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

+ CRL.REV.P. 39/2021 & CRL.M.A.1391/2021, CRL.M.A.  
1392/2021, CRL.M.A. 19931/2021, CRL.M.A. 564/2023  
MR. SACHIN AGARWAL .....Petitioner

Through: Ms. Mansi Bhushan, Ms. Sanjana  
Patel, Ms. Shakshi Sharma, Mr. Md.  
Navas K. Mr. Akshit Chaudhary, Mr.  
Chetan and Ms. Hanna Shirin,  
Advocates.

versus

DIVYA SHARMA .....Respondent

Through: Mr. Lokesh Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**21.01.2025**

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By way of the present petition filed under sections 397 and 401 of the Criminal Procedure Code 1973 ('Cr.P.C.'), the petitioner impugns order dated 09.11.2020 passed by the learned Principal Judge, Family Court, Dwarka District Courts, New Delhi whereby the learned Family Court was pleased to award the sum of Rs.35,000/- per month in favour of the respondent (petitioner before the learned Family Court) towards interim maintenance alongwith a sum of Rs.21,000/- as litigation expenses in proceedings under section 125 Cr.P.C.

2. Notice on this petition was issued on 01.02.2021; pursuant to which reply dated 17.07.2021 has been filed on behalf of the respondent; and rejoinder dated 04.01.2023 has been filed by the petitioner.



3. The court has heard Ms. Mansi Bhushan, learned counsel appearing on behalf of the petitioner (husband) as well as Mr. Lokesh Kumar, learned counsel appearing on behalf of the respondent (wife) at considerable length. Written submissions have also been filed by learned counsel appearing for the parties.
4. During the course of hearing learned counsel for the parties, the court is apprised that proceedings before the learned Family Court are *still pending*; the matter is stage of recording the evidence of the petitioner (respondent before the learned Family Court); and that *vide* order dated 09.11.2020 (a separate daily order from the impugned order), based on the pleadings of the parties and in order to finally decide the issue of maintenance the learned Family Court has framed the following 02 issues :

*“i. Whether the petitioner is entitled to maintenance, if so, to what amount? OPP*

*ii. Relief. ”*
5. A perusal of the impugned order shows, that at the relevant time the petitioner was employed as an Executive Engineer (Civil) with the Uttar Pradesh Power Transmission Corporation Ltd.; and while deciding the quantum of maintenance to be awarded to the respondent at the *ad-interim* stage, the learned Family Court has *inter-alia* relied upon the petitioner’s salary slip for the month of July 2019 which shows his net income as Rs.1,27,101/- per month. A copy of the salary slip has been placed on record in the present proceedings.



6. In the above circumstances, this court is not persuaded to entertain the present challenge insofar as the *quantum* of *ad-interim* maintenance awarded is concerned in its revisional jurisdiction.
7. However, Ms. Bhushan has argued that the impugned order has been passed without the learned Family Court having had any territorial jurisdiction over the matter, since it is her case, that the respondent (wife) was ordinarily a resident of Modi Nagar, District Ghaziabad, Uttar Pradesh and has approached the concerned court in Delhi on false pretext.
8. Accordingly, the present matter has been heard confined only to the issue of whether or not the learned Family Court had *territorial jurisdiction* to entertain and decide the petition before it under section 125 Cr.P.C.
9. To that end, attention is drawn to section 126(1) Cr.P.C., which reads as follows:

*“126. Procedure - (1) Proceedings under section 125 may be taken against any person in any district –*

- (a) *where he is, or*
- (b) *where he or his wife resides, or*
- (c) *where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”*

(emphasis supplied)

10. From the record it is observed that countervailing documents were filed before the learned Family Court in support of the petition being maintainable within the territorial jurisdiction of that court.
11. Furthermore, as pointed-out by Ms. Bhushan, the issue of territorial jurisdiction had been raised in the course of the proceedings under



section 125 of the Cr.P.C., which was dealt-with by the learned Family Court in the following manner :

*“7.Respondent has raised question regarding the jurisdiction of this Court to deal with this matter stating that after marriage petitioner had resided in Muzaffarnagar, U.P. and alleged cause of action if any has arisen in U.P. Petitioner has claimed that at present she is residing in Sector 7, Dwarka. At this stage there is no reason to doubt this contention of the petitioner. Moreover petitioner has filed a complaint under Section 12 of Domestic Violence Act before Ld. MM, Mahila Court, Dwarka which admittedly was dismissed by Ld. MM on the grounds of jurisdiction but in appeal same was restored and is subjudice. Therefore the objection raised by respondent is found without any substance.”*

(emphasis supplied)

12. As noticed above, even the learned Family Court has observed that there was no reason to doubt the contention of the respondent as regards territorial jurisdiction “at this stage”, namely at the stage of granting *ad-interim* maintenance. However, as per the averments in the section 125 Cr.P.C. petition filed by the respondent, she has herself said that her matrimonial home was in Muzaffarnagar, Uttar Pradesh; that after differences arose between the parties, the parents of the respondent had taken her to their house which is stated to be in Modi Nagar, Uttar Pradesh; but that subsequently, she moved to her sister’s house, which is stated to be in Dwarka, New Delhi.
13. Attention of the court has also been drawn to the copy of the respondent’s Aadhar card filed before the learned Family Court, which shows her address as Modi Nagar, Uttar Pradesh. Furthermore, the Domestic Incident Report dated 11.07.2017 prepared by the



Protection Officer records the respondent's shared-household as Muzaffarnagar, Uttar Pradesh *but* her present address as Dwarka, New Delhi. Copies of the respondent's Aadhaar card and the domestic incident report have been placed on record in the present proceedings.

14. In the circumstances, after making submissions, learned counsel for the parties agree that the issue of its territorial jurisdiction was required to be considered by the learned Family Court *on evidence*, which however was not done.
15. In view thereof, by consent of parties, the matter is remanded back to the learned Family Court, with a direction to frame a preliminary issue on territorial jurisdiction of that court; to permit the parties to lead evidence on that issue; and decide that issue expeditiously, in accordance with law.
16. Furthermore, since certain observations were made by the learned ASJ, Dwarka District Courts, New Delhi in Criminal Case No. 58/2019 in relation to territorial jurisdiction arising from complaint proceedings under section 12 of the Domestic Violence Act 2005, without however any evidence being lead in those proceedings, it is directed that the learned Family Court would decide the issue of territorial jurisdiction independent of any observations made in the said criminal appeal.
17. That being said, this court is conscious that there is no doubt that the learned Family Court in Delhi had 'subject-matter-jurisdiction' over the case; and it is only the territorial jurisdiction of that court which requires to be determined on evidence. Also, this court has declined to entertain the challenge to order dated 09.11.2020 insofar as the



quantum of *ad-interim* maintenance awarded is concerned in the present revisional proceedings.

18. In this view of the matter, and on considerations of justice, interim order dated 19.07.2021 passed in the present proceedings stands vacated; and it is directed that the petitioner shall comply with the order dated 09.11.2020 passed by the learned Family Court.
19. The revision petition is disposed-of in the above terms.
20. Pending application, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**JANUARY 21, 2025**

*ds/V.Rawat*