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

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*Judgment reserved on: 19.11.2025**Judgment pronounced on: 28.11.2025**Judgment uploaded on: 03.12.2025*+ **CRL.REV.P. 45/2024 & CRL.M.A. 1158/2024**

VINOD KUMAR

.....Petitioner

Through: Mr. Mahesh Chand Sharma,
Advocate, alongwith petitioner.

versus

SMT ASHA & ANR.

.....Respondents

Through: Mr. Himanshu Kaushik, Mr.
Akash Kasana, Mr Bhuvil
Choudhary, Ms. Himanshi
Sharma, Ms. Deepika Vashistha
and Ms. Disha, Advs. along
with respondent no. 1.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. This petition has been filed challenging the order dated 21.11.2023 [hereafter '*impugned order*'], passed by the learned Principal Judge, Family Courts, Karkardooma Courts (Shahdara), Delhi [hereafter '*Family Court*'] in MT Case No. 434/2021, titled as '*Asha vs. Vinod Kumar*', directing the petitioner-husband to pay interim maintenance of Rs. 5,000/- per month to each of the respondents herein.



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2. Briefly stated, the facts of the case, as set out in the petition, are that the parties were married on 22.02.2009 in Delhi according to Hindu rites and ceremonies, and one female child i.e. respondent no. 2 herein, was born out of the wedlock. It is the case of the petitioner—husband that after a few months of the marriage, respondent no. 1—wife started misbehaving with him and his family members and would extend threats to them. It is stated that she left the matrimonial home without any reason, but with the intervention of family members and friends, the parties resumed cohabitation on 13.06.2013. According to the petitioner, at the time of rejoining his company, respondent no. 1 did not disclose that she had in the meantime instituted proceedings before the CAW Cell, a petition under Section 125 of Cr.P.C., and a petition under Section 9 of the Hindu Marriage Act; *however*, the parties resumed living together on 28.06.2013 and these proceedings were subsequently withdrawn or compromised. The petitioner asserts that on 27.06.2016, respondent no. 1 again left the matrimonial home along with their daughter without any justified reason and has since been residing at her parental home. Thereafter, on 21.08.2021, she instituted the present petition under Section 125 of Cr.P.C.

3. In her petition under Section 125 of Cr.P.C., respondent no. 1 alleged that she had been subjected to cruelty and harassment by the petitioner and his family members, including on account of dowry demands and for giving birth to a female child. She claimed that she had been residing with her daughter at her parental home since 2014.



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Respondent no. 1 sought interim maintenance of Rs. 1,00,000/- per month from the petitioner–husband.

4. The learned Family Court, *vide* impugned order dated 21.11.2023, directed as under:

“ Ld. Counsel for the petitioner submits that the petitioner no.1 has no source of income and the respondent/husband may be directed to give interim maintenance to the petitioners as the respondent is gainfully employed and he earns about Rs.2,00,000/- per month from his teaching job and rental income. It is further submitted that the petitioner no.1/wife and her daughter are dependent on parents of petitioner no.1 for their day to day necessities and petitioner no.1 is living separately for past 6/7 years but the respondent has not made any provisions for maintenance of the petitioners deliberately despite having means to pay. Per contra, Id. Counsel for the respondent submits that the petitioner no.1 has left company of respondent with her own will and she alongwith her daughter and she is living separately without any reasonable cause. It is further submitted that the respondent is pursuing his PHD from Bundelkhand University, Jhansi and his monthly income is only Rs.6,000/-.

Arguments on the interim maintenance application heard at length and record perused.

The marriage between the parties is not in dispute and the petitioner no.1/wife claims that she has no source of income. The rival allegations by the parties regarding reasons of separate living and earning of other side are yet to be decided/established during the course of trial which is going to take time due to heavy pendency of cases, According to affidavit dated 12.01.2023 of petitioner no.1/wife, she is housewife and having no source of income and the respondent/husband has passed BBA, MBA, NET, M-Phil and he is working as lecturer at Prakash Institute at Noida, U.P. However the respondent/husband in his affidavit dated 02.02.203 has claimed that he is an MBA and pursuing Ph.D from Bundelkhand University, Jhansi and he is residing in a rented accommodation and his monthly income is only Rs.6,000/-. The claim of respondent about earning only Rs.6,000/- per month is not credible as even the minimum



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wages of a Graduate is about Rs.20,000/- per month as per State Government notification. In order to prevent destitution/vagrancy of the petitioners and without prejudice to respective rights and contentions of the parties concerned, the respondent/husband is hereby directed to pay interim maintenance @ Rs.5,000/- per month to the each petitioners (i.e. total Rs. 10,000/- p.m.) from the date of filing of the application for interim maintenance till disposal of the petition or till further orders in this regard. The respondent is further directed to pay the arrears of maintenance in four equal monthly installments. The respondent is further directed to deposit the said monthly interim maintenance on or before the 15th day of each month and arrears of maintenance in the bank account of the petitioner no. 1/wife or by giving demand draft in her name. If the respondent is paying any other maintenance to the petitioners under the orders of the any other court, then the same shall be adjusted from the interim maintenance awarded today to the petitioners. It is made clear that as per the settled law the petitioners shall be entitled to receive the maintenance to the highest amount out of the various allowances, if any, awarded to her by various courts, At this stage, ld. Counsel for the petitioner submits that the application for interim maintenance may be disposed of. Accordingly, the application of interim maintenance dated 21.08.2021 stands allowed and disposed of in terms of above directions.

Put up for rejoinder, if any, admission / denial of documents and framing of issues on 22.03.2024.”

5. The learned counsel appearing for the petitioner argues that the impugned order granting interim maintenance is unsustainable, as the petitioner is presently pursuing his Ph.D. from Bundelkhand University and is not employed. It is stated that he had truthfully disclosed his income as only ₹6,000/- per month earned from private tuition, and had also placed on record an income certificate issued by the State authorities, which the learned Family Court failed to consider. It is submitted that the respondent-wife has misstated the



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date of separation in her income affidavit as 2014, whereas the parties actually separated on 27.06.2016. To substantiate this, it is argued that respondent no. 2, the minor daughter, was studying at M.C. Gopichand Inter College, Khari, Gautam Budh Nagar, Uttar Pradesh, near the matrimonial home, from 04.04.2016 to 01.07.2017. Reliance is placed on the school certificate dated 28.01.2023 issued by the Principal. It is therefore contended that since the respondent-wife has not approached the Court with clean hands, she is not entitled to interim maintenance. It is further argued that the learned Family Court erroneously presumed, without any evidence, that the petitioner was earning ₹20,000/- per month. The learned counsel also argues that respondent no. 1 is well-qualified, having completed her graduation from Delhi University, a DIET diploma from Gwalior, Madhya Pradesh, and having cleared CTET, as reflected in her own income affidavit. It is alleged that she is employed as a teacher at Gyan Sarovar Bal Niketan School, Karawal Nagar, Delhi, earning ₹30,000/- per month, and also earns ₹10,000/- from private tuitions, making her capable of maintaining herself and the minor child. It is contended that petitioner's income certificate shows an annual income of only ₹75,000/- (approx. ₹6,000/- per month) duly verified by the Tehsildar, Tehsil Dadri, Gautam Budh Nagar, U.P., but the learned Family Court overlooked this and instead relied on minimum wages applicable in Delhi.

6. *Per contra*, the learned counsel appearing for the respondents argues that the maintenance awarded is purely interim in nature, and



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the impugned order suffers from no infirmity or illegality. It is denied that respondent no. 1 is working or holds any teaching diploma as alleged. It is further submitted that the petitioner himself is employed as a lecturer at Prakash Institute, Noida, earning approximately ₹1,20,000/- per month, and also possesses ancestral property. It is argued that the petitioner has deliberately suppressed his true income and is attempting to mislead the Court. It is thus prayed that the present petition be dismissed.

7. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondent, and has perused the material available on record.

8. After hearing the learned counsel for the parties and perusing the record, this Court notes at the outset that the respondent-wife has not challenged the impugned order granting interim maintenance. The present petition has been filed only by the petitioner-husband who, during the course of arguments, has confined his challenge to the limited submission that the learned Family Court erred in assessing his notional income on the basis of minimum wages applicable in Delhi, despite the admitted fact that he is a resident of Gautam Budh Nagar, Uttar Pradesh. It is also relevant to note that the respondent-wife has not placed any material on record to substantiate her allegation that the petitioner is working as a professor or is employed in any university at this stage. The only dispute raised before this Court, therefore, pertains to the applicability of the minimum-wage notification of the correct State.



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9. It is evident from the impugned order that the learned Family Court assessed the petitioner-husband's notional income on the basis of the minimum wages of a graduate in Delhi, observing that he is an able-bodied and educated person and that he had not filed any documentary proof of actual employment. Where a husband either produces no proof of income or claims that he earns nothing or only a meagre amount, and there is no reliable material on record to ascertain his earnings, the Family Court is justified in resorting to the minimum-wage framework to assess his earning capacity. In the present case, when the petitioner claims to be pursuing a Ph.D. and earning only ₹6,000/- per month from tuition, the learned Family Court cannot be faulted for adopting the minimum-wage criteria.

10. However, the material on record also establishes, and is not disputed by the respondent-wife, that the petitioner is not a resident of Delhi, but he claims to be a permanent resident of Gautam Budh Nagar, Uttar Pradesh, and is pursuing his Ph.D. from Bundelkhand University in that State. There is no material to show that he resides or is employed in Delhi. Therefore, while resorting to minimum wages to determine his notional income was appropriate, the learned Family Court ought to have applied the minimum-wage notification applicable in the concerned State where the petitioner resides, rather than that of NCT of Delhi.

11. In the given facts and circumstances, it is also relevant to refer to the decision of this Bench in *Tasmeer Qureshi v. Asfia Muzaffar*: 2025 SCC OnLine Del 7272, wherein it was



observed as under:

“(iv) Caution in Applying Minimum Wages Criteria While Assessing Notional Income of the Husband

45. Another issue which is relevant to highlight is the practice in which the learned Family Courts, faced with non-disclosure or evasive disclosure of income by the husband or where a husband pleads that he earns nothing, proceed to assess earning capacity by resorting to the schedule of minimum wages. The underlying rationale is sound - an able-bodied man cannot be permitted to defeat a claim for maintenance by his wife by withholding basic financial particulars [Ref : *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 2 SCC (Cri) 785 : (2015) 3 SCC (Civ) 274; *Rajnesh v. Neha* (supra)], and the Family Court is entitled to draw an adverse inference and impute at least a baseline earning capacity. Minimum wages provide a statutory and reasonable basis to assess a person's earning capacity when there is no direct or reliable proof of actual income available on record.

46. However, the method must be applied with accuracy and care. Minimum wages are not uniform across India; they vary by State/Union Territory, by scheduled employment, and by skill category (unskilled, semi-skilled, skilled, or highly skilled), and they are periodically revised. The learned Family Courts must therefore:

- (i) identify the correct State,
- (ii) determine the appropriate skill category on a *prima facie* view of the husband's qualifications, experience and past vocation, and
- (iii) note the effective date of the minimum wage schedule relied upon.

47. Orders that simply assume “minimum wages in Delhi” without examining whether the husband resides or is ordinarily employed in another State result in a higher or lower income assessment. For instance, if the husband resides in the State of Haryana and there is no proof that he is employed in Delhi, the minimum wage schedule applicable in Haryana has to be applied. The inadvertent practice of applying Delhi's minimum wages merely because the proceedings are before a court in Delhi or because the wife resides in Delhi ought to be avoided.”



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12. Applying the above principle to the present case, this Court is of the view that the premise for computing the petitioner's notional income i.e. minimum wage that a skilled/graduate would earn in Delhi, requires reconsideration.

13. In view of the above discussion, the impugned order dated 21.11.2023 is set aside to the limited extent that it proceeds on the basis of minimum wages of Delhi, and the matter is remanded back to the learned Family Court for deciding afresh in view of the fact that the petitioner is not a resident of Delhi.

14. The learned Family Court is requested to decide the application for interim maintenance within 01 month from the date of receipt of this order.

15. It is however clarified that the observations made hereinabove are solely for the purpose of deciding present petition concerned with the issue of interim maintenance, and the same shall not tantamount to this Court's expression of opinion on the merits of the case.

16. The present petition is disposed of in above terms. Pending application also stands disposed of.

17. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
NOVEMBER 28, 2025/zp