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

\+ CRL.REV.P.(MAT.) 83/2025, CRL.M.A. 5198-5199/2025

SAMEER KHAN .....Petitioner

Through: Mr. Kashif Athar and Mr. Faraz Mirza, Advocates.

versus

SMT. RUKSAR .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **18.02.2025**

1. The present application filed under Section 438/442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] is directed against judgment dated 8th November, 2024 in Mt. No. 136/2020 passed by the Family Court, North East District, Karkardooma Courts, Delhi. Through the said order, the Family Court has allowed the application filed by the Respondent under Section 125 Code of Criminal Procedure, 1973,[2] awarding a maintenance of INR 7,500/- each to her as well as their minor child.

2. Briefly stated, the factual background leading to the filing of the present petition, is as follows:

2.1 The Petitioner and Respondent married on 18th April, 2018 according

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[1] "BNSS"
[2] "Cr.P.C."

to Muslim rites and customs. From this marriage, a child was born on 13th January, 2019. However, due to temperamental differences, the Respondent left the matrimonial home and has been residing with her parents since 22nd February, 2019.

2.2 Subsequently, the Respondent applied to the Family Court for award of maintenance, contending that she had no independent source of income. She further contended that the Petitioner, who is engaged in the business of supplying building materials, earns approximately INR 60,000/- to 70,000/- per month.

2.3 The Family Court, after considering the material on record and evaluating the parties' financial status, disagreed with the Respondent's assessment of the Petitioner's income. Instead, the Court conservatively assessed the Petitioner's monthly earnings at INR 30,000/-. Based on this estimation, a total maintenance of INR 15,000/- per month was awarded—INR 7,500/- each for the Respondent and the minor child.

3. Aggrieved with the aforenoted findings, the Petitioner has invoked the jurisdiction of this Court, challenging the impugned order on the following grounds:

3.1 The Respondent has inflicted cruelty on the Petitioner, rendering cohabitation impossible and making his life miserable.

3.2 The Respondent is financially independent and leads a lavish and extravagant lifestyle, whereas the Petitioner is a daily wage labourer earning approximately INR 300/- per day. He is solely responsible for the care and maintenance of his elderly, dependent parents. On the contrary, the Respondent allegedly earns INR 20,000/- per month from her beautician shop and stitching business, which is sufficient to sustain herself and the minor child.

3.3 The Family Court's assessment of the Petitioner's income at INR 30,000/- per month is entirely speculative, and not supported by any documentary evidence. This determination is based on conjecture and surmises, rendering the order unsustainable.

3.4 The Family Court failed to consider the contradiction in the record, including the incomplete detailed income affidavit and the bank accounts filed by the Respondent.

3.5 The amount reflected in the Petitioner's bank account comprises payments by customers for the sale of the products, which were thereafter withdrawn and handed over to the owner of the business. These transactions, therefore, cannot serve as the basis for assessing the Petitioner's income as INR 30,000/-. In any event, even if such amounts are taken into consideration, as noted in the impugned order, the income of the Petitioner does not exceed INR 23,616/-.

4. The Court has duly considered the aforementioned contentions, but finds them unpersuasive. A perusal of the impugned order indicates that the Family Court took into account several crucial factors in determining the Petitioner's income. The reasoning provided by the Family Court for assessing the Petitioner's income at INR 30,000/- is as follows:

> *"16. It was argued by Id. counsel for the respondent that father and mother are dependent upon the respondent. PW-I in the cross examination was specifically suggested that "Sameer Building Material Supplier" is owned by father-in-law which of course was denied. Even in the detailed affidavit of assets and liabilities filed by the respondent he has categorically stated that cash is given by the father and brother on need basis. In view of the said statement and the suggestion given to PW-1, it is clear that parents are not dependent upon the respondent. The submission of Ld. counsel for the respondent stands rejected.*
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> *17. Now in order to decide the quantum of maintenance the income of*

the respondent needs to be assessed. It is the case of the petitioner that respondent is in the business of supply of building materials and is working from the address T-504 Gali No 12 Gautam Puri, Delhi -53. In the cross examination RW-1 admitted that the PAN Card and bank account are of the said address. He stated that same is owned by his friend. He admitted that he had an account in Central Bank of India, the statement of account was exhibited Ex. RW1/P3. He denied the suggestion that the entries were done by him. He volunteered to say that entries have done by his uncle. He admitted that he has not mentioned this fact in his reply nor in his affidavit. The fact that shop is being run from the house T-504 stands duly established. It was his case that the said shop belongs to his father, as PW-1 in his cross examination was suggested so. Respondent never examined his father. In the cross examination RW-1 took a stand that the shop is owned by a friend. The friend who owned the said shop, was never examined. In the cross examination, RW-1 volunteered to say that the said house was sold, no sale deed was placed on record to show the sale of the said house. He admitted that in Ex.PW1/4 his mobile number and his photographs are clearly visible and the same belongs to him. The plea taken by the respondent that he is a daily wager at a shop is not established as respondent has not examined any witness to prove that he is working as a labourer. Respondent did not disclose the name or the address of the shop to prove as to where he is working as a daily wager. U/s 109 of BNSS 2023 (Section 106 of the Indian Evidence Act) the burden was upon the respondent to prove his actual income which he has failed.

18. The respondent has filed the statement of account of the account maintained at Central Bank of India and has not filed the statement of account of ICICI bank, although as per his detailed affidavit he was maintaining one. The perusal of the statement of account shows that there is a credit of Rs. 20,300/-on 11.04.2018. On 18.09.2018 and 06.12.2018 a sum of Rs. 22,600/- is credited. Each month from 01.05.2019 till 02.12.2019 a sum of Rs. 2500/- is transferred primarily to pay a loan of Rs. 2514 which he took from IDFC Bank.

19. There are credit entries to the tune of Rs. 50,000/-, Rs. 30,000/- and Rs. 26,000/- on 08.07.2020, 20.07.2020 and 06.08.2020. On 25.03.2021 there is again credit entry of Rs. 6,00,000/-. Then again on 05.07.2021 the respondent has received a sum of Rs. 2,00,000/- in his account. All the amount once credited has been withdrawn by the respondent either through ATM or through cheque. The address of the bank account is the same as reflected in the photographs which reflects that respondent is the owner of Sameer Building material. Respondent has not come to the court with clean hands as he has not filed the statement of account of his ICICI Bank. Infact he has not even disclosed the correct account number. When the same was sent for verification it was reported to be incomplete. The income of a

person is not static and increases or decreases which depends on various factors. If the parties to the court with clean hands and disclose their true income, the same can be decided in a more objective manner. The element of guess work would be minimized. In the present case the respondent has denied that he is even the owner of the Sameer Building Material. The facts have to be appreciated on the basis of preponderance of probabilities and not beyond reasonable doubt. The total credit in the account maintained at Central Bank of India which was exhibited as Ex.RWI/P3, for the period 08.04.2018 to 08.04.2022 is Rs. 11,33,592/- i.e. Rs. 2,83,398/-per year, Rs. 23,616/-per month. It was his case in the cross examination that these entries were of his uncle and chacha, none of them have been examined. This court is unable to accept that respondent is a daily wager. The said credits are of his secondary account as the primary account has not even been disclosed and adverse inference ought to be drawn against him. The income of the respondent is thus assessed to be Rs. 30,000/- per month.
20. In terms of the 'Annurita Vobra vs. Sandeep Vobra', reported as, 2004 (3) AD 252 income of the respondent is to be divided into 4 units. Two units for himself, and one each for petitioner no 1 and petitioner no. 2. Accordingly, from the date of filing, petitioners are awarded a consolidated sum of Rs. 15,000/- per month (Rs. 7500/- each) as maintenance till petitioner no. I gets re-married or gainfully employed and to petitioner no. 2 till the age of majority.

21. The amount, if any, paid towards interim maintenance shall adjusted in view of the judgment of Rajnesh Vs. Neha & Ors. (2021) 2 SCC 324.

22. Respondent shall clear the arrears within period of two months from today and shall continue to pay the petitioner no. 2 on 5th day of each calender month.

23. File be consigned to Record Room after due compliance."

5. The Family Court observed that the Petitioner's disclosed bank account reflected multiple high-value deposits, including INR 50,000/-; INR 30,000/-; and INR 26,000/-; as well as INR 6,00,000/- on 25th March, 2021; and INR 2,00,000/- on 5th July, 2021. Based on these credit entries, the Court determined that the Petitioner's average monthly income was INR 23,616/-.

6. The Petitioner's contention that these transactions represented

payments for the sale of goods is entirely unconvincing and lacks merit. If the Petitioner were indeed a daily wage labourer, there would be no reasonable basis for customers to deposit payments directly into his personal account for the supply of building materials. Ordinarily, such transactions would be conducted through the business entity's accounts and documented through invoices. The Petitioner's explanation, therefore, does not withstand scrutiny.

7. The Family Court further observed that the Petitioner failed to make a full and candid disclosure of his financial status, as he withheld crucial documents and did not provide accurate details of his bank accounts, nor did he submit records of both his primary and secondary accounts. In light of these omissions, the Court was compelled to draw an adverse inference against the Petitioner, particularly regarding his actual income. The Court, therefore, proceeded to make a reasoned assessment of his earnings based on the available bank statements and credit entries, which strongly indicated a higher financial capacity than what was claimed. The Supreme Court has held that in such cases, where a party withholds crucial information, the Courts are entitled to draw an adverse presumption against that party, on the basis that had the information been disclosed, it would likely have been detrimental to their case.[3]

8. Therefore, having regard to the surrounding facts and circumstances, the Family Court's assessment of the Petitioner's income at INR 30,000/-, on a conservative basis, is found to be reasonable. In light of this income, the award of maintenance for the 6-year-old minor child, who has been

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[3] Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622; Kiran Tomar v. State of U.P. 2022 SCC OnLine SC 1539.

independently supported by the Respondent, is justified. Furthermore, the maintenance of INR 7,500/- awarded to the Respondent is also reasonable, as it reflects the minimum amount necessary for her to support herself. Therefore, the Court finds no infirmity in the Family Court's assessment of the Petitioner's income as well as the determination of the maintenance awarded to the Respondent and the minor child.

9. In light of the foregoing, the Court finds no merit in the present petition and accordingly, the same is dismissed along with pending application(s).

SANJEEV NARULA, J

FEBRUARY 18, 2025
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