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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 279/2025 & CRL.M.As. 17715/2025,**
17716/2025, 17717/2025, 17718/2025

DEVENDER KUMARPetitioner
Through: **Mr. R. Ilam P. and Mr. Aman Kumar,**
Advocates.
versus

KOMAL RANIRespondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
25.07.2025

1. The present revision petition filed under Section 438 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 397 read with Section 482 of the Code of Criminal Procedure, 1973²) is directed against order dated 7th March, 2025, passed by the Principal Judge, Family Court, North East District, Karkardooma Courts in MT. NO. 99/2020, titled ***Komal Rani v. Devendra Kumar***, whereby a monthly interim maintenance of INR 15,000/- each has been awarded to the Respondent and their minor daughter, during the pendency of the proceedings under Section 125 of CrPC.

2. The relevant portion of the impugned order, wherein the assessment of the incomes of the parties has been done, reads as follows:

¹ "BNSS"

² "CrPC"



“Issue No. 1 :

9. Section 125 Cr.PC provides that if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself can be directed to make a monthly allowance for her maintenance. In the explanation annexed to Section 125(1), wife has been included to mean a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

9.1 The marriage between the parties is not disputed and the respondent has not denied in his written statement that the petitioner No. 1 is not his legally wedded wife nor he has disputed the paternity of petitioner No. 2. Thus, the relationship between the parties stands established.

9.2 Both parties have levelled various allegations against each other of physical as well as mental cruelty. However, the petitioner in her cross-examination deposed that she was residing with the respondent in the rented house at the time of separation after the birth of daughter. She further deposed that the respondent abandoned her and left her and her daughter in the rented house where she waited for him for two months and then shifted to the house of her parents. There was no further cross-examination of the petitioner/PW1 on the said facts as deposed by her that she was abandoned by the respondent which means that the said fact has been admitted by the respondent. She further deposed that she is still willing to live with the respondent subject to condition that he shall not commit any cruelty upon her and keep her properly. On the contrary, the respondent/RW1 in his cross-examination flatly refused to take back the petitioner to the matrimonial home submitting that since she refused to go with him before the Mediation Centre. This cannot be a ground for the respondent to abandon the petitioners, more particularly petitioner No. 2 who is still a minor.

9.3 The petitioner has made various allegations of physical and mental cruelty against the respondent but there was no substantive cross-examination of those facts. In her cross-examination, she deposed that though she was physically and mentally tortured during her stay at the matrimonial home but she never complained to the police. Again, there was no further cross-examination except a suggestion later on that the respondent never committed any cruelty which was denied by her.

9.4. The cross-examination of the parties, as aforesaid, clearly show that the petitioners have been abandoned by the respondent and he is not prepared to take them to the matrimonial home which is sufficient for the purposes of the present petition to allow maintenance to the petitioners. Even otherwise, in proceedings under section 125 Cr.P.C., the wife is not supposed to prove the allegations of cruelty beyond reasonable doubt and they can be decided on preponderance of probability. It has been held in ***Nagendrappa Natikar vs. Neelamma AIR 2013 SC 1541*** that:



“Proceedings under Section 125 Cr. PC are quasi criminal and quasi civil in nature and therefore, the standard of proof is not as strict as in criminal cases. More so, the said Section 125 Cr. PC is a beneficial piece of legislation which strives to cure the social malady of neglect faced by the wife, children and parents.”

9.5 Thus, irrespective of the fact as to which spouse is guilty, once the petitioner has been able to prove that she has been abandoned by the respondent, coupled with her inclination to join the matrimonial company and refusal on part of the respondent to take her back, gives valid and sufficient reason to the petitioners to claim maintenance from him.

9.6 The petitioner claims that though she is a graduate and has completed DIET course before marriage but presently is unemployed. It cannot be disputed that she has to take care of her daughter who is presently aged about 07 years and studying in Class 1. Thus, she cannot be expected to take up any job at present. The respondent alleged that she is taking home tuition and is earning about Rs.10,000/- p.m. but could not place on record any proof about it or of her any other source of income and it remained only a vague allegation.

9.7 On the contrary, he himself deposed in the cross-examination that he was appointed as a regular teacher with Delhi Govt. on 24.7.2019 on a basic pay of Rs.44,900/- p.m. He has placed on record copy of his salary slip for the month of August 2024 wherein his net pay is reflected as Rs.63,284/- Though he claimed in the petition that he has the liability to maintain both his parents but in the cross-examination, he deposed that he has three more brothers who all are having their own business. He admitted that his parents are not solely dependent upon him and that his mother is owner of two properties. He also admitted that he had not taken any loan prior to the filing of present petition which means that the loan was taken only to mitigate the liability of maintenance. Even otherwise, any personal loan taken by the husband cannot absolve him from paying maintenance to the wife and children and it would only be his own liability which he has to meet from his share. Thus, the income of the respondent is admitted as also the fact that he has no other substantial liability except to maintain the petitioners. However, the petitioner has failed to prove any other source of income of the respondent, except his salaried income, as aforesaid. Thus the salary income of the respondent has to be considered as his only income. This issue is accordingly decided in favour of the petitioners.

ISSUE No. 2/Relief:

10. In ‘Annurita Vohra Vs. Sandeep Vohra, 2004 SCC Online Del. 192’, it was held that:

“On having arrived at net disposable income of the respondent



being the dominant earning spouse, it will have to be distributed amongst the dependent members of family in consonance with the requirements of the family members which is exactly what happens when the spouses are one homogeneous unit. As the wife is entitled to live in a manner commensurate with her husband's status are similar to the lifestyle enjoyed by her before the marital severance, a satisfactory approach would be to divide the net disposable income/family resource cake in two portions to the husband since he has to incur extra expenses in the course of making his earning, and one share each to the other members." (Relied upon in 'Bhaskar Singha Vs. Monika, Crl. Rev. No. 306/2021, decided by Hon'ble High Court of Delhi on 24.09.2021).

10.1 Thus, the net income of the respondent is to be distributed in accordance with the ratio in the said case. In the above background, the monthly income of respondent of Rs.63,284/- (rounded off to Rs.64,000/- considering the annual increment and dearness allowance which would have been granted to the respondent from August 2024) is therefore, to be distributed by giving two portions to him and one portion to each of the dependent. i.e. petitioners No. 1 and 2. Giving some provision to the parents of the respondent, a monthly maintenance @ Rs.15,000/- (Rupees Fifteen Thousand only) per month, is hereby granted to each of the petitioner (total Rs.30,000/- per month) payable by the respondent to them from the date of interim order, i.e. i.e.16.2.2021, till they are legally entitled.

The litigation expenses of Rs.10,000/- inclusive of the expenses incurred for Special Travel Arrangement of petitioner for conducting this case are also awarded.

Needless is to observe that any amount paid by the respondent to the petitioner by way of maintenance in any other case/proceedings and already paid by him in the present proceedings, shall stand adjusted against the amount accrued under this order. The order of interim maintenance already awarded to the petitioners is merged in the present order.

*File be consigned to **Record Room.**”*

[Emphasis Supplied]

3. At the outset, it must be emphasized that the impugned order pertains only to an interim arrangement for maintenance, which, by its very nature, is a temporary measure intended to operate during the pendency of the proceedings. Such orders are provisional and subject to variation upon a comprehensive evaluation of the evidence at the final stage.



4. As per the impugned order, the Petitioner's income has been assessed at INR 63,284/- (rounded off to INR 64,000/-), which is not in dispute. The relationship between the parties is also admitted. The Respondent has separated and is currently residing with her parents, along with the daughter of the parties, who is 7 years old. The Respondent's lack of any income is an uncontroverted fact as the Petitioner has not produced any conclusive proof to demonstrate that she is presently earning. He merely asserts, without enough evidence, that she is capable of doing so. However, mere capacity to earn does not operate as a bar on awarding maintenance by the husband. In this regard, the Supreme Court in **Rajnish v. Neha**³ observed as follows:

"62. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

63. In Shailja and Anr. v. Khobbanna, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival"

5. Nonetheless, the core grievance raised by the Petitioner is that the maintenance awarded to the Respondent imposes a disproportionate financial burden upon him, given his limited income and familial responsibilities. It is submitted that he is the sole earning member of the family and also bears the responsibility of supporting his aged parents, who are 71 and 74 years old, respectively. Both parents are stated to be suffering from age-related medical conditions, thereby necessitating regular expenditure on healthcare and other essential needs. In view of these

³ (2021) 2 SCC 324.



circumstances, the Petitioner urges the Court to consider a reduction in the maintenance amount awarded to the Respondent.

6. The court has considered the aforementioned contentions but finds no merit in the same. It is well-settled that, at the stage of adjudicating interim maintenance, the trial court is only required to make a *prima facie* assessment which is reasonable, and an informed estimation based on the material available on record. This Court in **Sarita Bakshi v. State**,⁴ as well as the Supreme Court in **Rajnesh v. Neha** have laid down comprehensive and structured guidelines for assessing maintenance, which the Trial Court has duly followed. The interim maintenance awarded is proportionate to the Petitioner's income as estimated at this stage. Pertinently, the Trial Court has also taken into consideration the age and dependency of the Petitioner's parents. Furthermore, it bears mention that both parents are receiving a monthly pension of INR 2,000/- each as senior citizens, which offsets, to some extent, the financial strain claimed by the Petitioner.

7. At this juncture, it is imperative to highlight that the fundamental duty of a husband is to provide maintenance to his wife and children, as highlighted by the Supreme Court in **Shamima Farooqui v. Shahid Khan**⁵. In the said case, the Court underscored that a healthy, able-bodied husband has a legal obligation to provide maintenance to his wife. Furthermore, the Court emphasized that this obligation is amplified when the children are in the care of the wife. The Supreme Court in **Anju Garg v. Deepak Kumar Garg**⁶, categorically made the following observations:

"The Family Court had disregarded the basic canon of law that it is

⁴ 2022 SCC OnLine Del 1707.

⁵ (2015) 5 SCC 705.

⁶ 2022 SCC OnLine SC 1314.



*the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. **The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute.** In Chaturbhuj v. Sita Bai, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy.”*

[Emphasis Supplied]

8. In view of the foregoing discussion and the well-settled position of law, this Court finds no arbitrariness or perversity in the impugned order warranting interference under its revisional jurisdiction.

9. It bears reiteration that interim maintenance is, by its very nature, a provisional measure aimed at securing the financial subsistence of the claimant during the pendency of proceedings. It neither adjudicates the final rights of the parties nor precludes a reassessment based on the evidence that the parties may adduced during trial.

10. Accordingly, the present petition is disposed of along with pending applications.

11. It is clarified that, in the event of any change in circumstances, the Petitioner shall be at liberty to seek a modification of the maintenance amount by filing an appropriate application under Section 127 of CrPC. If such an application is filed, the same shall be considered and decided on its own merits, in accordance with law.

SANJEEV NARULA, J

JULY 25, 2025/as