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

+ **CRL.REV.P. 24/2021**

RICHA GUPTA .....Petitioner

Through: Mr. Ramakant Sharma, Mr. Ravi Avasthi, Mr. Prateek Avasthi and Mr. Abhishek Avasthi, Advocates along with Petitioner.

versus

RAHUL GUPTA .....Respondent

Through: Ms. Jyoti Sharma, Advocate.

+ **CRL.REV.P. 182/2021**

RAHUL GUPTA .....Petitioner

Through: Ms. Jyoti Sharma, Advocate.

versus

RICHA GUPTA .....Respondent

Through: Mr. Ramakant Sharma, Mr. Ravi Avasthi, Mr. Prateek Avasthi and Mr. Abhishek Avasthi, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **13.01.2025**

1. Both the present revision petitions assail the order dated 12th October, 2020[1], passed by the Principal Judge (South) Family Courts, Saket, New Delhi, thereby granting interim maintenance to Mrs. Richa Gupta (Petitioner

[1] "Impugned order"

in CRL.REV.P. 24/2021) under Section 125 of Code of Criminal Procedure, 1973[2], as follows:-

(i) A sum of INR 20,000/- per month to Richa Gupta from April 2019 till the disposal of the petition.

(ii) A sum of INR 40,000/- per month to the minor daughter of Mr. Rahul Gupta and Richa Gupta, from the date of filing of the petition till the disposal of the same.

(iii) Rent for accommodation in Greater Kailash till 2nd July, 2017.

2. Through the present revision petitions, Richa Gupta seeks enhancement of the interim maintenance, whereas Rahul Gupta (Petitioner in CRL.REV.P. 182/2021) seeks reduction of the interim maintenance amount.

3. The facts and contentions of the parties in the present case have been succinctly noted in the impugned order and therefore, it would be apposite to reproduce the same, along with the final findings of the Trial Court, as follows:

> *"2. Briefly stating, the facts which are relevant for the disposal of the present application are that petitioner/wife got married to respondent on 09.12.2002. One female child namely Shaina was born out of the said wedlock on 27.11.2006 who is in the custody of the petitioner. Since the inception of the marriage, petitioner was harassed and maltreated by the respondent and her in-laws. They used to demand money from the petitioner to run the household expenses. Respondent is working as General Manager with Air Asia and is drawing a salary of approximately Rs.40 lakhs per annum. Respondent Is living a lavish life. In 2014, parties to the petition shifted to Greater Kailash, New Delhi in a rented accommodation. The respondent deserted the petitioner on 5.12.2016 without any reasonable excuse. After being deserted, the petitioner continued to stay in the said rented accommodation till 2.7.2017 and, thereafter, she shifted to her parents house. It is averred that petitioner faced great difficulty in maintaining herself and her daughter from her meagre salary. Petitioner*

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[2] "Cr.P.C."

has prayed that the application be allowed.

3. Application has been resisted by the respondent. He has denied all the allegations levelled in the petition. It is averred that petitioner failed to discharge matrimonial obligations as she wanted to lead an independent life. Petitioner is working in a reputed airlines and is drawing a salary of Rs.60,000/- per month in addition to income from other sources such as interest income, agriculture income and income from shares etc. Respondent is ready and willing to keep the petitioner and his daughter with him in a rented house near the school of the child but the petitioner has refused for the same. It is averred that respondent is fulfilling his duties by paying school fee of the daughter. Respondent has denied that he is drawing a salary of Rs.40 lakhs per annum. However, he has admitted that he was working as Head of Sales with Air Asia w.e.f 5.6.2017 and was drawing a net salary of Rs.2,75,668/- per month. It is averred that respondent was terminated in June, 2018 due to recession. He is living in a rented accommodation at Noida in Uttar Pradesh. His parents are also dependent upon him. He is willing to pay the school fee of the child which is around Rs.26.785/- per month. Respondent has prayed that application be dismissed.

4. I have heard Sh. Rama Kant Sharma, Ld.Counsel for the petitioner and Sh. Sagar Sharma, Ld. Counsel for the respondent. Ld. Counsel for the petitioner has contended that is solely dependent upon her father for her day-to-day needs. According to him, respondent was earning Rs.40 lakhs per annum at the time of filing of the present petition in September, 2017. He is living a luxurious life. After receiving notice of the present petition on 18.1.2018, he resigned from Air Asia in May, 2018 and has falsely claimed in his affidavit that he was terminated from service. He has claimed that respondent has no other liability except to maintain the petitioner and their child and it is in these circumstances that petitioner has sought maintenance @ Rs.2.5 lakhs per month from the respondent. Secondly, it is contended that petitioner was employed as a Sales Executive in Jet Airways (India) Ltd and was earning about R8.5,81,152- per annum till March. 2019. Thereafter, Jet Airways was grounded and the petitioner became unemployed. Thirdly, it is contended that respondent has not disclosed true and correct facts about the various companies formed by him along with his father. After quitting his job from Air Asia in 2018, the respondent started working for his own business in the name of Go Travel Studio declaring on paper himself as its employee. The said company is a unit of RGS Business Solutions. He has shown to be drawing a salary of Rs.25,000/- per month from August, 2018. However, he has transferred Rs.1.28 lakhs to RGS Business Solutions and Rs. 1.3 lakhs to his father on 30.7.2015 which itself shows that he Is misleading this Court by showing himself as an employee of the company. The said company is, in fact, owned by him. Fourthly, respondent received Rs.7 lakhs on 5.10.2017 from Go Air which is reflected in his statement of account. However, said amount is not disclosed in his *income affidavit. Fifthly, it is contended that respondent formed another company by the name of 'Goecomm Studio' on 14.2.2019. This company is also the unit of RGS Business Solution which is the parent company launched on 21.2.2016. Thus, the respondent has 3 companies namely RGS Business Solution, Go Travel Studio and Goecomm Studio which have not been disclosed by him in his income affidavit. Sixthly, it is contended that respondent has falsely stated that he has to look after his parents. Respondent's father is retired with Reserve Bank of India as AGM and is receiving pension besides medical benefits. Lastly, it is contended that respondent has not filed relevant documents with his income affidavit in compliance of the Kusum Sharma judgment.*

5. All such contentions have been refuted by the respondent. It is contended that petitioner has deserted the respondent and, as such, she is not entitled to any maintenance. Secondly, it is contended that respondent got their daughter admitted in one of the best school in Noida for which the respondent fulfilled all his responsibility as his father by renting a house near to the school. However, the petitioner being an arrogant lady kept on residing in the rented accommodation in Greater Kailash, New Delhi. Thirdly, it is contended that respondent tried to convince the petitioner through telephonic conversation but she flatly refused to join the respondent. The respondent, thereafter, filed separate petitions u/S 9 HMA and S.12 of Guardian and Wards Act which are pending adjudication. Lastly, it is contended that respondent has lost his job and is working as an employee in his father's company. He is drawing a salary of Rs.25,000/- per month while the petitioner is earing Rs.5 lakhs per month. Ld. Counsel has drawn attention of this Court to various chats between the parties. The respondent has prayed that the application be dismissed with costs. In support of his contentions, Ld. Counsel has relied upon judgments - Kuntlbal vs. Alakhram, 1998 (2) MPLJ 635; Maria Jaiswal vs. Rajesh Jaiswal, 1I (2000) DMC 170; Sanjay Bhardwaj vs, State, Crl. MC No.491/2009., decided by High Court of Delhi on 27.8.2010: Rani Sethi vs. Sunil Sethi, CM No. 169/2009, decided by High Court of Delhi on 31.3.2011, Yashika Mehndiratta vs. Amit Mehndiratta, Crl. MC No.1697/2012, decided by High Court of Delhi on 2.5.2013: Anjum vs. Yunes Saleem, Cri. Rev. P. No.256/2015, decided by High Court of Delhi on 8.9.2016; Anil Jain vs. Sunita, Crl. Rev. No.829/2014, decided by High Court of Madhya Pradesh, Jabalpur on 29.11.2016; Sarila Jain vs. Master Rishabh Jain, Crl. Rev. P. 419/2014, decided by High Court of Delhi on 24.2.2016; Nisha Jain vs. Amit Jain, Mat. App. (FC) 106/2015, decided by High Court of Delhi on 24.8.2018; Manta Rai vs. Yogendra Kumar Rai. Appeal from Order No.423 of 2016, decided by Uttranchal High Court on 22.6.2017; Neelam Kadyan vs. Naveen Dalal, MAT. APP. (FC) 164/2017, decided by High Court of Delhi on 25.9.2017 and Sukhjinder Singh Saini vs. Havinder Kaur, Cri. Rev. P. 484/2015, decided by High Court of Delhi on 10.11.2017.

6. I have gone through the judgments cited at bar. Though not referred to or relied upon, in judgment - Shailja ys. Khobbanna, Orl. Appeal 125-126 of 2017, decided by the Apex Court on 18.1.2017, it was held that whether the wife Is capable of earning or whether she is actually earning are two different things.

7. The respondent has filed two income affidavits, first on 28.11.2017 and second on 12.9.2018. There is a huge difference in these income affidavits. In his first income affidavit his monthly Income is stated to be Rs.282868/- per month while in his second income affidavit, it is stated to be Rs.90,205/- per month as he was terminated in June, 2018 due to recession. He has share of Rs.40 lakhs in joint property at Noida and has bank balance around Rs.2 lakhs. He has FDRs worth Rs.15 lakhs with HDFC and Yes Bank, He also has stocks worth Rs.417294/- with HDFC Bank. He maintains a Scorpio car and a motorcycle. He received Rs.38 lakhs from sale proceeds of Faridabad flat which he utilised for purchasing a flat at Noida.

8. As per income affidavit filed by the petitioner, she is MBA. She was drawing a salary of Rs. 681152/- per annum while she was working with Jet Airways (India) Ltd. Her monthly expenditure Is stated to be Rs.2,31,235/- per month.

9. ***Respondent has stated that he is working as an employee in a company and is getting a salary of Rs.25,000/- per month. At the time of filing of the present petition, respondent was working with Air Asia. He remained employed with Air Asia till May, 2018. The respondent has not disclosed the true and correct facts about the various companies formed by him along with his father. The online web portal of the company 'Go Travel Studio' formed by him declares that it is a leading provider of booking facilities for domestic and international ticketing, hotel bookings, holiday packages, transport services by air including buses & trains as well. The company is based in Greater Noida with 50 employees. The respondent has shown on papers to be an employee in the abovesaid company. The abovesaid company is a unit of RGS Business Solution. However, he has transferred Rs.1.28 lakhs to RGS Business Solution on 1.8.2018. He also paid a sum of Rs. 1.3 lakhs to his father. These transactions prima facie show that respondent is misleading this Court by showing himself as an employee of the abovesaid company. The respondent received a sum of Rs.7 lakhs on 5.10.2017 from Go Air, as mentioned in his statement of account. The respondent formed another company by the name of Goecomm Studio on 14.2.2019. Prima facie it appears that respondent is managing three companies namely RGS Business Solution, Go Travel Studio and Goecomm Studio. His statement of account shows that he has transferred huge amount of money to his friends and family members.*** *His father cannot be said to be dependant upon him as he retired from Reserve Bank of India and is receiving pension. He is also entitled to medical benefits. In his amended income affidavit,* *respondent has shown that his monthly income is Rs.25,000/- per month while his monthly expenditure is more than Rs.1.64 lakhs. He has claimed that he is borrowing Rs.50,000/- per month from his sister as loan. However, no proof of the same has been filed in the court. The parents of the respondent are stated to be the Directors of the company namely RGS Business Solutions.* ***Prima facie it appears that respondent is managing the companies as he alone has the requisite experience and competency to run the same. He is falsely alleging himself to be an employee in the company in order to evade his liability towards maintenance for his wife and the child. From the documents placed on record, l am of the prime facie view that the Information reflected in the income affidavit of the respondent does not reflect his true financial status. Thus, it cannot be accepted that the particulars of source of income furnished by the respondent are correct. Having regard to the nature of transactions reflected in the statement of accounts of the respondent's banks, I am of the view that respondent is intimately connected with the affairs of the companies allegedly run by his father and, therefore, for determining his earning capacity and social status, the income of the said company is to be taken into account****.* ***The Income Tax Returns filed by the respondent are not conclusive of his true income. His income has to be assessed in the light of the abovesaid considerations as well. As is common knowledge, income tax returns do not reflect the true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining it in the proceedings such as the present case.***

10. As per ITR of AY 2017-18, petitioner received rental income of Rs.2,59,959/-; Rs.18,030/- as interest on NSC; Rs. 12,426/- as PPF and Rs.2134/- from mutual funds. She has a flat worth Rs.40 lakhs booked with Jaypee Infratech and bank balance of Rs.4 lakhs; she also has FDRs worth Rs.34,73,241/- and stocks worth Rs.70,000/. She owns Maruti SX-4 car and 30 gram jewellery. The petitioner remained in job till March, 2019*.* ***Therefore, till the time she remained in employment, she is not entitled to any maintenance as apart from salary, she has income from other sources as well. The plea raised by the respondent that petitioner is actually earning would be required to be established at trial. Till respondent establishes by leading cogent evidence that petitioner is actually earning around Rs.5 lakhs per month from her own sources, there is no justification to deny maintenance to the petitioner-wife after her leaving the job in March, 2019****.*

11. Respondent has withheld vital information from this Court regarding the actual income and assets. Keeping in view the fact that respondent's social status, his place of residence, it is difficult to believe that he does not have the requisite means to support his wife and the minor child. I, therefore, feel that it would be just and proper to direct the respondent to pay:

(a) The rent for accommodation at Greater Kailash till 2.7.2017;

(b) A sum of Rs.20,000/- per month to the petitioner-wife from April, 2019 till the disposal of the present petition.
(c) A sum of Rs.40,000/- per month for their minor daughter from the date of filing of the petition till the disposal of the present petition.
12. Petitioner is directed to inform the court by filing an affidavit with relevant documents within 15 days as and when she gets employed as well as amount, if any, received by her from Jet Airways. ***<u>Amount paid, if any, paid by the respondent towards maintenance/rent, shall be liable to be adjusted.</u>*** *The monthly payment shall be made on or before 7th of each calendar month.*
13. Nothing in this order shall tantamount to an express of opinion on the merits of the case.
14. Arrears be cleared within six months in equal installments. As regards future maintenance, the amount shall be transferred in the bank account of the respondent by the petitioner by the 10th day of each calendar month. The amount already paid by the respondent be adjusted. The application stands disposed of."

[Emphasis added]

4. As can be seen from the above extract, the annual income presented by Rahul Gupta, on the basis of his Income Tax returns, income affidavits and other documents, has not been found credible by the Trial Court. The Trial Court took note of the fact that in the first income affidavit dated 28th November, 2017, filed by Rahul Gupta, he disclosed that he was earlier earning a monthly income of INR 2,82,868/-. On the other hand, in the second income affidavit filed on 12th September, 2018, he stated that since he was terminated from his earlier job in June, 2018, his monthly income stood at only INR 90,205/-. Moreover, during the course of proceedings, Rahul Gupta stated that his monthly income further reduced to only INR 25,000/-.

5. Although Rahul Gupta rendered an explanation for the said reduction in his income, however, as noted above, the Trial Court after considering the facts of the case, did not accept Rahul Gupta's submissions on a *prima facie* basis as there were several inconsistencies. Thus, on the basis of the income

affidavits and documents filed by Rahul Gupta, the Trial Court come to the conclusion that the same are not conclusive of his actual income and assets. Thus, without taking any final decision on the real/actual income of Rahul Gupta, which has to be determined at trial, the Trial Court passed the impugned order for interim maintenance.

6. Counsel for Richa Gupta challenges the impugned order and asserts that the interim maintenance of INR 20,000/- awarded to Richa Gupta is insufficient for her to meet her needs. He further points out that the minor daughter of Rahul and Richa Gupta is currently studying in Shri Ram Millennium School, which is a prestigious school having quarterly fees of INR 1,07,000/-, which comes out to be nearly INR 35,000/- per month. Therefore, he argues that the maintenance awarded by the Trial Court for the minor daughter – i.e., INR 40,000/-, is insufficient. He urges that apart from the monthly school fees, the minor daughter is currently in Class 12th for which she needs additional tuition classes. Moreover, being a growing child, the minor daughter has other needs which also need to be accommodated in the maintenance awarded for her.

7. On the other hand, counsel for Rahul Gupta argues that the maintenance amount being paid by him is on the higher side, having regard to his current income, as reflected in the income certificates and documents presented to the Trial Court. Furthermore, she assets that Rahul Gupta has not misled the Court in any manner and all the documents furnished by him are true to his knowledge. Therefore, she contends that there was no basis for the Trial Court to conclude that Rahul Gupta's income, as reflected in the Income Tax certificates and other submitted documents, is not his true/actual income. Moreover, counsel for Rahul Gupta argues that Richa

Gupta herself is also guilty of misrepresenting her real income before the Trial Court since she has additional income, in the nature of rental income and interest on the Fixed Deposits, which are sufficient to take care of her needs and ought to have been factored in while awarding interim maintenance. In this regard, it is pointed out that the Trial Court itself noted the existence of such additional income of Richa Gupta in paragraph no. 10 of the impugned order. Lastly, counsel for Rahul Gupta submits that the impugned order is only for interim maintenance and the trial with regard to award of final maintenance is ongoing. As such, the Trial Court can be directed to expediate the proceedings, rather than this Court interfering in the award of the interim maintenance.

8. The Court has duly considered the aforenoted contentions of the Parties. Indeed, the impugned order dated 12th October, 2020, only pertains to award of interim maintenance and the final maintenance amount is yet to be worked out as the trial is ongoing. On a query of the Court, regarding the current stage of the proceedings, the Court is apprised that Richa Gupta is presently under examination and her evidence has been partly recorded. Counsel for Richa Gupta attributes the delay of four years in reaching this stage in trial, on the part of Rahul Gupta, as he allegedly did not execute the impugned interim maintenance order. The said contention is strongly opposed by counsel for Rahul Gupta.

9. Be that as it may, the order under challenge is of an interim nature. The Trial Court has rightly noted that even though the factum of real/actual income of Rahul Gupta as well as Richa Gupta has been highly contested, the veracity of the contentions of the parties must be examined during trial. At the interim stage, the Trial Court could only take a *prima facie* opinion

on the basis of the documents field by the parties, which indicate that there are material discrepancies in the income disclosed by the parties. Nevertheless, keeping in view the social status of Rahul Gupta, his place of residence and overall lifestyle, the Trial Court came to the conclusion that it is difficult to believe that he does not have the requisite means to support his wife and minor child. On this aspect, the Court agrees with the finding of the Trial Court. The Supreme Court in the case of ***Chaturbhuj v. Sita Bai***[3] has observed that the object behind the provision for maintenance under Section 125 of the Cr.P.C. is to prevent vagrancy by compelling those who can provide support to extend the same to those who have a moral claim and are otherwise unable to support themselves. In this regard, it must be noted that it is settled law that a husband with adequate means has a sacrosanct duty to financially support his wife and minor children, which responsibility he cannot shirk away from[4]. Furthermore, as has been noted in several judgments, in cases of maintenance under Section 125 of the Cr.P.C., wherein often the case is interlinked with matrimonial discord between the parties, the Courts have observed a tendency of parties to downplay their income and, in such cases, even Income Tax returns do not necessarily provide a correct picture of the real incomes[5]. In such cases, the Courts are afforded the liberty to make some guesses regarding the reasonable earnings of the person[6].

10. In light of the above, the Court does not find material infirmity with the observations of the Trial Court. However, considering the fact that the

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[3] (2008) 2 SCC 316
[4] Anju Garg & Anr. v. Deepak Kumar Garg 2022 SCC OnLine SC 1314
[5] Kiran Tomar v. State of U.P. 2022 SCC OnLine SC 1539
[6] Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622

marriage between the parties sustained for nearly fourteen years and they have a minor daughter who is currently studying in Class 12th and for whom the monthly school fees is nearly INR 35,000/-, in the opinion of the Court, the interim maintenance awarded for the minor child needs to be enhanced.

11. Accordingly, the present petitions are disposed of with a slight modification in the impugned order.

12. The maintenance of the child is increased from INR 40,000/- to INR 55,000/- per month, commencing from the date of the filing of the application for maintenance under Section 125 of Cr.P.C. till the date of disposal of the said petition.

13. With the above directions, the present petitions are disposed of, along with pending applications.

SANJEEV NARULA, J

JANUARY 13, 2025/*d.negi*