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

+ CRL.REV.P. 906/2019

BINDU & ORS

.....Petitioners

Through: Mr. Jagat Rana, Advocate.

versus

UMESH KUMAR CHHIKARA

.....Respondent

Through: Mr. Shivinder K. Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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17.01.2025

1. The present petition has been filed under Section 397 of the Code of Criminal Procedure, 1973¹ read with Section 19(4) of the Family Courts Act, 1984 impugning order dated 27th May, 2019 passed by the Principal Judge, Family Court, South-West District, Dwarka Court, in MT. Case No. 609/2018.

2. Through the impugned order, the Family Court decided the Petitioners' application seeking interim maintenance and Petitioners No. 2 and 3 were granted maintenance of INR 10,000/- each. Petitioners, however, remain dissatisfied and have impugned the said order seeking enhancement.

3. Since the impugned order is an interim order dated 27th May, 2019, at the outset, the Court queried about the progress of the case over the past five years. In response, it was informed that the proceedings before the Family Court are still pending and are currently at the stage of cross-examination of

¹ "Cr.P.C."



Petitioner No. 1.

4. Counsel representing the Petitioners highlights the change in the circumstances since the passing of the impugned order. He argues that Petitioner No. 1 does not seek maintenance for herself but only for their children, i.e., Petitioners No. 2 and 3. He submits that Respondent, being the father of the children, is legally bound to provide adequate maintenance to Petitioners No. 1 and 2. Petitioners No. 2 and 3 are enrolled at Delhi Public School, Dwarka, where the quarterly fee for both children was INR 90,000/- at the time the impugned order was passed. This amount has since increased to approximately INR 98,000/- per quarter for both Petitioners. Additionally, it is submitted that Petitioner No. 1 bears all other expenses for transportation and their upbringing which includes their tuition fee, food, clothing etc. It is also highlighted that the earnings of Respondent, which has been recorded at INR 1,05,000/- per month in the impugned order, have since been enhanced to INR 1,28,224/- per month, which is an admitted fact, as borne out from the income affidavit. In view of the foregoing, the Petitioners request that the interim maintenance be increased to adequately cover the actual school fees of Petitioners No. 2 and 3.

5. Counsel for the Respondent strongly opposes the petition and defends the impugned order. He submits that the Respondent is currently employed as the Vice Principal at Modern School, with a carry home monthly salary of INR 1,10,000/-. Moreover, he argues that a significant portion of this income is consumed towards payment of EMIs amounting to INR 80,000/- per month for repayment of a housing loan, leaving him with limited funds to meet his personal expenses. Additionally, he points out that Petitioner No.1's income has increased since the passing of the impugned order, now



nearing INR 1,00,000/- per month. He further claims that the Respondent was previously unemployed due to the Petitioner's actions and highlights that Petitioner No. 1 is the daughter of a retired ACP from the Delhi Police, who subjected him to unnecessary harassment and compelled the school authorities to pressurize him to leave the services of the school. Counsel for Respondent emphasizes that the Respondent is doing his best to provide for Petitioners No. 2 and 3, and any additional maintenance would impose an undue financial burden on him, which he is incapable of bearing.

6. Counsel for Respondent has also emphasized that any change in circumstances should be addressed by filing an application under Section 127 of the Cr.P.C. to seek an enhancement of maintenance. In this regard, it is also pointed out that an application under Section 127 of Cr.P.C. was filed, but subsequently withdrawn. Filing of the application and its withdrawal is not disputed by counsel for Petitioner, however, he explains that the said application was filed subsequent to the filing of the present petition. Therefore, it was deemed more appropriate to request this Court to address the issue comprehensively.

7. The Court has considered the afore-noted contentions. As noted earlier, the impugned order pertains to interim maintenance, and the adjudication of final maintenance is still pending before the Trial Court, which will be determined on the basis of the evidence presented by the parties.

8. Be that as it may, it is undisputed that the incomes of both Petitioner No. 1 and the Respondent has increased. Both are salaried individuals whose earnings can be easily verified through their income tax returns. In fact, the figures noted above have not been disputed. Additionally, the fact that



school fees of Petitioners No. 2 and 3 has increased on multiple occasions, is also a fact that is not disputed. The last revision was in the year 2023, which increased the fees to INR 18,195/- per month per child.

9. The husband's legal duty to provide maintenance to his wife and children has been recognized by the Supreme Court in *Shamima Farooqui v. Shahid Khan*.² At the stage of interim maintenance particularly, the Court cannot determine the exact maintenance amount and some assumptions are necessary to factor in the needs of parties.³ Thus, considering the overall circumstances and the fact that the salary of both Petitioner No. 1 and Respondent has increased, in the opinion of the Court, it would be appropriate to modify the impugned order slightly.

10. In light of the foregoing, the Respondent is directed to pay an additional amount of INR 10,000/- (INR 5,000/- per child) per month effective from 1st April, 2023. The Respondent shall clear the arrears within three months from today, and the enhanced amount shall continue to be paid until the Family Court renders a final decision in MT. Case No. 609/2018.

11. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

JANUARY 17, 2025

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² (2015) 5 SCC 705

³ *Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622