants of attachment shall stand revived. The other consequences for breach of undertaking shall also follow.

16. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

FEBRUARY 13, 2025

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