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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 207/2025 & CRL.M.A. 13842/2025**
AKASH SHRIVASTAVAPetitioner

Through: Mr. Umang Tyagi and Mr. Zuber Ali,
Advocates with Petitioner (through
VC).

versus

SWATI VERMA & ORS.Respondents
Through: Mr. Sudhanshu Tomar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
11.09.2025

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1. The present revision petition under Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 401 of the Code of Criminal Procedure, 1973²) assails the order dated 17th February, 2025 passed by the Family Court, Shahdara District, Karkardooma Courts, Delhi in MT No. 498/2019 titled “*Swati Verma & Ors. v. Akash Srivastava.*” By the impugned order, the Family Court, in exercise of jurisdiction under Section 125 Cr.P.C., directed the Petitioner to pay a sum of INR 20,000/- per month each to Respondents No. 2 and 3, the two minor children, along with their school fees.

2. Respondent No. 1 asserts she was married to the Petitioner on 14th September, 2010, with the marriage being formally registered at Kanpur on

¹ “BNSS”



23rd October, 2018. The Petitioner disputes the validity and subsistence of the marriage, but unequivocally admits his paternity of Respondents No. 2 and 3, who remain in the custody and care of Respondent No. 1. For present purposes, that admission is decisive. The impugned order grants maintenance only to the minor children, and their right to be maintained flows directly from the undisputed father–child relationship. In that context, the Petitioner’s denial of marriage is a collateral plea of no legal consequence; once paternity is acknowledged, the statutory duty under Section 125 Cr.P.C. to provide for the children’s upkeep is engaged, irrespective of any controversy surrounding the marital tie.

3. Respondent No. 1 instituted proceedings under Section 125 of the Cr.P.C. seeking maintenance both for herself and the two minor children. Upon consideration of the income affidavits and the evidence led by the parties, the Family Court declined maintenance to Respondent No. 1 but awarded maintenance in favour of Respondents No. 2 and 3. The relevant findings of the Family Court to this effect are as follows:

11. Firstly, I am taking up issue of territorial jurisdiction raised by the respondent in written statement / reply. L.d. Counsel for respondent has argued that this Court has no territorial jurisdiction to entertain this petition, as the Petitioners have never stayed within the territorial jurisdiction of this Court and even this fact has already been concluded by L..d. MM under DV Act that the Petitioner no. I never resided at the given address. It is further argued that the Petitioners have manipulated a rent agreement just to invoke territorial jurisdiction of this court and this petition ought to be returned to the Petitioners to file afresh before Ghaziabad Court where the Petitioners had been residing at the time of filing of this case. On the other hand, Ld. Counsel for the Petitioners has argued that the Petitioners have filed this petition on the basis of rent agreement and the Petitioners were residing at said address at the time of filing of this case, due to this court has territorial jurisdiction to

² “Cr.P.C.”



entertain this petition and same is liable to be disposed off on merit.

12. Admittedly, Section 126 of CrPC deals with territorial jurisdiction of a court to deal with a petition u/s 125 of CrPC. Any petition may be filed where either the Petitioner or the respondent has been residing. Petitioners have filed this petition on the basis of a rent agreement and the respondent has nowhere disputed it. PW1 has categorically deposed that the respondent deserted him and the bank pressurized her to vacate the premises, whereas RWI has also admitted that he defaulted in payment of EMIs and settled loan when the Petitioners left the premises. PW1 has further admitted that she had been residing at Indirapuram, Ghaziabad during the period from January, 2019 to 31.03.2024 and earlier left her matrimonial home in bare clothes and educational documents and started living in a rented accommodation, which supported the version of the Petitioners. In fact, PW1 has duly proved that she along with her children shifted to a rented accommodation and has also placed on record said rent agreement pertaining to address falling within the territorial jurisdiction of this Court. Rent agreement dated 25.06.2019 is on record and the respondent has not led any evidence to prove that it is a forged and fabricated document. In fact, testimony of PW1 is slightly contradictory as, on the one hand, she has deposed that she had been residing at Indirapuram, Ghaziabad during the period from January, 2019 to 31.03.2024 and left her matrimonial home on 01.04.2024, whereas she has also deposed that she stayed on rent within the jurisdiction of this court. In fact, testimony of PW1 duly supported by rent agreement which has proved that the Petitioners stayed within the jurisdiction of this court at the time of filing of this case and this court has territorial jurisdiction to entertain this case and plea taken by the respondent has no substance.

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19. Petitioner Nos. 2 and 3 are minor sons and this fact is not disputed by the respondent. PW1 has proved that both children were born out on 03.01.2012 and 15.08.2013 respectively. RWI has also proved that he used to reside with the Petitioner no.1 in live-in relationship and both children were borne out of this relationship. Respondent has also filed a child custody case against the Petitioner no. 1 regarding custody of both children namely Divyansh and Aakansh. Even birth certificates of both children are Mark E and F, which have duly corroborated this relationship between the Petitioner no. 2 & 3 and the respondent.

20. Both children are aged about 10 and 11 years and are studying in a reputed school at Greater Noida, UP. Respondent has filed his affidavit of income and assets and has acknowledged that both children are in custody of the Petitioner no.1 and studying in J.M. International School.



Respondent has claimed that he is not earning, whereas earlier he was earning a substantial amount and has acknowledged his last drawn salary Rs. 1,70,000/- pm in the year 2020, whereas he has not filed his ITR. However, the Petitioners have proved his ITR filed before the court of MM under DV Act as Ex.PW1/19 (colly), as per which, he carried Rs. 12,80,100/- during the financial year 2016-17, which reduced to Rs. 2,05,700/- with refund of Rs. 15,960/- in next year. RWI has admitted that he has paid housing loan of flat at Indirapuram, Ghaziabad in the month of June, 2024 itself and now said flat stated to be in possession of his sister. It is further admitted that property remained in default of loan amount during the period from 2020-24 and probably just to turn out the Petitioners from said property. Respondent has claimed that he has not been earning and is dependent upon his pensioner mother and earning sister, which is not believable in any manner. Respondent has been staying in an expensive city like Pune and that too just as a dependent upon his family members, whereas he had been working there and was earning and drawing a handsome salary.

21. In fact, the respondent has been doing work but has concealed from this Court and his version that he has been earning merely Rs. 15,000/- per month is not believable in any manner and hereby discarded. It is further beyond explanation that the respondent has not been earning but still has borrowings of Rs. 24 Lacs. In fact, earning of the respondent ought to be considered according to his last drawn income @ Rs. 1,70,000/- per month.

22. Respondent is father of both children and is liable to maintain them.

No doubt mother of both children is also earning but her earning is much lesser than respondent, due to the respondent is solely liable to maintain his both children. Respondent has no other dependency except the children as he has already admitted that his mother is pensioner and sister is also earning.

23. Keeping in view of facts and circumstances of the case, I hereby direct the respondent to pay school fees of both children on monthly basis directly to school and the Petitioner no.1 shall send copy of fees receipt of both children to the respondent at least 7 days prior to due date and the respondent shall pay fees directly to school. if he fails to pay school fees, then the Petitioner no.1 shall pay said school fess and shall recover from the respondent as default maintenance. Besides school fess, the respondent shall also pay Rs. 20,000/- per month to each child, which shall be payable by the respondent from the date of filing of this petition till they attain age of majority or start earning, whichever is earlier. Monthly maintenance shall be payable on 10th of each succeeding calendar month.

24. Any ad-interim/ interim maintenance in this petition or any other interim / regular maintenance in any other petition, if any shall also be



subject to adjustment. With these observations present petition is disposed of.

25. File be consigned to Record Room.”

4. The Petitioner who appears through video conferencing mechanism along with his counsel, advances the following submissions against the impugned order:

4.1. The Family Court has erred by misreading and misconstruing the income affidavit of the Petitioner. The Petitioner is at present unemployed and does not have a regular or fixed source of income. In the absence of cogent evidence establishing gainful employment or a steady income stream, the assumption of a higher earning capacity, is entirely speculative.

4.2. The findings in the impugned order are not supported by any reasoning or analysis of the material on record. The directions therefore rest on conjecture rather than substantiated financial assessment.

4.3. The Petitioner resides in a flat situated in Pune which, belongs to his sister. He is financially dependent on his aged mother, who draws only a modest pension, and on his sister, who works as an insurance agent. Against this backdrop, the quantum of maintenance directed, INR 20,000/- per month to each child along with school fees, is disproportionate, arbitrary, and beyond his means of compliance.

4.4. The Family Court failed to note that it lacked territorial jurisdiction since Respondent No. 1 resides in Ghaziabad. Earlier, the proceedings under the Protection of Women from Domestic Violence Act, 2005,³ the Mahila Court, Shahdara were dismissed on 15th July 2022 for lack of territorial jurisdiction. Taking a contrary view in the present case amounts to a clear

³ “DV Act”



jurisdictional error.

4.5. Respondent No. 1 is withholding the Petitioner's important documents and also does not allow the Petitioner to meet Respondents No. 2 and 3.

5. The Court has considered the above-noted facts and contentions. At the outset, it bears repetition that the impugned order under Section 125 of Cr.P.C. concerns only the minor children (Respondents No. 2 and 3). The Family Court, on examining the income affidavits, bank records, and the Petitioner's own admissions, found that he had understated his means. Although the Petitioner had claimed to be earning merely INR 15,000/- per month, he had previously drawn a salary of INR 1,70,000/- per month in 2020, continued servicing home-loan EMIs until June 2024, and disclosed borrowings of about INR 24,00,000/-. These circumstances drew inconsistencies with his plea of financial hardship. The Family Court accordingly assessed his capacity with reference to his last known earnings, making a reasonable estimation based on the pleadings, financial disclosures, and overall status of the parties.

6. This approach of the Family Court is consistent with settled principles governing the determination of maintenance, which permit a degree of guesswork where income is concealed, inadequately disclosed, or not verifiable. In such cases, courts may draw reasonable inferences from factors such as qualifications, work history, lifestyle, liabilities, and overall standard of living, rather than rely solely on self-serving affidavits.⁴ The use of the Petitioner's last drawn salary as a benchmark, given his prior earnings

⁴ **Rajnish v. Neha**, (2021) 2 SCC 324; **Bharat Hegde v. Saroj Hegde**, 2007 SCC OnLine Del 622.



and credentials, is, therefore, a fair and reasonable application of these principles.

7. Further, the paternal relationship between the Petitioner and Respondents No. 2 and 3 is undisputed. The children are in Respondent No. 1's custody and are studying in a reputed school. In law, a father's duty to maintain his minor children is statutory and non-derogable once paternity is established; it does not hinge on the status of the marital relationship or on inter se disputes between the adults. The Supreme Court has consistently held that a healthy, able-bodied man cannot evade his responsibility to maintain his children by pleading limited means or other excuses.⁵ While the mother's income may affect the apportionment, it does not absolve the father of his obligation.

8. The two minors (aged about 10 and 11 years) require steady support for nutrition, healthcare, clothing, transport, extracurriculars and schooling. Direct payment of school fees to the institution, with a fallback mechanism, properly secures their education. The monthly maintenance of INR 20,000/- for each child is a balanced amount, reasonably aligned with the Petitioner's last-drawn income and the family's social background. The Supreme Court has elucidated in its judgement in **Chaturbhuj v. Sita Bai**⁶ that maintenance must be "reasonable and realistic": it should not be oppressive to the payer, yet cannot be so meagre as to drive dependents to penury. While there exists no straight-jacket formula for the same, the assessment of the Petitioner's income and the consequent award in the present case bears the stamp of reasonableness and meets the essential needs of the dependents.

⁵ *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705; *Anju Garg v. Deepak Kumar Garg* (2022) 4 SCC 443).



9. The jurisdictional objection is equally untenable. Section 126(1) of Cr.P.C. permits proceedings where either the husband or the wife has been residing. The Family Court recorded, on evidence, that Respondent No. 1 and the children were residing within its territorial jurisdiction, supported by a rent agreement dated 25th June 2019. The said finding is a mixed question of fact and law. Relying on the previous dismissal of a DV Act application for lack of jurisdiction is not valid, especially as it pertained to a different period, address, and statute. Such dismissal neither acts as *res judicata* nor affects proceedings under Section 125 of Cr.P.C., which has its own rules for venue based on current residence. Besides, in revision, this Court does not re-examine such factual findings unless there is clear perversity, which is not present here.

10. The remaining arguments do not help the Petitioner's case either. The claim of unemployment and dependence on family members is contradicted by his financial history, showing earning capacity beyond self-declared income. Second, the claim that the earlier order was vague is without merit. The impugned order properly evaluated the evidence, financial records, and children's needs before providing a clear and reasonable relief. Further, issues of child access or withheld documents are not relevant with regards to the present matter and should be addressed in separate guardianship or related proceedings. These do not affect the children's entitlement to support under Section 125 of Cr.P.C.

11. Lastly, the Court also has to take stock of the limited scope of interference at the stage of revision. Under Section 442 BNSS (formerly Section 401 of Cr.P.C.), interference lies only for jurisdictional error, patent

⁶ *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316.



perversity, or manifest miscarriage of justice, and not to substitute an alternative view on quantum if the Family Court's view is reasonably open on the record.⁷ The impugned order applies the correct tests, marshals the material, and fashions relief proportionate to need and capacity. No ground for revisional correction is made out.

12. For these reasons, the petition stands dismissed, along with all pending applications.

SANJEEV NARULA, J

SEPTEMBER 11, 2025/as

⁷ *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452.