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

+ **CRL.REV.P. 328/2021 & CRL.M.A. 16428-16429/2021, CRL.M.A. 6738/2023**

RAJAN ARORA

.....Petitioner

Through: Ms. Ruchira Goel, Ms. Ritika Rao
and Ms. Veera Mahuli, Advocates.

versus

SUBHASH CHANDER

.....Respondent

Through: Mr. Vijay Datt Gahtori, Mr. Priyank
Kharkwal and Mr. Vishal Bohra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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22.01.2025

1. The Petitioner invokes Section 397(1) of the Code of Criminal Procedure, 1973¹ read with Section 19(4) of the Family Courts Act, 1984 seeking revision/ quashing of final order dated 22nd June, 2020² passed in MT. No. 717/2016 (CC No. 164/2016). By this order Additional Principal Judge, Family Court, directed the Petitioner to pay an amount of INR 4,000/- per month from 01st June, 2019 onwards as maintenance to his father, the Respondent.

¹ "Cr.P.C."

² "Impugned order"



2. Briefly stated, the facts of the case are as follows:

2.1. The Respondent, married to Mrs. Usha Rani in 1972, and has two children from the marriage—namely, the Petitioner and Rishi Arora.

2.2. The Respondent alleged that he faced hostility and desertion at the hands of his wife and both sons due to familial disputes, leaving him with no choice but to shift to Ludhiana and live with his brother. He further stated that he has no knowledge of the whereabouts of his elder son, Rishi Arora.

2.3. Claiming that he is a senior citizen with multiple medical ailments and has no independent source of income, the Respondent sought maintenance of INR 10,000/- per month under Section 125 of the Cr.P.C. from the Petitioner.

2.4. The Petitioner, in his opposition, denied the Respondent's claims and argued that the Respondent was financially independent, having previously sold a property in Vikaspuri for INR 30 lakhs. He further contended that he was unable to financially support the Respondent due to his own family obligations. Considering all such circumstances, on the basis of the evidence led by the parties, the Trial Court, through Impugned order, came to the following conclusion:

“19. I have considered the submissions made on behalf the parties. My findings on various issues is as follows:

Issue No. (1). Whether is petitioner is entitled to maintenance as prayed? OPP

Issue No. (2). Whether the respondent is under no obligation to pay the maintenance? OPR

20. The above two issues are connected and are taken up together.

21. There is no dispute between the parties to this petition that the petitioner is the biological father of the respondent and the respondent was born from the wedlock between Mrs. Usha (RW2) and the petitioner.

22. The petitioner in his evidence has deposed on the same lines as his petition. The respondent of his own volition did not choose to cross examine the petitioner. There is no evidence or material on record to



show that petitioner has any source of income to live on his own. The petitioner is now 70 years of age and admittedly suffering from Asthma. In these circumstances, the respondent would remain liable to maintain the petitioner. The liability of the respondent is not dependent on the matrimonial disputes between the petitioner and RW-2. The liability of the respondent to maintain the petitioner would also not come to an end only because the petitioner has filed the present petition against one of his sons and not against the other son. At best, that may be a factor while deciding the quantum of the amount to be paid by the respondent to the petitioner as maintenance.

23. Issues nos. (1) and (2) are thus decided in favour of the petition.

Issue No. (3): Relief.

24. The respondent is now about 42 years of age as would be apparent from affidavit of income, assets and expenditure filed by him. Though the respondent claims that he is working part time and earning Rs.5000/- per month but in his cross-examination, the respondent admitted that he is doing welding job, off and on, and this would show that the respondent is a skilled person having the skill of welding. The respondent is a resident of Delhi which is a metropolitan city having ample opportunities for such work. The respondent in his cross-examination admitted that earlier he was having a car. From cross-examination of the respondent it would appear that he maintained that car at least till the year 2014. The respondent during his cross-examination denied that he is maintaining an Esteem car. The respondent in his affidavit of income, assets and expenditure has also disclosed that he owns his scooter. As per him, total family expenditure of his family is Rs 15,300/- per month which is jointly paid by him and his wife. In the facts and circumstances of this case, the income of the respondent for the purpose of the present case is assessed at Rs. 16,000/- per month. Moreover, the wife of the respondent is also working as a teacher though there is a dispute as to whether she is working on contract basis or as a confirmed teacher.

25. The respondent in his affidavit has stated that he is living with his wife, one child and his mother (wife of the respondent). The respondent was ordered to pay Rs. 2500/- per month as interim maintenance vide order dated 19.05.2017. The petitioner has not filed the petition against the other son on the ground that he was not aware of the particulars of the other son. The residential address of the other son was disclosed by the respondent in his written statement but even then, no steps were taken by the petitioner against the other son.

26. In the facts and circumstances of this case, I am of the opinion that the ends of justice would be met if the respondent is directed to pay to the petitioner an amount of Rs.4000/- per month from 01.06.2019 till the lifetime of the petitioner. The petitioner shall also remain entitled to the amount of Rs.2500/- per month from the date of filing of this petition that is 16.09.2016 till 31.05.2019. it is ordered accordingly.



27. It is made clear that any payment received by the petitioner towards maintenance from the respondent herein would have to be adjusted from the amount payable under the present judgement

28. Arrears be paid to the petitioner by the respondent within a period of two months.

29. Issue No. (3) is decided accordingly.

29. Needless to say that the petitioner shall remain entitled to seek further maintenance from his other son if permissible in law.

30. The present petition is disposed of with the above directions. The file be consigned to record room."

3. Counsel for the Petitioner argues that the Impugned order is perverse and is thus liable to be quashed. She argues that the order overlooks the Petitioner's unequivocal stance in his application dated 23rd March, 2018, seeking modification of order dated 21st August, 2017, passed by the Trial Court, directing the Petitioner to pay litigation costs to the Respondent. In the said application, the Petitioner had stated that, while he was unable to provide financial support to his father in Ludhiana in the form of monthly maintenance, he was willing to care for and maintain his father at his home in Delhi. It is argued that, in these circumstances, the invocation of Section 125 of the Cr.P.C. by the Respondent is misconceived and legally untenable, as the essential precondition for its applicability—proof of refusal or neglect—was not established. The Trial Court, it is contended, failed to adequately consider this crucial detail. The Petitioner had expressed his willingness to care for his father, albeit with the condition that he reside with him in Delhi. By disregarding this critical fact, the Trial Court has exceeded the scope and jurisdiction conferred under Section 125 of the Cr.P.C. The Counsel further emphasizes that for maintenance to be granted under this provision, the dependent parent must demonstrate both that the person from whom maintenance is sought has sufficient means and that such person has



“neglected or refused” to support the dependent.

4. It is further contended that the Petitioner has additional financial responsibilities, as he is required to support his mother, wife, and son, all of whom are entirely dependent on him. Consequently, the Petitioner argues that he lacks the financial capacity to pay the maintenance amount sought by the Respondent. Additionally, it is asserted that the Trial Court failed to consider that the Respondent has sufficient means to sustain himself, as evidenced by his bank statements, which purportedly reflect his financial independence.

5. The Court has considered the aforementioned contentions but remains unpersuaded.

6. The law is well-settled that the primary object of Section 125 Cr.P.C. is to prevent vagrancy and destitution. A parent’s right to claim maintenance from their child cannot be made conditional upon the parent’s willingness to reside with the child, particularly in situations where cohabitation is either impractical or unjust. In the present case, it is an undisputed fact that the Respondent is divorced from his wife, who currently resides with the Petitioner. Expecting the Respondent to return to a home shared with his estranged spouse, merely to accommodate the Petitioner’s preferences for fulfilling his maintenance obligations, would be unreasonable and unjust. Such a demand, in the opinion of the Court, would amount to a grave denial of dignity and fairness to the Respondent.

7. The Respondent is a 70-year-old individual suffering from medical ailments, without any income or property to sustain himself. The Petitioner’s contention regarding his financial constraints was duly considered by the Trial Court, which assessed his income as INR 16,000/- per month and



determined INR 4,000/- as a reasonable contribution for the Respondent's maintenance. The amount is modest and necessary for the Respondent's basic sustenance.

8. The argument regarding the Respondent's alleged financial independence, based on the sale of a property in Vikaspuri, is unsubstantiated. The Petitioner did not present any cogent evidence to establish that the proceeds from the sale are still available to the Respondent or are sufficient to meet his ongoing needs. Pertinently, the Petitioner did not cross-examine the Respondent during the Trial Court proceedings. Thus the Respondent's testimony regarding his financial condition to remain unchallenged. The Trial Court's order is fair, reasonable, and in consonance with the law. The amount of INR 4,000/- per month is not excessive, given the Respondent's age and medical condition.

9. In such circumstances, the findings of the Trial Court are supported by evidence and do not warrant interference by this Court in its revisional jurisdiction.

10. For the foregoing reasons, following directions are issued:

10.1. The present revision petition is dismissed, and the Impugned Order dated 22nd June, 2020, is upheld.

10.2. The interim stay, on the execution petition, granted by this Court *vide* order dated 3rd December, 2021, stands vacated.

10.3. The Petitioner is directed to clear all arrears of maintenance within six weeks from the date of this order, failing which the Respondent shall be at liberty to take appropriate steps in accordance with law.



11. The pending applications, if any, stand disposed of.

JANUARY 22, 2025
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SANJEEV NARULA, J