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

+ CRL.REV.P. 236/2021, CRL.M.A. 11794/2021, CRL.M.A.
8392/2024, CRL.M.A. 24948/2024, CRL.M.A. 13738-13739/2025
GAUHAR HUSSAINPetitioner

Through: Mr. Amit Khanna and Mr. Gauhar
Hussain, Advocates.

versus

MUMTAZ ARA & ORS.Respondents

Through: Mr. Niraj Chaudhary and Ms. Nisha,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **01.08.2025**

1. The present revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973¹ assails the judgement dated 14th December, 2020,² passed by the Principal Judge, Family Court, Central District, Tis Hazari Court, Delhi, whereby the Petitioner has been directed to pay maintenance to the Respondents.

2. The brief factual matrix leading to filing of the instant petition is as follows:

2.1. The Petitioner got married to Respondent No. 1 on 12th January, 2000 according to Muslim rites and customs with the *Mehar* amount was fixed at INR 51,000/-. From this marriage, parties have one daughter (Respondent No. 2).

¹ "Cr.P.C."



2.2. Marital relations deteriorated swiftly. According to Respondent No. 1, she was persistently neglected and subjected to cruelty by the Petitioner. Thereafter, the Petitioner allegedly left her, during her pregnancy, at her parental home on 13th June, 2000. She later commenced legal proceedings, which included the registration of an FIR alleging cruelty.

2.3. On 27th February, 2003, Respondent No. 1 instituted proceedings under Section 125 of the Code of Criminal Procedure, 1973,³ seeking maintenance for herself and her then minor daughter. These proceedings remained pending for nearly seventeen years.

2.4. Meanwhile, by order dated 27th October, 2007, the Family Court directed the Petitioner to pay interim maintenance of INR 2,500/- per month to each Respondent. The Petitioner's application under Section 127 Cr.P.C. seeking cancellation of this order was dismissed. As the interim maintenance order itself was never challenged, it attained finality.

2.5. Ultimately, by judgment dated 14th December, 2020, the Family Court determined the maintenance payable in the following terms:

“41. Considering all the applications, as filed by the parties, the replies and pleadings on those applications, coupled with the evidence led by the parties in the present case, in my opinion the petitioners are entitled to the maintenance as follows:-

(A) From the date of filing of the petition till 27.10.2007 i.e. the date on which the Interim maintenance was granted Rs. 2500/- per month to each petitioner.

(B) From 28.10.2007 till 30.06.2014 Rs. 10000/- per month for each of the petitioners.

(C) As the respondent had taken voluntarily retirement in July, 2014, the maintenance amount has to be reduced according to the pension being received by the respondent from 01.07.2014 till the time both the petitioners are entitled to receive the maintenance, as per law. Thus, petitioner no.1 will be entitled to receive Rs. 8000/-

² “the impugned judgement”

³ “Cr.P.C.”



per month w.e.f. 01.07.2014 till she is entitled to receive the same, as per law. Petitioner no.2 will be entitled to receive maintenance of Rs. 8000/- per month till she gets married or starts earning, whichever is earlier, as it is the settled law that even u/s 125 Cr.P.C. daughters should be entitled to receive maintenance till they start earning or get married. Petitioners are also entitled to get one time litigation expenses to the tune of Rs. 50000/-."

3. Aggrieved by the order of the Family Court, the Petitioner has approached this Court in revision, challenging both the reasoning and the quantum of maintenance awarded.

4. Counsel for the Petitioner raises the following grounds in support of the Petition:

4.1. The impugned judgment is arbitrary and overlooks material evidence on record. The relevant documents placed before the Family Court were either disregarded or insufficiently considered.

4.2. Respondent No. 1 has been living separately without just cause. She is the one who deserted the matrimonial home, not the other way around. A spouse who refuses to live with the other without sufficient reason is disentitled to claim maintenance under law.

4.3. Respondent No. 1 withheld material facts in the proceedings before the Family Court. She did not, of her own accord, disclose her academic qualifications [M.Phil, Ph.D., and B.Ed degrees] or her prior employment with All India Radio, before marriage, both of which she acknowledged only when confronted in cross-examination. It is further alleged that she failed to reveal her tenure as a research scholar with the Indian Council of Historical Research between 2004 and 2006, during which she received a fellowship of INR 1,32,000/-. This, too, was admitted only during cross-examination. Moreover, she concealed her authorship and publication of a book from



which she continues to derive royalties, as well as the existence of certain bank accounts held in her name.

4.4. Both Respondents are well-qualified individuals, with sufficient educational qualifications and professional competence to sustain themselves independently. However, the Family Court failed to properly assess their earning potential and, in consequence, erroneously concluded that they required maintenance for their sustenance.

4.5. The Petitioner lacks the financial capacity to comply with the maintenance awarded by the Family Court. He survives solely on a monthly government pension of approximately INR 35,000/-, from which he must service personal loan instalments of INR 7,242/-. After meeting these obligations, he is left with limited means, making it impossible for him to both meet the monthly maintenance awarded and clear the accumulated arrears, which he estimates at around INR 35,00,000/-. He attributes the accumulation of arrears to procedural delays allegedly caused by Respondent No. 1 during the prolonged pendency of the proceedings.

5. The Court has considered the aforementioned contentions. At the outset, it must be emphasized that this Court is exercising its revisional jurisdiction, which is circumscribed. The Supreme Court in *New India Assurance Co. Ltd. v. Krishna Kumar Pandey*⁴, explained that the revisional power is intended to correct patent defects, jurisdictional errors, or manifest errors of law. Such power is to be exercised only where there is manifest perversity or unreasonableness, miscarriage of justice, or a complete misreading of records in the findings of the lower courts. The High Court, must not sit as a court of appeal to re-evaluate the findings of the lower courts. In *State of*



Kerala v. Puttumana Illath Jathavedan Namboodiri⁵, the Supreme Court underscored the scope of revisional jurisdiction of the High Court, to the following effect:

“5. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.....”

6. These pronouncements make it clear that the inquiry is confined to examining whether the impugned judgment suffers from such patent illegality or perversity as to justify interference.

7. In the present case, upon examining the record and the reasoning adopted by the Family Court, this Court finds no such defect or glaring irregularity that would warrant revisional intervention.

8. It is apposite to first address the legal position on the entitlement of Respondent No. 1 to maintenance, even assuming, for the sake of argument, that the divorce relied upon by the Petitioner is valid. The Family Court, without adjudicating the validity of the alleged divorce, held that such entitlement would nonetheless subsist. This view is consistent with the law laid down by the Supreme Court in ***Danial Latifi v. Union of India***,⁶ which affirms that a divorced Muslim woman is entitled to claim maintenance under Section 125 Cr.P.C. unless she has remarried. As there is no material

⁴ 2019 SCC OnLine SC 1786.

⁵ (1999) 2 SCC 452.



on record to suggest that Respondent No. 1 has remarried, there is no basis for this Court to depart from that settled position. Insofar as Respondent No. 2 is concerned, the legal position is equally clear. In *Noor Saba Khatoon v. Mohd. Quasim*,⁷ the Supreme Court held that children of Muslim parents are entitled to maintenance under Section 125 Cr.P.C. until they attain majority or are able to maintain themselves, whichever is earlier, and, in the case of female children, until their marriage. Applying this principle, the Family Court's direction regarding Respondent No. 2's maintenance warrants no interference.

9. Now, turning to the plea of desertion. The Petitioner argues that Respondent No. 1 wilfully and without just cause refused to cohabit with him, thereby forfeiting her right to maintenance under Section 125(4) Cr.P.C. The Family Court, however, found that the Petitioner himself admitted to having left Respondent No. 1 at her parental home during her pregnancy and never making any attempt to bring her back. In the absence of any credible material to establish that Respondent No. 1 left his company without sufficient reason, the Family Court was justified in rejecting this plea. The burden to prove such refusal rested squarely on the Petitioner, and on the record as it stands, that burden has not been discharged.

10. As to the allegation that Respondent No. 1 concealed income sources, specifically, the receipt of a research fellowship from the Indian Council of Historical Research between 2004 and 2006 and the publication of a book in 2003, the impugned order reveals that the Family Court has addressed and rejected this contention. It found that these were isolated, dated, and non-

⁶ (2001) 7 SCC 740

⁷ (1997) 6 SCC 233



recurring sources of income, insufficient to establish a sustainable capacity for self-support. This approach is in line with the principle articulated by the Supreme Court in *Chaturbhuj v. Sita Bai*,⁸ which clarifies that the test under Section 125 Cr.P.C. is not merely whether the wife had, at some point, an earning opportunity or a potential to earn, but whether she presently possesses sufficient and regular means to maintain herself with dignity. On the evidence adduced, the Petitioner failed to demonstrate that either Respondent enjoyed a consistent and adequate income stream.

11. The related argument, that Respondent No. 1's educational attainments make her capable of earning, was also rightly rejected by the Family Court. Even where a spouse is well-qualified, entitlement to maintenance cannot be denied in the absence of proof of actual and gainful employment. In *Shailja & Anr. v. Khobbanna*⁹ the Supreme Court drew a clear distinction between the capacity to earn and the fact of earning, holding that it is the latter which is decisive for determining whether maintenance should be awarded. Here, no credible material has been placed on record to show that Respondent No. 1 has been engaged in any regular employment or has an income adequate for her sustenance. This Court, therefore, finds no merit in the Petitioner's contention on this score.

12. As to the plea of financial incapacity, the Family Court rightly noted the admitted fact that the Petitioner was receiving a government pension of approximately INR 35,000/- per month at the relevant time, which, the Court is apprised, has since increased to about INR 40,000/- per month. It also took into account that the Petitioner had received post-retirement

⁸ AIR 2008 SC 530

⁹ (2018) 12 SCC 199



benefits of nearly INR 16,00,000/-. These findings remain uncontroverted, as no material has been placed before this Court to challenge them. The inability to pay maintenance must be established through cogent evidence; it cannot rest on bare assertions. The Supreme Court in *Shamima Farooqui v. Shahid Khan*¹⁰ observed that a husband cannot evade his statutory duty to maintain his wife and children by pleading financial constraints when his overall means suggest otherwise, nor can he deliberately reduce his income to avoid such obligations. Similarly, in *Rajnish v. Neha*,¹¹ the Court emphasised that maintenance must be commensurate with the status of the parties and the husband's capacity to earn, rather than limited to his present earnings alone. Viewed against these principles, the maintenance awarded by the Family Court is proportionate to the Petitioner's means and consistent with the standard of living he can reasonably afford. This Court, therefore, finds no basis to disturb that determination.

13. The Petitioner further contends that outstanding arrears of approximately INR 35,00,000/- have accumulated, allegedly due to delay tactics on the part of Respondent No. 1, and pleads financial incapacity to discharge them. The Respondents dispute this figure, asserting that the arrears stand at INR 22,80,000/-. Be that as it may, it is evident that the arrears have accrued from two sources: the interim maintenance orders that remained operative throughout the prolonged pendency of the proceedings, and the maintenance awarded under the impugned judgment. These orders were neither stayed nor set aside at any stage. It is well settled that so long as an order of maintenance subsists, compliance with it is mandatory, and

¹⁰ 2015 (5) SCC 705

¹¹ 2012 (2) SCC 324



such obligation cannot be avoided by attributing delay to the opposite party without any legal finding to that effect. The mere pendency of proceedings, absent a modification or suspension of the order, does not absolve a party from its enforcement.

14. In light of the foregoing discussion, this Court finds no infirmity or perversity in the reasoning adopted by the Family Court. The Petitioner has not demonstrated any material irregularity, error of law, or jurisdictional defect that would warrant the exercise of revisional powers under Sections 397 and 401 Cr.P.C. Revisional jurisdiction is not a forum for substituting the Court's own view merely because another conclusion might also have been possible. Since the decision under challenge is supported by the evidence on record and is consistent with settled legal principles, it ought not to be disturbed. Where substantial justice has been done, interference serves no purpose but to unsettle what has been correctly decided.

15. Accordingly, this Court finds no merit in the present revision petition. The impugned judgment dated 14th December, 2020, being well-reasoned and legally sound, calls for no interference.

16. The petition is dismissed along with all pending applications, if any.

SANJEEV NARULA, J

AUGUST 1, 2025

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