



\$~73

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

+ CRL.REV.P.(MAT.) 320/2025 & CRL.M.A. 20488/2025, CRL.M.A. 20489/2025

ASHOK KUMAR

.....Petitioner

Through: Ms. Shikha Kaushik and Mr. Ritik Chandel, Advocates.

versus

BABY AANYA THROUGH HER MOTHER AND ORS

.....Respondents

Through: Mr. Hemant Mehla, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.07.2025

%

1. The present revision petition under Sections 438 and 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, is directed against the order dated 28th March, 2025², passed by Family Court-01, South West District, Dwarka, New Delhi, in MT No. 82/2022 titled ***Baby Aanya & Ors. v. Ashok Kumar***. By the impugned order, the Family Court has awarded maintenance in favour of the Respondents under Section 125 of the Code of Criminal Procedure, 1973.³

2. The Petitioner is a Head Constable in the Delhi Police. He married Respondent No. 3 on 10th December, 2009 in accordance with Hindu rites and ceremonies. Owing to matrimonial discord and irreconcilable

¹ "BNSS"

² "impugned order"



differences, the parties have since separated. From this marriage, they have two children; a minor daughter (Respondent No. 1) and a minor son (Respondent No. 2), both of whom presently reside with Respondent No. 3.

3. Respondent No. 3 instituted a petition before the Family Court seeking maintenance for herself and the minor daughter. However, during the course of the proceedings, certain averments and submissions prompted the Family Court to proceed on the footing that the minor son was also in the custody of Respondent No. 3. On that basis, maintenance was awarded in favour of all three Respondents. The operative portion of the impugned order reads as follows:

“35. Keeping in view the facts of the case, income, liability and expenditure of both the parties, this Court allow the present petition in following terms:

A)petitioner no.1/daughter shall be entitled to maintenance @ Rs.8,000/-pm from the date of filing of present petition till she attains the age of majority.

B)Petitioner no.2/wife shall be entitled to maintenance @ Rs.12,000/-pm from the date of filing of present petition till life time or till petitioner no.2 remarries. She is also entitled for maintenance qua her son @ Rs.8,000/-pm from Jan,2025 till he attains the age of majority.”

4. The Petitioner, to his credit, does not dispute the award of maintenance to Respondent Nos. 1 and 3. However, it is submitted that the grant of INR 8,000/- per month towards Respondent No. 2 (the minor son) is factually misconceived and untenable, as his custody has always been with the Petitioner. It is further submitted that the Petitioner has been bearing the full expenses of the child’s education and welfare, including his school fees. In support of this assertion, counsel for the Petitioner, Ms. Shikha Kaushik,

³ “CrPC”



draws attention on the ongoing custody proceedings, wherein the Petitioner has sought custody of the minor daughter (Respondent No. 1), while Respondent No. 3 has filed an application seeking custody of the minor son (Respondent No. 2). This, she submits, unequivocally establishes that Respondent No. 2 has remained in the Petitioner's care.

5. Ms. Kaushik also refers to the finding of the Trial Court holding that Respondent No. 2 resides with Respondent No. 3 – which forms the basis of the maintenance award. She argues that this finding, as set out in paragraph 32 of the impugned order, extracted below, is premised on a wrong foundation.

“32. At the time of filing of present petition, son Atharva was residing with the respondent/father. In the cross examination respondent has admitted that Son Atharva is now residing with petitioner no.2 since Dec,2024. Since son is also now residing with petitioner no.2/mother hence petitioner no.2 is also entitled for maintenance towards the son.”

6. Ms. Kaushik submits that the Petitioner never conceded permanent or temporary custody of the minor son to Respondent No. 3. She clarifies that the statement relied upon by the Family Court was a reference to a temporary arrangement during the winter holidays, when his son was visiting Respondent No. 3. It is contended that the Trial Court misconstrued this as a change in custody, without examining any documentary or corroborative material, such as school records, residence proofs, or welfare reports. On this premise, it is urged that the award of maintenance in respect of Respondent No. 2 is founded on an erroneous and unverified assumption, warranting interference.

7. This Court has carefully considered the submissions and perused the record, including the impugned order and the testimony of the Petitioner.



The finding of the Family Court that Respondent No. 2 was residing with Respondent No. 3 was premised on Petitioner's own deposition recorded during the proceedings. The relevant portion of his testimony reads as under:

"I am working in Delhi Police as a Head Constable. I joined my service on 25.05.2008. The annual educational expenses of son is around Rs.4,50,000/-. Since my separation, daughter is not residing with us. (Vol. In year 2018). I have not paid any amount apart from amount awarded by this court as ad-interim maintenance. Some times, I used to pay online as and when demanded by the daughter. At present, my son is residing with my wife. It is correct that son is residing with petitioner no.2 since December 2024. I am not paying any extra amount except awarded by this court to petitioner no.2 towards the expenses of son. (Vol. I used to spend money on son as and when he came and ask for purchase of something). It is correct I have not paid the tuition fee of the son since he is residing with petitioner no.2. I was posted in High Court Security when the petitioner no.2 filed the present petition. It is correct that I have purchased a flat bearing no. B-82, Third Floor back side, New Jankipuri, Uttam Nagar, New Delhi, It is wrong to suggest that I am residing in this flat along with lady Constable Reena Saroha. (Vol. In this flat my sister is residing). My parents are not residing in this property. It is correct that Reena Saroha is working with Delhi Police. It is correct that petition no.2 is residing with her parents and both children at her parental house. It is wrong to suggest that I am deposing falsely."

[Emphasis supplied]

8. Upon a plain reading, it is evident that the Petitioner acknowledged that his minor son was residing with Respondent No. 3 at the relevant time. This statement, viewed in context, is not a casual or qualified assertion but a categorical admission. Though the Petitioner emphasised his prior financial contributions toward the child's education, he simultaneously accepted that Respondent No. 2 was, then, in the care and custody of Respondent No. 3 and that he had not paid the school fees since the child began residing with her. In the opinion of this Court, such an unequivocal admission was rightly taken into account by the Family Court, while assessing the child's dependency and determining the entitlement to maintenance.



9. It is, however, clarified that any pending custody proceedings between the parties shall be adjudicated on their own merits, and the observations contained in this order shall not prejudice the outcome of those proceedings in any manner.

10. As regards the Petitioner's income, being a salaried employee of the Government of NCT of Delhi, there remains little room for ambiguity or dispute. The Family Court's assessment of his financial capacity, and the corresponding apportionment of maintenance in favour of the Respondents, is firmly rooted in settled principles of law elucidated by the Supreme Court in *Shamima Farooqui v. Shahid Khan*,⁴. Moreover, a husband cannot shirk his responsibility to maintain his spouse and children, particularly when he has a stable source of income. The impugned order, in the considered view of this Court, does not suffer from any perversity or illegality so as to warrant interference under revisional jurisdiction.

11. With the above directions, the present petition is disposed of along with pending applications.

SANJEEV NARULA, J

JULY 18, 2025

d.negi

⁴ (2015) 5 SCC 705