



2025:DHC:6746



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 12.08.2025*+ **CRL.REV.P. 29/2024**

MS. JYOTI & ANR.Petitioners

Through: Mr. Tarun Garg, Advocate.

versus

DEEPAK PANCHALRespondent

Through: Ms. Vijay Rani, Advocate.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The present criminal revision petition has been filed by the petitioners assailing the order dated 01.12.2023 [hereafter '*impugned order*'] passed by the learned Judge, Family Court-01, Shahdara, Karkardooma Courts, Delhi [hereafter '*Family Court*'] in MT No. 733/2019 titled as '*Jyoti Panchal and Anr. vs. Deepak Panchal*' vide which an application filed under Section 127 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] was disposed of.

2. Briefly stated, facts of the present case are that the marriage between the petitioner no.1-wife and respondent-husband was solemnised on 22.11.2018 according to Hindu rites and ceremonies. It was the second marriage for both parties, and each had a child from their first wedlock; however, no issue had been born from the



marriage between them. The petitioner-wife had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter 'DV Act'] against the respondent. She had also got an FIR registered for commission of offence under Sections 498A/406/34 of the IPC. Thereafter, the petitioner-wife, as her minor son, filed a petition under Section 125 of the Cr.P.C. on 01.10.2019 seeking maintenance, in which she alleged that she was harassed and subjected to cruelty for demand of dowry and both petitioner no. 1 and her son i.e. petitioner no. 2 were neglected by the respondent-husband. It was also alleged that the respondent compelled the petitioner to leave the matrimonial home by committing acts of cruelty, but he was duty bound to maintain them. It was also asserted that petitioner no. 1 had not been earning, whereas the respondent had been running a firm in the name and style of M/s. Vishwakarma Enterprises, and had been earning ₹2,00,000/- per month, and therefore, it was prayed that he be directed to pay ₹50,000/- per month as maintenance to both petitioners.

3. First, the learned Mahila Court-03, Shahadra, Karkardooma Courts, Delhi *vide* order dated 23.02.2021, granted ad-interim maintenance to the petitioner-wife to the tune of ₹10,000/- per month, in the proceedings pending under the DV Act. The said order was challenged by the respondent-husband before the learned Principal District and Sessions Judge, Shahadra, Karkardooma Courts, Delhi, by way of an appeal under Section 29 of the DV Act, which was partly allowed *vide* order dated 31.07.2021, and the order of the



learned Mahila Court was modified to the extent that the ad-interim maintenance had been reduced from ₹10,000/- per month to ₹8,000/- per month.

4. Eventually, in the petition filed under Section 125 of the Cr.P.C., the learned Family Court granted interim maintenance to the petitioner no.1 (wife) vide order dated 19.04.2023 to the tune of ₹10,000/- per month, as the respondent's income was assessed at ₹40,000/- per month. Further, the petitioner no. 2, i.e. minor son of the petitioner no. 1 from her previous marriage, was not found entitled to maintenance on the ground that the stepfather (i.e. respondent herein) was not liable to pay maintenance to the stepson.

5. The aforesaid order was challenged by the petitioner-wife before this Court by way of CRL.REV.P. 1111/2023. The Co-ordinate Bench was informed that the wife had also filed an application under Section 127 of the Cr.P.C. before the learned Family Court for seeking enhancement of the maintenance. This Court, in order dated 18.10.2023 observed that the judgment of the Division Bench of this Court in **Rajiv Kumar Yadav vs. Manju Devi: MAT APP. (FC) No. 62/2023** was not brought to the attention of the learned Family Court, as per which the husband should have been found liable to pay maintenance to petitioner no. 2 (minor son) also, and this Court had remanded the matter back to the learned Family Court and decide the application under Section 127 of the Cr.P.C. expeditiously by considering the aforesaid judgment.



6. In this background, the learned Family Court disposed of the application under Section 127 of the Cr.P.C. by way of impugned order dated 01.12.2023, and granted maintenance to the petitioner no. 2 also. Thus, the income of the husband i.e. ₹40,000/- was now divided among the husband, his own daughter, and both the petitioners. The petitioners were thus granted interim maintenance of ₹8,000/- per month each. The relevant portion of the impugned order reads as under:

“None has appeared on behalf of the respondent despite three calls and it is already 3:00 PM. Application under Section 127 of Cr.P.C. has been filed by the petitioner after the liberty of the Hon’ble High Court to move this application with direction to dispose off application within 2 months vide order dated 18.10.2023. Issue involved in this application under Section 127 of Cr.P.C. is just confined to the maintenance of minor son of the petitioner no. 1, who is petitioner no.2 herein, but born out of first husband of the petitioner no. 1. Ld. Counsel for petitioner has argued that this court has not considered the maintenance of the minor, whereas his liability was acknowledged by the respondent at the time of his second marriage with the petitioner no.1 due to respondent is also liable to pay the maintenance to the petitioner no.2. It is further argued that the Hon’ble High Court in judgment titled “*Rajiv Kumar Yadav Vs. Manju Devi in MAT APP. (FC) No. 62/2023, dated 01.03.2023*” has granted the maintenance to minor from first marriage, due to petitioner no.2 is also entitled for maintenance and same may be allowed.

On the other hand, none has appeared on behalf of the respondent to oppose this application.

Petitioner no.2 is son of the petitioner no.1 from her first husband but the petitioners have argued that the respondent had acknowledged the liability of the petitioner no.2, due to he has liability to maintain him also. Though judgment relied upon by the Ld. Counsel for the petitioners titled herein abovesaid was dealing with a little different situation where biological father of the daughter, whose maintenance was awarded by the court,



had died and stepfather had acknowledged her liability and paid the maintenance, yet facts of present case are different. Even in case cited above, application was under Section 25 of Hindu Marriage Act for permanent alimony, whereas in this case survival status of biological father of minor is not known due to there is a lot of difference of facts in both cases. However, now it has become matter of trial as to whether respondent acknowledged the liability of the petitioner no.2 at the time of marriage or not. Respondent has not contested this application due to by taking a prima facie view that the respondent might have acknowledged the liability of the petitioner no.2, this application is hereby allowed for interim maintenance.

As per order dated 19.04.2023, income of the respondent was considered @ Rs. 40,000/- per month which was divided into four shares, out of which, two shares were given to the respondent, one each for petitioner and daughter of the respondent. Now petitioner no.2 is shall also have one share in the earnings of the respondent and his monthly income @ Rs. 40,000/- per month shall be divided into five shares and both petitioners shall be entitled for Rs. 16,000/- per month (Rs. 8,000/- each) from the date of application and during the pendency of this case, payable on 10th of each succeeding month. With these observations, application is hereby disposed off.

However, observation of this court shall not effect the merit of this case and respondent may take his available defenses during trial.”

7. By way of this petition, the aforesaid impugned order has been assailed on the ground that the maintenance has been awarded on a lower side by not assessing the respondent's income correctly, and the petitioners are entitled to higher amount of maintenance.

8. The learned counsel appearing for the petitioners has argued that the learned Family Court has erred in awarding only ₹8,000/- per month, each, as maintenance to the petitioners. It is contended that



the respondent is the sole proprietor of M/s Vishwakarma Enterprises, engaged in manufacturing cooker whistles and leading a luxurious life, and his bank statements reflect withdrawal and deposit entries of substantial amounts. It is submitted that the profit and loss account of the firm showed a turnover of ₹19,81,395/- for the year 2018, and the respondent had availed a loan of ₹3,00,000/- in the name of the said firm, thereby concealing his true income. It is further submitted that the respondent is owner of several properties and has a monthly income of ₹1,60,000/- as per income tax records and turnover figures, which have been ignored by the learned Family Court. By rejecting the petitioner's application for enhancement of the amount of maintenance under Section 127 of the Cr.P.C., the learned Family Court has overlooked material financial records including income tax returns, bank statements, and expenditure details filed by the respondent himself. It is prayed that the maintenance be enhanced from a total amount of ₹16,000/- to ₹50,000/- per month, or any such higher amount, in view of the respondent's actual financial capacity.

9. On the other hand, the learned counsel appearing for the respondent has contended that the petitioners are not entitled to interim maintenance as petitioner no. 1 is running a beauty parlour and earning more than ₹50,000/- per month. It is submitted that she is a qualified beautician with a diploma from a reputed institute and has been harassing the respondent and his family members. It is further contended that the respondent does not run any private business as



alleged and that his sole income at the relevant time was ₹8,000/- per month. It is also stated that the petitioners are claiming the maintenance by showing the income of the respondent, from 2017 to 2019; however it is clear that the alleged amount entirely belonged to the brother of the respondent who is the owner of the said Firm/Company 'M/s Vishwakarma Enterprises'. It is contended that the respondent is working as a dye fitter at Sindhu border for last three years and earning only ₹14,000/- per month. It is also submitted that the respondent has a minor daughter, aged about 10 years, from his first marriage and is facing difficulty in maintaining her. It is submitted that the amount of maintenance should be reduced in light of the aforesaid, and in any case, since the petitioners have been already granted ₹8,000/- per month each as maintenance by the impugned order, they are not entitled to any further amount. It is thus prayed that the present petition be dismissed.

10. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

11. In the present case, this Court finds that the learned Family Court had initially not granted interim maintenance to the petitioner no. 2 (minor son of petitioner no. 1 from previous marriage) as the respondent was not his biological father, and it was the responsibility of natural father to maintain his son. However, pursuant to order dated 18.10.2023 passed by this Court, the impugned order was passed and the petitioner no. 2, though stepson of the respondent, was



also granted interim maintenance. The learned Family Court also rightly observed that whether the respondent had adopted or acknowledged the liability to maintain petitioner no. 2 after his marriage with petitioner no. 1, was a matter to be determined during trial. However, since the respondent herein had not contested the said application, a *prima facie* view had been taken that he might have acknowledged such liability, and interim maintenance had accordingly been granted to petitioner no. 2.

12. The learned Family Court, assessing the respondent's income at ₹40,000/- per month, had divided it into five shares and awarded two shares to the respondent, one share to his own daughter, and one share each to the petitioners herein; thus an amount of ₹16,000/- per month, i.e. ₹8,000/- each to the petitioners, from the date of filing of the petition. The respondent has not challenged the said order.

13. In the present petition, both the petitioners and the respondent have argued on the aspect of income of the respondent and accordingly, the quantum of maintenance. The respondent has opposed the petition and contested the assessment of his income, claiming it to be about only ₹14,000/- per month, and citing his responsibility for a minor daughter from his previous marriage. He has further submitted that the petitioners are already receiving ₹16,000/- per month pursuant to the impugned order dated 01.12.2023 passed by the learned Family Court, and the petitioner no. 1 had earlier also been granted ₹8,000/- per month in the proceedings



under DV Act. He has rather prayed for a reduction in the maintenance and for adjustment of the amount awarded by the learned Mahila Court against the maintenance fixed by the learned Family Court.

14. It is not in dispute that the parties had contracted their second marriage on 22.11.2018 and that both had children from their first marriages, with no child born from their present marriage. It is also undisputed, at this stage, that the petitioner is not engaged in any employment and is residing with her parents along with her minor son from her first marriage, who, as per her claim, had been treated by the respondent as his own child.

15. The petitioner has alleged that the Income Tax Record filed by the respondent himself for the period w.e.f. 2017 to 2019, would reflect the monthly income of the respondent to be about ₹1,50,000/- per month, and annually around ₹19,00,000/-. It is further contended that the respondent is the proprietor of M/s Vishwakarma Enterprises and for the year 2018, the total turnover has been shown as ₹19,81,395/-, and expenses have also been shown on the higher side. It is further alleged that the respondent owns multiple immovable and movable assets.

16. Upon a consideration of the material placed on record, this Court is of the opinion that the learned Family Court has *prima facie* assessed the respondent's monthly income at ₹40,000/-, taking into account the income affidavits, nature of his business, the financial



records produced before the Court, and the overall circumstances reflected in the record.

17. The petitioners have themselves placed on record the income tax records of the respondent-husband, as Annexure P-5. It is apparent from the same that the total income of the respondent for the AY 2017-18 was about ₹3,00,000/-. It is noted in order dated 19.04.2023 that for the next year, his total income was about ₹5,00,000/-. Though the petitioners have contended that the income tax records show the respondent earning about ₹1,50,000/- per month, a perusal of those records reveals no such income. It appears that the annual turnover of the respondent's proprietorship concern – meaning the total sales in a given year – has been incorrectly projected as her income. This approach is erroneous, as turnover is subject to deduction of the cost of sales, which must then be further reduced by business expenses, only after which the net profit figure is arrived at. In the present case, the net profit, as reflected in the records, was between ₹3,00,000/- and ₹5,00,000/- per annum.

18. Therefore, considering the same, this Court is of the view that the learned Family Court did not commit any error by taking a *prima facie* view – for the purpose of grant of interim maintenance – that the respondent-husband would be earning about ₹40,000/- per month. Accordingly, this Court finds no infirmity with the assessment of respondent's income.

19. There is also no error in the approach of the learned Family



Court in apportionment of the respondent's income by dividing it into five shares and keeping two shares for the respondent himself, one share for his own minor daughter, and then giving two shares i.e. ₹16,000/- to the petitioners herein – which approach is in conformity with the decision of this Court in ***Annurita Vohra v. Sandeep Vohra***: 2004 SCC OnLine Del 192.

20. It is settled law that at the stage of interim maintenance, the Court is only required to make a *prima facie* assessment of the financial status of the parties, pending adjudication of the main petition. In the present case, the order passed by the learned Family Court is neither perverse nor arbitrary, and in the absence of any manifest illegality or material irregularity, this Court is not inclined to interfere with the same in the exercise of its revisional jurisdiction. Thus, the impugned order dated 01.12.2023 passed by the learned Family Court is upheld.

21. It is however clarified that in terms of the decision of Hon'ble Supreme Court in ***Rajnish v. Neha***: (2021) 2 SCC 324, any amount paid as maintenance to the petitioners in the present proceedings or in any other proceeding (such as under DV Act) shall be adjusted/deducted from the amounts of maintenance payable under the impugned order.

22. It is also clarified that any amount of interim maintenance paid by the respondent towards the petitioners shall remain adjustable in future amount of maintenance determined by the learned Family



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Court, which, needless to say, shall be determined on the basis of evidence led by both the parties and on touchstone of cross-examination.

23. The present petition is therefore dismissed, but with the above observations.

24. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 12, 2025/ns