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

\+ CRL.M.C. 2481/2025

GAURAV SHARMA .....Petitioner

Through:

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Digam Singh Dagar, APP for State.
ASI Vikram Singh, PS: Karawal Nagar.
Mr. Rahul Sharma, Ms. Jyoti Sharma, Mr. Manikant Sharma and Ms. Shikha Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% **09.04.2025**

CRL.M.A. 11098/2025 *(seeking condonation of delay)*

1. For the grounds and reasons stated in the application, the same is allowed. Delay of 63 days in refiling the petition is condoned.

2. Disposed of.

CRL.M.C. 2481/2025

3. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (corresponding to Section 482 of the Code of

[1] "BNSS"

Criminal Procedure, 1973[2]) assails judgment dated 04th October, 2024 passed by ASJ (FTC), North East, Karkardooma, Delhi in Criminal Appeal 145/2024. By the impugned judgment, the ASJ upheld the interim maintenance granted by the Mahila Court, North East, Karkardooma, by order dated 13th May, 2024 in Complaint Case No. 222/2023.

4. The factual background leading to the present petition is as follows:

4.1. The marriage between Petitioner and Respondent No. 2 was solemnised on 7th December, 2020. From their marriage, parties have a minor daughter aged around 3 years.

4.2. Barely a few months into the marriage, due to serious differences, the parties have been living separately since 19th September, 2021.

4.3. In 2023, Respondent No. 2 initiated proceedings under the Protection of Women from Domestic Violence Act, 2005[3] and moved an application under Section 23 of the DV Act seeking interim relief. By the impugned order dated 13th May 2024, the Mahila Court awarded monthly maintenance of INR 16,940/- in favour of Respondent No. 2 and the minor child.

4.4. The Petitioner challenged the aforesaid order by way of an appeal under Section 29 of the DV Act. The Appellate Court, however, dismissed the appeal on merits, affirming the order passed by the Mahila Court.

4.5. Aggrieved, the Petitioner has now invoked the inherent jurisdiction of this Court, seeking to set aside the order of the Appellate Court.

5. Counsel representing Petitioner challenges the concurrent findings of the Courts on the following grounds:

5.1. The Appellate Court and the Mahila Court have wrongly applied the

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[2] "Cr.P.C."

ratio in ***Annurita Vohra v. Sandeep Vohra***[4] to the facts of the instant case. Unlike the facts in ***Annurita Vohra***, where the husband had no dependants or financial liabilities beyond his immediate family, the Petitioner herein bears responsibility for his elderly, chronically ill parents, alongside routine household expenses and loan repayments. Monthly liabilities amounting to INR 42,075/-, encompassing household needs, medical bills, and other financial obligations, have been disregarded, thereby distorting the assessment of the Petitioner's disposable income. These expenses are integral to enable the Petitioner to sustain a basic standard of living. In this context, the monthly maintenance award of INR 16,940/- is disproportionate and does not align with the principles laid down by the Supreme Court in ***Rajnesh v. Neha & Anr.***[5] wherein it was observed that the the quantum of maintenance must not create an unrealistic and oppressive financial obligation.

5.2. The Petitioner's income affidavit, which detailed these unavoidable financial obligations, was neither controverted nor found to be exaggerated. Nevertheless, the Courts below disregarded the substance of those disclosures without assigning adequate reasons.

5.3. The Mahila Court has also failed to appreciate that no document was filed by Respondent No. 2 with her income affidavit including bank statements whereas the Petitioner had duly disclosed the expenses which were not factored in while passing the impugned order.

6. The Court has considered the submissions advanced on behalf of the

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[3] "the DV Act"
[4] C.R. No. 71/2002 decided on 15th March, 2004
[5] SLP Crl. 9503/2018

Petitioner but finds no ground to warrant interference. At the outset, it must be emphasised that the Petitioner has invoked the inherent jurisdiction under Section 528 of BNSS and that the order under challenge is rendered by the Appellate Court. The powers vested in Court under the afore-noted provision are intended to prevent abuse of the judicial process or to secure the ends of justice. It is well settled that such jurisdiction cannot be invoked merely to reassess factual determinations or supplant the discretion exercised by subordinate courts. Unless the impugned order suffers from legal perversity, manifest unreasonableness, or material irregularity that causes a miscarriage of justice, intervention is neither warranted nor permissible.

7. At this juncture, it would be apposite to extract the reasoning of the Appellate Court in upholding the decision of the Mahila Court. The same reads as follows:

> *"11. On the basis of above said grounds, Ld. counsel for the appellant/husband has vehemently argued that the impugned order dated 13.09.2024 passed by the Ld. Trial Court be set- aside. It is submitted that severe prejudice would be caused to the appellant/husband, if the present appeal is not allowed and the impugned order is not set-aside.*
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> *12. The respondent no.2 had duly appeared in pursuance of notice issued to her. The Ld. Counsel for respondent no.2 had submitted before this Court that he did not wish to file any reply to the present appeal and that he would straight away argue the same.*
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> *13. It is submitted by the Ld. Counsel for the respondent no.2 that the present appeal is devoid of any merits and the appellant has made false averments in the present appeal and there is no infirmity in the order passed by the Ld. Trial Court. It is further submitted that the appellant is trying to misuse and abuse the statutory provisions of PWDV Act, 2005, in order to cause unnecessary harassment to the respondent no.2/wife. It is further submitted on behalf of the respondent no. 2 that the Ld. Trial Court had duly relied upon the material available on the record as well as the income*

affidavits of both the parties before passing the impugned order dated 13.05.2024. The submissions of the appellant that the said orders have been passed in a mechanical manner are completely false and vexatious and are without any basis. The appellant has himself mentioned his income in the income affidavit as Rs. 45,544/- per month, therefore, there is no guess work applied by the Ld. Trial Court.

14. It has been stressed by Ld. counsel for the respondent no.2/ wife that there is no error or infirmity in the impugned order dated 13.05.2024, since the Ld. MM had carefully scrutinized the disclosures made in the income affidavits filed by both the parties, and had passed the impugned order after due application of mind. Hence, the present appeal is strongly opposed by the respondent no. 2/wife.

15. It is submitted by the Ld. Counsel for the respondent no.2 that the appellant has falsely submitted before this Court and also before the Ld. Trial Court that his parents are dependent upon him. The appellant has a younger brother who is serving with UP Police and he is still unmarried. Furthermore, the father of the appellant is working as a Supervisor in a private company and earning a handsome salary. The appellant and his family members have ancestral property admeasuring 20 bigha and 3 residential houses. The appellant resides in their own house and the other two houses are given on rent.

16. I have heard the submissions and gone through the material available on record.

17. I have also perused the TCR and the impugned order dated 13.05.2024.

18. I have carefully perused the impugned order passed by the Ld. Trial Court. The Ld. Trial Court had duly considered the DIR filed by the Protection Officer, as well as the contents of the petition and the WS/reply filed by the appellant. The income affidavits filed by the appellant and the respondent no.2 was also carefully perused by the Ld. Trial Court.

19. In the income affidavit filed by the appellant before the Ld. Trial Court, he had himself mentioned that he was working as a Senior Assistant with Government of NCT of Delhi and was earning around Rs. 45,544/- per month. Alongwith the affidavit he has only filed the statement of the account, from which he is making payments towards the loans taken by him and deliberately he had chosen not to file the bank statements of his salary account. Upon specific query being put to him, the appellant had replied that his current net salary is Rs. 49,000/-per month. There is not even a single document filed alongwith his reply or his income affidavit to show the *expenses incurred by him upon the medical treatment of his parents, as averred by him before this Court.*

20. The perusal of the said affidavits filed by both the appellant and respondent no.2 clearly reflect that both the respondent no.2/complainant and the appellant have not made full disclosures in their income affidavits and no document has been filed by either of them in support of their respective contentions regarding the income of the appellant and their respective expenditures as claimed by them. Therefore, the Ld. Trial Court had to rely upon the admission of the appellant that he was earning Rs. 45,544/- per month as his monthly income. Furthermore, since there is a categorical admission qua the monthly income by the appellant, there is no merit in the arguments addressed by the Ld. Counsel for the appellant that the Ld. Trial Court had resorted to guess work and had wrongly applied its mind to reach at the said figure. Therefore, no fault could be found in the reasoning given by the Ld. Trial Court in this regard. Furthermore, the bald assertions made by the appellant that his parents are dependent upon him, is not substantiated by any documentary evidence and therefore, his submissions that the Ld. Trial Court had wrongly applied the ratio of ***Annurita Vohra (Supra)****, is highly misplaced.*

21. Furthermore, there is no merit in the submissions made by the Ld. Counsel for the appellant that the Ld. Trial Court failed to appreciate that the appellant was making payment of Rs. 1,500/-per month in the Sukanya Samriddhi Account, opened by him in the name of their daughter. The said contribution in itself is a non taxable investment, since it is excluded from competition of Income Tax u/s 80(C) of the Income Tax Act. Merely because, he is making the said payment, which his daughter would be entitled to withdraw after she attains the age of majority, does not imply that she must face destitution till that time and that the appellant is not responsible for her monthly maintenance.

22. The appellant have not made out any case against the impugned order dated 13.05.2024 and all the grounds raised in the present appeal are devoid of merits and same are hereby rejected. The Ld. Trial Court shall duly consider the averments made by both the parties at the time of trial and at this stage of granting interim maintenance, no perversity is found in the impugned order.

23. The grounds raised by the appellant that the Ld. Trial Court did not consider the income affidavit and the reply/WS filed by the appellant is also completely baseless as the impugned order dated 13.05.2024 clearly reflects that the Ld. Trial Court had applied its judicial mind and had carefully considered all the relevant records before passing the impugned *order. There cannot be any fault pointed out at the reasoning of the Ld. Trial Court, whereby, the Ld. Trial Court had relied upon the categorical admission of the appellant in his income affidavit for assessing the income of the appellant. Therefore, this court finds no reason to disturb the finding of the Ld. Trial Court that it could be safely assumed that appellant must be earning at least Rs. 45,544/- per month as stated by him in his income affidavit and therefore, after deducting his EMIs of Rs. 11,650/- his wife and child are entitled to at least half of the remainder of the said monthly income as maintenance. Therefore, this court finds no perversity in the impugned order dated 13.05.2024, whereby, the Ld. Trial Court has awarded monthly maintenance to the respondent no.2/wife and their minor daughter, to the tune of Rs. 8,470/-each from the date of filing of the petition till they are legally entitled to receive the same or till the disposal of the said complaint, whichever is earlier.*

24. Hence, in view of the aforesaid observations, there are no grounds made out for interfering with the impugned order dated 13.05.2024. Therefore, the present appeal is hereby dismissed for being devoid of any merits."

8. From the above extract, it is evident that the Appellate Court has rendered a reasoned decision upholding the interim maintenance awarded by the Trial Court. The Court examined the income affidavits of both parties, the Petitioner's reply, and the Domestic Incident Report submitted by the Protection Officer. Pertinently, the Petitioner's monthly income of INR 45,544/-, as disclosed in his income affidavit, formed the basis of the maintenance assessment.

9. The Petitioner failed to substantiate the claims raised in his defence. No documentary evidence was placed on record to support the assertion that his parents are financially dependent on him, or that he incurs significant medical expenses on their behalf. The impugned judgment rightly records that the income affidavits filed by both parties lack full disclosure. Accordingly, the Petitioner's contention that the Mahila Court indulged in guesswork while computing his income was justifiably rejected by the

Appellate Court.

10. Furthermore, the Appellate Court also correctly observed that while contributions to the Sukanya Samriddhi Account are commendable, they do not absolve the Petitioner of his legal obligation to provide for the daily needs of his minor daughter. The impugned order reflects a considered application of mind, careful evaluation of the record, and adherence to the legal principles laid down in ***Rajnesh v. Neha***. The assessment of monthly maintenance, INR 8,470/- each for Respondent No. 2 and the minor child, is thus based on the Petitioner's admitted income after deductions and cannot be said to suffer from any arbitrariness.

11. Having regard to the Petitioner's admitted income and the responsibility borne by Respondent No. 2 in caring for their minor daughter, the maintenance awarded, INR 16,940/- per month in total, in the opinion of the Court cannot be said to be excessive. On the contrary, it is a modest and reasonable sum, reflective of the basic financial needs required to sustain a dignified standard of living in present-day circumstances.

12. That said, it must be emphasised that the impugned order pertains to interim maintenance, a relief that is, by its nature, provisional. At this stage, the Court is not expected to conduct a detailed inquiry or render a final determination of financial entitlements. The objective is to provide immediate and reasonable sustenance based on the material placed on record. It is well settled that such determinations are not made with mathematical precision, but on a *prima facie* assessment of the income affidavits and disclosures submitted by the parties. The quantum awarded remains subject to variation or adjustment upon parties adducing evidence

being led during trial.

13. In light of the foregoing reasons, the Court finds no ground to interfere with the impugned order in the exercise of its jurisdiction under Section 528 of BNSS.

14. The petition is accordingly, dismissed.

SANJEEV NARULA, J

APRIL 9, 2025
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