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

\+ CRL.M.C. 4473/2019

MANJU .....Petitioner

Through: Mr. Michael Peter, Advocate with petitioner in person.

versus

AMIT KUMAR & ORS .....Respondents

Through: Mr. Vikas Dahiya, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **20.11.2025**

1. The present petition filed under Section 482 of the Code of Criminal Procedure, 1973[1] seeks setting aside of order dated 01st June, 2019 passed by the District and Sessions Judge in CA No. 36/2019, titled ***"Amit Kumar & Ors. Vs. Manju"***. By the said order, the Appellate Court has reduced the interim maintenance awarded by the Trial Court to the Petitioner and her minor daughter from INR 15,000/- to INR 12,500/-.

2. The Petitioner (wife) married Respondent No. 1 (husband) on 24th February, 2014 as per Hindu Rites and Customs. Parties have one girl child from this marriage. Owing to matrimonial discord and temperamental differences, the parties separated. The Petitioner thereafter instituted proceedings under the Protection of Women from Domestic Violence Act, 2005,[2] seeking, *inter alia*, interim maintenance.

3. The Trial Court, by order dated 28th February, 2019, awarded monthly interim maintenance of INR 15,000/- to her and her daughter. In appeal preferred by Respondent No. 1, the Appellate Court, by impugned order dated 1st June, 2019, reduced the same from INR 15,000/- to INR 12,500/-

[1] "Cr.P.C."
[2] "DV Act"

per month. Relevant portion of the order is extracted:

> *"6.4 The family resource cake, thus, comes to Rs.60,000/- per month. Appellant/ husband is maintaining and bringing up two minor daughters form his previous marriage aged about 12 years & 8 years. Though, the appellant claims his mother to be dependent upon him, however, the court would not accept the same. Nonetheless, a special consideration shall have to be given to the appellant for the reason, that he can be presumed to be incurring extra expenditure on securing safety and taking care of two minor daughters; who would be without any adult supervision in his absence during the office hours. In these circumstances, the appellant's mother, if she is living with him or one additional person to take care of the minors, shall have to be provided for from the family resource cake.*
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> *6.5 An important factor to be considered is that the third child i.e. the daughter of the present respondent No. 1 is only aged about 3 years and has not yet started going to school. The expenditure incurred upon two daughters would certainly be more than likely expenditure on the 3 years old child.*
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> *6.6 Family resource cake of Rs. 60,000, shall have to be distributed to provide for shares of two daughters of the appellant from the first marriage, one extra share for the person to attend upon the minor daughters in the absence of appellant during the office hours. Appellant is entitled to two shares for himself as is permissible in terms of law laid down in* ***Annurita Vohra Vs. Sandeep*** *reported as (2004)* ***IDMC 568 DEL****, leaving one share for the minor child and two shares for the respondent/ wife. Reliance upon law laid down in* ***Jogender Singh's*** *case* ***(supra)*** *is misplaced. The judgement in* ***Jogender Singh's*** *case* ***(supra)*** *does not discuss the parameters for awarding maintenance. The judgement makes a passing reference to settle law, which is evidently a reference to* ***Annurita Vohra's*** *case* ***(supra).***
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> *6.7 The appellant would, therefore, be entitled to 5/8 share (2 for self, 1 each for the daughters and 1 for the supervisor of the daughters) of the family resource cake i.e. 37,500/-(60,000/-x5/8). The share of respondent and the minor child, thus, comes to 3/8 of the family resource cake i.e.22,500/-. Deducting the presumed income of the respondent/ wife i.e. her contribution to the family resource cake, maintenance towards the respondent/ wife and the minor child comes to Rs.12,500/- (22,500-10,000).*
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> *6.8 Thus, this court is of the opinion that an amount of Rs.12,500/- per month towards the maintenance and the minor child is sufficient. Accordingly, maintenance for the respondent/ wife and minor child is assessed at Rs. 12,500/- per month. Payment already made shall be adjustable. It is also made clear that the entitlement of respondent and the minor child at the rate of Rs. 12,500/- per month shall not be in addition to what has been awarded by the family court."*

4. Aggrieved by the reduction of the maintenance amount, the Petitioner has preferred the instant petition. Mr. Michael Peter, counsel for the Petitioner, contends that the Appellate Court erred in reducing the

maintenance awarded to the Petitioner and her minor daughter. It is contended that the Appellate Court incorrectly presumed the Petitioner's income to be INR 10,000/- per month on the basis of her purported earning capacity and past employment, despite the absence of any material on record to demonstrate that the Petitioner was employed or earning any actual income. It is further submitted that the Appellate Court exceeded its jurisdiction in setting aside not only the Trial Court's order dated 28th February, 2019, but also the Family Court's earlier order dated 09th April, 2018, whereby interim maintenance of INR 7,000/- had been awarded to the Petitioner under Section 125 Cr.P.C. It is also argued that the impugned order is based on an incorrect understanding of the judgement of this Court in ***Annurita Vohra v. Sandeep Vohra***.[3]

5. The Court has considered the aforenoted facts and submissions. The challenge is directed against an interim order, and therefore the scope of interference at this stage is limited bearing in mind that interim maintenance is fixed on a *prima facie* assessment of the material on record and is always subject to modification upon full evaluation of evidence. Detailed fact-finding is neither warranted nor required at this stage.

6. A perusal of the impugned order reveals that the Appellate Court duly considered the earning capacity, financial obligations, and dependent responsibilities of Respondent No. 1, and thereafter proceeded to equitably allocate the "family resource cake" among all his dependents. It is undisputed that, apart from the Petitioner and the minor daughter from the present marriage, Respondent No. 1 has two minor daughters from his first marriage, whose mother (the first wife) is deceased. It is further noted that

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[3] 2004 SCC OnLine Del 192.

Respondent No. 1 is also required to bear the expenses of the supervisor who looks after the minor daughters in his absence. In these circumstances, the Appellate Court's approach of taking into account all dependents while determining the appropriate maintenance does not suffer from any perversity.

7. The Petitioner has argued that the Appellate Court erred in its interpretation of ***Annurita Vohra*** while determining the quantum of maintenance. However, it is necessary to underscore that this Court, in the said judgment, did not prescribe a rigid or inflexible formula for computation of maintenance. The assessment of maintenance must necessarily depend upon the facts and circumstances of each case, including the financial capacity of the parties and the number of dependents to be supported.

8. In the present case, as noted earlier, Respondent No. 1 has multiple dependents apart from the Petitioner and her minor daughter, necessitating an equitable distribution of the available resources. Further, in ***Annurita Vohra***, this Court observed that the "family resource cake" may be apportioned by allotting two shares to the husband, considering his additional expenses incurred in earning, and one share each to other dependents. However, the Appellate Court, generously awarded two shares to the Petitioner and one share to the minor daughter, thereby upholding the principle underlying interim maintenance, *i.e.*, preventing a dependent spouse from being reduced to destitution during the pendency of proceedings. The Appellate Court adopted an equitable approach for determining award of maintenance.

9. This Court finds some merit in the Petitioner's contention that the

Appellate Court's inference regarding her monthly income of INR 10,000/- appears to lack substantive evidentiary support, as it is the actual earnings, and not mere potential employability, that has to be taken into account for determining income. However, the fact still remains that Respondent No. 1 bears substantial responsibility towards several dependents, as noted above.

10. As regards the Petitioner's contention that the Appellate Court erroneously set aside the Family Court's earlier order awarding interim maintenance of INR 7,000/-, it is observed that the impugned order contains no such finding. The Appellate Court merely clarified that the maintenance awarded would not be in addition to the amount awarded in the proceedings under Section 125 Cr.P.C. It is trite law that although a wife may pursue maintenance under different statutory provisions, the husband cannot be directed to pay separate and independent amounts in each proceeding without accounting for the relief already granted. The court deciding the subsequent maintenance claim is required to consider, and where appropriate, adjust or set off the amount awarded in earlier proceedings.[4] The Appellate Court's approach in adjusting the maintenance against the amount awarded by the Family Court, therefore, does not suffer from any legal infirmity or perversity.

11. It is further pertinent to note that the proceedings before the Trial Court have since progressed, and the matter is presently at the stage of the Petitioner's evidence. It has been brought to the notice of this Court that Respondent No. 1 has not complied with the Appellate Court's direction to pay interim maintenance of INR 12,500/- per month. Counsel for Respondent No. 1 submits that Respondent No. 1 has not earned any salary

[4] Rajnesh v. Neha & Anr, (2021) 2 SCC 324.

since September 2019 and is, therefore, financially incapable of paying maintenance to the Petitioner. In support of this submission, a certificate issued by the Office of the Principal District and Sessions Judge has been placed on record, which reads as follows:

> *"It is certified that as per letter no. 2525/ACCTTS.(HQ)/PB(JJA)/320/2025 dated 15/01/2025 salary was paid to Sh. Amit Kumar, JJA EC. 87984025 for the period February 2019 to May 2019 by South-West District, Dwarka Courts. LPC of the Sh. Amit Kumar, JJA was received in Central District, THC in the month of June 2019 and salary for the period June 2019 to August 2019 was paid to the official from Central District THC. In compliance to letter no 12122/F.19/UA/Admn.RACC/2019 dt. 06/09/2019 salary of the said official had been stopped w.e.f. September 2019 and LPC was sent to South District, Saket Court Complex.*
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> *LPC of Sh. Amit Kumar, JJA was received in South District, Saket Court complex in the month of June 2023. No salary has been paid by Accounts Branch, South District to the official as no any order regarding release of salary has been received by the Accounts Branch, South District till date.*
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> *This certificate is issued at the request of the official."*

12. It appears that Respondent No. 1 has not been receiving any salary since September 2019. Considering this fact, any interference by this Court to enhance the maintenance is entirely unwarranted.

13. It is clarified that the Petitioner shall be at liberty to execute the impugned order and lead evidence before the Trial Court to substantiate her claim for enhanced maintenance.

14. In light of the foregoing discussion, the present petition is disposed of.

15. All rights and contentions of the parties are left open.

SANJEEV NARULA, J

NOVEMBER 20, 2025/ab