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

\+ **CRL.REV.P.(MAT.) 84/2025, CRL.M.A. 5487/2025, CRL.M.A. 5489/2025 & CRL.M.A. 30980/2025**

SH RAJESH KUMAR .....Petitioner

Through: Ms. Jyotika Kalra, Ms. Ayushi Chugh & Mr. Vishal Baliyan, Advs. Petitioner in person

versus

SMT SAVITA SHARMA & ORS. .....Respondents

Through: R1 in person

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **30.10.2025**

CRL.M.A. 5487/2025

1. The present application is filed seeking condonation of delay of 289 days in filing the present petition.

2. It is stated that the delay was caused as the petitioner had *bona fidely* filed a petition under Section 127 of the CrPC before the learned Family Court, which was dismissed on 20.07.2024. It is submitted that thereafter, time was spent in obtaining certified copies and further delay was caused due to financial hardships of the petitioner.

3. Considering that the present is a matrimonial dispute and the petitioner had been pursuing a petition under Section 127 of the CrPC before the learned Family Court, this Court considers it apposite to condone the delay.

4. The present application is allowed in the aforesaid terms.

CRL.REV.P.(MAT.) 84/2025, CRL.M.A. 5489/2025 & CRL.M.A. 30980/2025

5. The present petition is filed challenging the impugned judgment dated 28.04.2023 (hereafter '**impugned judgment**'), passed by the learned Family Court, Shahdara District, Karkardooma Courts, Delhi in CT Case No. 1410/2016.

6. By the impugned judgment, the learned Family Court allowed the petition filed by the respondents (who are wife and children of the petitioner) under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**') and directed the petitioner to pay a sum of ₹17,500 per month each to the children, that is, to Respondent Nos. 2 and 3, from date of application till the period they start earning according to the living standard of their parents or get married, whichever is earlier. The learned Family Court further directed that major expenses like higher education, etc. shall be borne by both the parties in 60:40 ratio (60% by the petitioner and 40% by Respondent No. 1), wherein decision of Respondent Nos.2 and 3 shall be final regarding selection of course.

7. The learned counsel for the petitioner submits that the learned Family Court has awarded maintenance on the higher side and the petitioner has been ordered to pay maintenance at the rate of ₹35,000/ month with effect form September, 2014, when his net salary was only ₹59,239/-.

8. She submits that it has not been appreciated by the learned Family Court that Respondent No.1 is in a better financial position than the petitioner as she has significant savings, despite which, she is not contributing proportionately to the expenses of

Respondent Nos. 2 and 3 while the petitioner is disproportionately burdened by the same.

9. She submits that the learned Family Court has accorded absolute discretion to the children to decide the course they wish to pursue without any consideration to the capacity of the parents to pay such fees.

10. She submits that Respondent No.1 has filed an execution petition wherein 30% of the gross salary of the petitioner has been attached, even though, it is settled law that attachment is to be based on the net salary instead.

11. *Per contra*, Respondent No.1 who appears in person argues that she had been forced to institute execution proceedings as the petitioner had repeatedly failed to pay the awarded maintenance on time. She submits that the awarded maintenance is adequate and the petitioner is earning a handsome salary.

12. I have heard the counsel for petitioner and Respondent No.1, and perused the record.

13. It is the case of the petitioner that an exuberant amount of maintenance has been awarded in the present case from the date of filing of the application, without appreciating that the petitioner was earning a significantly lower earlier. It is pertinent to note that no maintenance has been awarded in favour of Respondent No.1 and the maintenance has only been awarded in favour of Respondent Nos. 2 and 3. The petitioner has provided a detailed chart indicating the distribution of his income. Although deductions of the EMIs of ₹23,022/- per month and ₹18,604/- per month towards personal loans of ₹10 lakhs and ₹8 lakhs respectively are showed in the chart, as rightly noted by the learned Family Court, the same cannot be deducted since the

loans were taken for settlement of a case as well as payment of maintenance to the petitioners. The chart also reflects certain deductions which are not explained. It is pertinent to note that the learned Family Court had assessed the petitioner's income as ₹77,000/- on the basis of his drawn salary in December, 2018.

14. It is pointed out that the petitioner had volunteered to pay a sum of ₹20,000/- per month as maintenance from 09.08.2017.

15. The chart appended by the petitioner reflects that his net salary between September, 2014 and June, 2017 was not constant and kept fluctuating. The average net salary per month for the said period is approximately ₹35,000/-. From the month of July, 2017, the deductions for the EMIs of ₹23,022/- per month and ₹18,604/- per month are reflected, which are to be negated. The net income of the petitioner between July, 2017 has gradually increased till April, 2023 (when the impugned order was passed), and the average net income for the said period comes to approximately ₹78,000/-. The chart reflects that the income of the petitioner has only increased further thereafter.

16. In such circumstances, this Court considers it apposite to modify the maintenance amount as under:

a. From filing of the application till June, 2017: ₹17,000/ month (that is, ₹8,500/ month each to Respondent Nos. 1 and 2), and

b. July, 2017 onwards: ₹35,000/month as has been directed by the learned Family Court by the impugned judgment.

17. As the petitioner has no other dependants, the said amounts do not appear to be unreasonable. It is important to note that Respondent Nos. 2 and 3 have advanced in their age, the cost of their higher education and general cost of living, involving

coaching, vocational training, etc. has only increased and the maintenance amount appears to be apt in such circumstances.

18. This Court also finds merit in the contention that the petitioner and Respondent No.1 ought to bear the burden of major expenses in 50:50 ratio, especially considering the fact that both the parties have no other liability. It is argued that Petitioner No.1 has significant savings by placing reliance on paragraph 23 of the impugned judgment. It is pertinent to mention that the said paragraph details certain transient and erratic credit entries into the bank accounts of Respondent No.1, and the same have been duly taken into account by the learned Family Court in assessing the income of Respondent No.1. Even otherwise, as both the parties are employed, in the opinion of this Court, a 50:50 ratio distribution appears to be fair.

19. Insofar as the argument in relation to the absolute discretion accorded to Respondent Nos. 2 and 3 in regard to pursue their course of selection is concerned, this Court finds merit in the same. There is a possibility that Respondent Nos. 2 and 3 choose a course that is entirely out of the means of the petitioner. A father's responsibility to maintain his kids cannot be stretched to such an extent so as to render him entirely penniless. At the same time, the discretion of Respondent Nos. 2 and 3 to pursue a course of their choice cannot be curtailed entirely. In such circumstances, this Court considers it apposite to modify the direction of the learned Family Court. While Respondent Nos. 2 and 3 shall have the final decision regarding selection of their course, it is made clear that the apportioned burden on the petitioner in respect of both Respondent Nos. 2 and 3 (including the monthly maintenance amount) shall not be collectively more

than 50% of his net salary for that year. The said arrangement is in line with the dictum in the case of ***Annurita Vohra v. Sandeep Vohra* : 2004 (74) DRJ 99**, which provides for distribution of two portions of the disposable family resource cake in favour of the earning member and one portion each for the dependents.

20. The petitioner is also aggrieved by attachment of 30% of his gross salary rather than 30% of his net salary by the learned Executing Court by order dated 22.08.2023, and the salary being directly remitted to the account of Respondent No.1. It is pertinent to note that while the petitioner has filed an application seeking stay of the said order dated 22.08.2023, however, the prayer clause reflects that the said order has not been challenged in the present petition. Thus, this Court does not consider it apposite to delve into the same at this juncture, especially when there is no certain urgency as the order of attachment was passed way back in the year 2023.

21. The present petition is disposed of with the aforesaid modifications to the awarded maintenance. Pending applications also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 30, 2025
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