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

+ **CRL.REV.P. 1254/2019 & CRL.M.A. 41660/2019**

TAPSI VIDYARTHI

.....Petitioner

Through: Mr. Ajit Kumar, Mr. Kumar
Bankatesh, Ms. Amita Singh, Mr.
Ravi Kumar and Mr. Rakesh Kumar,
Advocates.

versus

ARVIND KUMAR SINGH

.....Respondent

Through: Ms. Francesca Kapur, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

16.04.2025

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1. The present petition under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973¹ is directed against the judgment and final order dated 22nd March, 2019 passed by the Family Court, Dwarka, New Delhi in MT. No. 769/2017 titled as ***“Tapsi Vidyarthi vs. Arvind Kumar Singh”***. By this order, the Family Court dismissed the Petitioner’s application under Section 125 of the Code of Criminal Procedure, 1973,² seeking maintenance for a specified period between July 2013 and August 2014.

2. Briefly stated, the factual background leading to the filing of the petition is as follows:

¹ “Cr.P.C.”



2.1 The Petitioner and the Respondent got married on 18th April, 2012, and from this marriage, a male child was born on 29th November, 2013. However, due to certain temperamental differences and other reasons, the Petitioner and Respondent eventually separated.

2.2 Subsequently, the Petitioner applied to the Family Court for award of maintenance under Section 125 Cr.P.C. In the said case, the parties filed their evidence by way of affidavits and were also subjected to cross-examination. On the basis of the evidence adduced by the parties, the Family Court, *vide* the impugned order, dismissed the petition, observing as follows:

“20. The petitioner has filed the present petition for seeking maintenance on the ground that on the day of filing of petition, she was not working and was on leave without pay and therefore she was not having sufficient means to maintain herself. Whereas respondent is a man of means and getting handsome salary of Rs. 70,000/- per month. Besides that he is also having his own house and agricultural land in the village from which he is having agricultural income.

21. The said plea of the petitioner has been controverted by the respondent in para 14 of his written statement where he claimed that because of torture and harassment of the petitioner, respondent is jobless and living a merciful life.

22. The petitioner has reiterated her plea in para 15 of her examination in chief. During her cross-examination, PW-1 admitted that respondent was not doing any job from June 2013 to December 2014. She volunteered that during that period respondent was running a company. She shown her ignorance that respondent was not having any earning from his work of event management from June 2013 to December 2014. She admitted that respondent borne the delivery expenses of her son.

23. The petitioner, has claimed that respondent is earning Rs. 70,000/- per month and also having agricultural income. However: she has failed to place on record any cogent proof to prove the said fact that respondent was earning Rs. 70,000/- per month or having any agricultural income.

24. The petitioner herself has admitted during her cross-examination that respondent was not doing any job from June 2013 to December 2014. The petitioner however has claimed that during that period respondent was running an event management company.

² “CrPC”



25. The said fact has been admitted by the respondent but he categorically stated that said business went into losses, due to which he stopped that business and started working from 05th January, 2015. He also mention that he had borne all the expenses of the delivery of petitioner.

26. Ld. counsel for the petitioner has contended that last drawn salary of the respondent was of Rs. 70,000/- per month which is reflected from his pay slip Ex. PW-1/6. He further contended that respondent was having three cars in his name and that is why he must be earning not less than Rs. 70,000/- per month.

27. No doubt that last drawn salary of respondent was Rs.70,120/- which is reflected from his salary slip for the month of April 2013 Ex. PW-1/6. However, petitioner herself has admitted during her cross-examination that respondent had left his job and during June 2013 till December 2014 respondent was jobless. The said fact itself raises serious doubt about the plea qua earning of respondent.

28. The respondent who was living with his family was having three cars in his name. However, RW-2 Sh. Shyam Singh, father of the respondent has categorically stated in his cross-examination that his son was having two cars registered in his name. He volunteered that respondent uses one car registered in his name which is Santro and one is used by him. He admitted that one another car of make Skoda was also registered in the name of respondent during June 2013 to December 2014. He volunteered that said care was purchased by him in the name of respondent at the time of his marriage and after year 2014 he hand over the said car to his daughter and now the said car is registered in her name.

29. The testimony of RW-2 shows that though three cars were registered in the name of respondent, but respondent was using only one car make Santro and other cars were used by his family members.

30. The petitioner was working in Castrol India Ltd. Prior to filing of this petition and she was on leave without pay since May 2013 till July 2014. However, she remained in the job and resigned from the said job vide resignation letter dated 28th July, 2014. Thereafter, she joined service in August 2014 with another company.

31. The petitioner was on leave from the date of filing of petition till August 2014 when she again started working. The petitioner thus claimed maintenance from the respondent from the date of filing of petition till August 2014 only. However, during her cross-examination she admitted that respondent himself was jobless from June 2013 to December 2014.

32. When respondent himself was not working and was not having sufficient means during June 2013 to December 2014 then it cannot be said that respondent, has failed to maintain the petitioner despite having sufficient means.

33. The respondent even had borne all the delivery expenses of the petitioner and has been paying maintenance of the child @ Rs. 10,000/- per month since the



day of his birth till date.

34. In view of the aforesaid facts and circumstances, I am of the considered view that petitioner has failed to prove on record that respondent was having sufficient means to maintain the petitioner from the date of filing of petition till August 2014 when petitioner herself started working. The respondent was himself jobless during June 2013 to December 2014 therefore, he cannot be held liable to pay any maintenance to the petitioner from the day of filing of the petition till August 2014 when petitioner started working again. The petitioner is thus not entitled for any maintenance from the respondent. The petitioner has thus failed to discharge the onus of issue no. 1, same is accordingly decided against the petitioner.

35. **Issue No. 2:- Relief.**

In view of my findings on issue no. 1, the petition filed by the petitioner u/s 125 Cr.P.C. is dismissed. Petitioner is held not entitled to receive any maintenance from the respondent. File be consigned to record room after due compliance.”

3. Aggrieved, the Petitioner has now approached this Court, seeking setting aside of the impugned order.
4. The Court has heard counsel for both the parties. Pertinently, the Petitioner’s claim for maintenance is limited to a specific period, from the date of filing the petition in July 2013 until August 2014.
5. The Respondent stated before the Family Court that he had been unemployed from June 2013 to December 2014, and since he was not working for the said period, he lacked the means to provide maintenance to the Petitioner. The Family Court, taking these facts into consideration, concluded that the Petitioner had not established that the Respondent had sufficient means to maintain her during the aforesaid period, thereby not discharging her burden of proof with respect to Issue No. 1. Given the Respondent’s unemployment from June 2013 to December 2014, the Court held that he could not be held liable to pay maintenance for this period.
6. It is crucial to note that during part of the aforesaid period, i.e., from



May 2013 to July 2014, the Petitioner claimed to be on leave without pay. She further stated that, although she remained employed with Castrol India Ltd., she had to submit her resignation on 28th July 2014, after which she secured employment with another company in August 2014. As a result, the Petitioner did not receive any income during this period and had no means to support herself.

7. It has been recorded by the Family Court that the Respondent had borne all the delivery expenses, and has also been providing maintenance for the child at a rate of INR 10,000/- per month, starting from the child's birth on 29th November 2013. However, it is undisputed that the he did not bear any expenses for the period between May 2013 and October 2013. While it may be true that the Respondent was also unemployed during this time, it must also be acknowledged that the Petitioner too, lacked the means to support herself, as she was on leave without pay. In this regard, it is significant to note that the Petitioner, in her affidavit, specifically averred as follows:

“11. That since the deponent was so sick after their harassment she had taken to Medical leave from February 2013 followed by leave without pay. At present deponent is not getting any salary since May 2013. Since 2nd May 2013, the deponent is living with her parents in Gurgaon and she came in parent's house only with few daily wear clothes and toiletries. Rests of her clothes and gold jewellery are still lying at the house at Dwarka i.e. her in-laws house.”

8. The Petitioner was also subjected to cross-examination on this issue, during which she made the following statement:

“I started working from August 2014. I was working with Castrol India Ltd. on the date of filing of petition. Vol. I was on leave without pay since May 2013 till July 2014. I was getting salary prior to that in HDFC Bank, Sector - 21, Gurugram. I can produce the statement of said bank account. I do not



remember how much amount I had received from Castrol India Pvt. Ltd. after my resignation but I can provide the same. It is correct that respondent was not doing any job from June 2013 to December 2014. Vol. During that period the respondent was running an event Company. I am not aware if respondent was not having any earning from his work of even management from June 2013 to December 2014. It is correct that respondent borne the delivery expenses of my son. It is wrong to suggest that respondent has borne pre-delivery expenses as well. It is wrong to suggest that respondent had taken a package from Columbia Hospital at the time when I got pregnant. It is wrong to suggest that said package contains all the pre-delivery and post-delivery expenses. It is wrong to suggest that I have received salary from my Company from July 2013 to August 2014. It is wrong to suggest that I am not entitled for any maintenance from the respondent. It is wrong to suggest that I have deposed falsely.”

9. In light of the foregoing facts and circumstances, considering that the Petitioner was on leave without pay and did not have any source of income from May 2013 to October 2013, the Respondent should have been directed to provide her with maintenance during this period. Such maintenance could have been drawn from the Respondent’s savings. The Trial Court has overlooked over this critical aspect.

10. It is crucial to emphasize that it is the fundamental duty of a husband to provide maintenance to his wife, as highlighted by the Supreme Court in ***Shamima Farooqui v. Shahid Khan***.³ In the said case, the Court underscored that a healthy, able-bodied husband has a legal obligation to provide maintenance to his wife. The Supreme Court in ***Anju Garg v. Deepak Kumar Garg***,⁴ categorically made the following observations:

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

³ (2015) 5 SCC 705.

⁴ 2022 SCC OnLine SC 1314.



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.”

11. In light of the aforementioned legal principles, the Court is of the view that the determination of whether the Respondent is obligated to pay maintenance to the Petitioner should not solely hinge on whether he was earning, but must also take into account his ability to work and his capacity to provide for her maintenance. Given that the Petitioner had no source of income for the period between May 2013 and October 2013, the Respondent ought to have provided her maintenance for this period. Given that the Respondent's last drawn salary has been determined to be INR 70,000/- per month, taking this as the benchmark, the present petition is disposed of with a direction to the Respondent to pay maintenance in the amount of INR 10,000/- per month to the Petitioner, for the period from May 2013 to October 2013.

12. With the above direction, the petition is disposed of, along with pending application.

SANJEEV NARULA, J

APRIL 16, 2025
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