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

\+ CRL.REV.P.(MAT.) 178/2025

CHANDERWATI .....Petitioner

Through: Dr. Ajay Chaudhary, Mr. Bharat Chaudhary, Ms. Vinita, Ms. Monika and Mr. Vishesh Kumar, Advocates.

Versus

LAL JEE .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **22.04.2025**

1. The present revision petition under Section 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] is directed against judgment dated 27th January, 2025 passed by the Family Court-02, East Karkardooma Courts, Delhi in MT No. 236/2019 titled ***"Chanderwati v. Lal Jee"***, granting enhanced maintenance to Petitioner. The Petitioner, however, remains aggrieved by the quantum of enhancement and has, therefore, invoked the jurisdiction of this Court seeking further increase in the maintenance awarded to her.

2. Briefly stated, the factual background leading to the filing of the

present petition, is as follows:

2.1 The Petitioner and the Respondent got married on 20th June, 1995, and from this marriage, a son was born on 20th March, 1996. However, due to certain temperamental differences and other reasons, the Petitioner and Respondent eventually separated, and have been living separately since 31st December, 1999. The child turned major in the year 2014.

2.2 Subsequently, the Petitioner, along with her son, filed a petition under Section 125 of the Code of Criminal Procedure, 1973[2] against the Respondent, seeking maintenance. The said application was allowed by judgment dated 16th December 2010, whereby a total maintenance of INR 6,000/- per month was awarded to the Petitioner and her son, with effect from the date of filing the petition, *i.e.*, 3rd June, 2000. Additionally, the Respondent was directed to pay INR 5,000/- towards litigation expenses.

2.3 Subsequently, on 21st May 2019, the Petitioner filed an application under Section 127 of the Cr.P.C. [MT No. 236/2019], seeking enhancement of the maintenance amount on account of a change in circumstances and the increased cost of living in Delhi. The aforesaid application was decided through the impugned order, allowing the Petitioner's request in the following terms:

> *"22. In view of the above discussion, the following directions are issued in the present case :*
>
> *(a) the respondent shall pay an amount of Rs.14,000/- per month to the petitioner as maintenance from the date of filing of the present petition i.e. 21.05.2019 till this month and thereafter, he shall continue to pay her the maintenance amount of Rs.20,000/- per month.*
>
> *(b) it is made clear that the monthly amount of Rs. 6,000 /- which she has received from respondent towards the maintenance shall be adjusted towards the enhanced maintenance awarded to her.*

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[1] "BNSS"

[2] "CrPC"

> *(c) petitioner shall get the aforesaid maintenance from the respondent during her lifetime or till she gets remarried after divorce or the law permits.*
> *(d) any amount paid by the respondent as maintenance in any other proceedings for the period in question shall be liable to be adjusted in the maintenance amount awarded to the petition.*
> *(e) the respondent shall also pay an amount of Rs.15,000/- as litigation expenses to the petition.*
> *(f) arrears of maintenance will be paid within three months from today."*

3. The Petitioner is aggrieved by the aforesaid order and contends that the enhancement of maintenance granted by the Family Court is inadequate to meet her needs. She submits that the Family Court failed to take into consideration that she has no independent source of income and that her son, despite having attained majority, is unable to work due to medical conditions. As a result, she is entirely dependent on the mercy of her brother for her livelihood. It is further argued that the Family Court overlooked the fact that the Respondent withdrew a sum of INR 16 lakhs from his GPF account on 18th May, 2022, which should have been considered while determining his financial capacity to pay maintenance. The exclusion of this amount from the calculation of the Respondent's income is erroneous. Additionally, the voluntary deductions made by government employees towards their GPF accounts ought to have been taken into account while assessing the quantum of maintenance. The Petitioner also contends that the Family Court committed a grave error in restricting the enhancement to merely INR 14,000/-, which has caused serious prejudice to her. Furthermore, it is submitted that the judgment of this Court in ***Annurita Vohra v. Sandeep Vohra***[3] has also not been rightly appreciated by the Trial

[3] 2004 SCC OnLine Del 192.

Court.

4. The Court has duly considered the aforesaid contentions, but remains unconvinced. Upon evaluating the Petitioner's request, the Trial Court, in the impugned order, recorded the following findings:

> "***ISSUE No. I***
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> *11. This petition is under Section 127 Cr.P.C for alteration of maintenance amount which has been awarded to the petitioner and her son vide judgment Ex. PW1/3. Section 127 Cr.P.C read as under:-*
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> > *Alteration in allowance.- [(I) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance, for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]*
> >
> > *(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.*
> >
> > *(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-*
> >
> > *(a) the woman has, after the date of such divorce, re-married, cancel such order as from the date of her re-marriage;*
> >
> > *(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-*
> >
> > > *(i) in the case where such sum was paid before such order, from the date on which such order was made;*
> > >
> > > *(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;*
> >
> > *(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance as the case may be, j after her divorce, cancel the order from the date thereof*
> >
> > *(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or any of them has*

been ordered] to be paid under Section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

12. The facts which are admitted and not in dispute are as under:

(A) the marriage of petitioner and respondent was solemnized on 20.06.1995 according to Hindu Rites and Customs.

(B) They were blessed with a son namely Sanchit on 20.03.1996.

(C) Petitioner and her son filed a petition under Section 125 Cr.P.C for maintenance against the respondent

(D) The respondent did not contest the said petition and proceeded ex parte.

(E) The said petition was allowed vide judgment dated 16.12.2010 Ex.PWl/3.

(F) The petitioner is regularly getting maintenance @ Rs. 6,000/- per month.

(G) The respondent is working in MCD whereas the petitioner is a housewife.

13. Ld. Metropolitan Magistrate in her judgment Ex. PW 1 /3 observed in paragraph no. 12, relevant part of which is as under:

> *I am inclined to grant maintenance of Rs. 3,000/- per month to each of the petitioners (totaling Rs. 6,000/- per month) from the date of filing the petition till they are legally entitled to receive the same.*

14. ***The son of the parties namely Sanchit attained the age of majority on 20.03.2014. Petitioner claimed that he is physically weak and continuously under treatment and unable to maintain himself and she is maintaining him also. There is no such evidence on record that their son is incapable of maintaining him. Admittedly, he is not studying. In view of this, petitioner's son is not entitled for maintenance, when he attained the age of majority in terms of judgment Ex. PW1/3. Thereafter, he is not entitled for any maintenance from the respondent.***

15. ***In this case petitioner is seeking alteration in maintenance amount i.e enhancement of same claiming that there is substantial increase in the income of respondent after judgement Ex.PW1/3. It is pertinent to note that while passing judgment Ex. PW1/3, the monthly income of respondent was considered around Rs. 10,000/- to Rs. 15,000/-. PW1 placed on record salary slip of the respondent for the month of August, 2019 which is not in dispute. The gross salary of respondent in August 2019 is Rs. 51,812/- and after deductions his net pay is Rs. 36,782/-. Hence, it is clear that there is a substantial increase in the income of the respondent from the date of passing of judgment Ex. PW1/3 till this petition has been filed. In view of this, petitioner has established***

that there is change in circumstance for alteration in maintenance allowance awarded vide judgement Ex. PW1/3.

16. In this petition alteration of maintenance amount means enhancement of the same. Petitioner in her affidavit of income and assets, claimed that she is unemployed, however, her general monthly expenditure is Rs.23,500/-, out of which she is incurring a sum of Rs. 5,000/- per month towards maintenance of their son. Whereas respondent is doing a government job in MCD/PWD Department and getting more than Rs. 65,000/- per month. He has been residing in his own house.

17. Respondent in his affidavit of income and assets claimed that his monthly gross salary is Rs.51,812/-, though his net pay is Rs. 38,712/- out of which he is paying Rs. 6,000/- per month as maintenance to petitioner and also voluntarily provided Rs. 8,000/- per month for electricity, water, cable and for food and medicine.

18. Respondent admitted that he worked in Renatus an Ayurvedic company and was getting an amount in his Canara Bank Account, but there is no evidence when the respondent worked in the Renatus company and what amount he got in his account. Admittedly, he is working in MCD- a government body - where he is not permitted to do other work/additional work except his job.

19. It is pertinent that respondent placed on record his salary slip for the month of August, 2024 wherein his total salary is Rs. 81,360/- and after deductions, he is getting net monthly salary of Rs. 63,330/-. He is contributing Rs. 15,000/- per month towards GPF, which is not so excessive, seeing his overall deductions. In view of above, it is clear that in the year 2019, respondent's net salary was Rs.36,782/- per month, whereas in August, 2024 his net monthly salary of Rs. 63,330/-.

20. One of the arguments of Ld. Counsel for the respondent is that respondent is maintaining three children of his late brother by paying approximately Rs. 6,000/- to Rs. 8,000/- per month. Respondent testified that his brother and his wife have expired and he has liability for their three minor children. He has not disclosed whether the children are residing with him or not. It is pertinent that in his affidavit of income and assets, respondent has not shown the children of his late brother as his own dependent. Hence, respondent is not entitled for deduction of Rs. 6,000/- to Rs. 8,000/- per month as his liability towards the children of his late brother.

ISSUE No. II/Relief

21. Now taking guidance from the judgement of the Hon'ble High Court of Delhi in Annurita Vohra Vs Sandeep Vohra 110 (2004) DLT 546, wherein it is held that:-

> *'In my view, a satisfactory approach would be to divide the Family Resource Cake into two portions to the husband since he has to incur extra expenses in the course of making his earning,*

and one share to each other member"

"22. In view of the above discussion, the following directions are issued in the present case :
(a) the respondent shall pay an amount of Rs.14,000/- per month to the petitioner as maintenance from the date of filing of the present petition i.e. 21.05.2019 till this month and thereafter, he shall continue to pay her the maintenance amount of Rs.20,000/- per month.
(b) it is made clear that the monthly amount of Rs. 6,000 /- which she has received from respondent towards the maintenance shall be adjusted towards the enhanced maintenance awarded to her.
(c) petitioner shall get the aforesaid maintenance from the respondent during her lifetime or till she gets remarried after divorce or the law permits.
(d) any amount paid by the respondent as maintenance in any other proceedings for the period in question shall be liable to be adjusted in the maintenance amount awarded to the petition.
(e) the respondent shall also pay an amount of Rs.15,000/- as litigation expenses to the petition.
(f) arrears of maintenance will be paid within three months from today.
23. This petition is accordingly disposed of."

5. From a perusal of the impugned order, it is evident that the Family Court duly acknowledged the substantial increase in the Respondent's income. This finding was based on the salary slip of the Respondent for the month of August 2019, a document not disputed by either party. As per the said salary slip, the Respondent's gross salary was INR 51,812/-, with a net salary of INR 36,782/- after deductions. The Family Court also considered the salary slip for August 2024, which recorded a gross salary of INR 81,360/- and a net salary of INR 63,330/-. Taking into account this considerable enhancement in the Respondent's earnings, along with the general monthly expenditure borne by the Petitioner, the Family Court rightly concluded that a graded enhancement of the maintenance amount was warranted.

6. With regard to the Petitioner's son, the Family Court observed that he

had attained the age of majority. Although the Petitioner claimed that her son is physically weak, undergoing medical treatment, and dependent on her for maintenance, the Court noted that she had failed to produce any evidence to substantiate his alleged incapacity to support himself. Furthermore, the Court took into account that the son was not pursuing any educational course. Accordingly, the Court rightly concluded that, having attained majority and in the absence of any evidence demonstrating his inability to maintain himself, the Petitioner's son was not entitled to claim maintenance from the Respondent. The Petitioner also argued that the Family Court failed to consider the Respondent's withdrawal of INR 16 lakhs from his GPF. However, such a withdrawal does not constitute additional income that would justify a proportionate increase in the maintenance awarded to the Petitioner.

7. With respect to the Petitioner's contention regarding the appreciation of the judgment of this Court in ***Annurita***, it is pertinent to note that the said decision lays down a method for dividing the family resource "cake" into two portions for the husband, acknowledging that he incurs additional expenses in the course of earning, and one share each for the other members of the family. Applying this principle to the facts of the present case, the Respondent's current net salary of INR 63,330/- would entitle the Petitioner to one-third of that amount, after reserving two shares for the Respondent. This calculation yields an approximate figure of INR 20,000/-. Accordingly, the enhancement in maintenance granted by the Trial Court was not only reasonable, but also proportionate to the Respondent's increased income.

8. In these circumstances, the Court finds no ground to interfere in the impugned judgment, so as to grant further enhancement to the Petitioner.

9. In light of the foregoing, the present petition is dismissed.

SANJEEV NARULA, J

APRIL 22, 2025
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