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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.02.2025*+ **CRL.REV.P. 1115/2024**

SH. SUBHASH CHAND

.....Petitioner

Through: Mr. D.B. Yadav and Mr.
Sauraj Yadav, Advocates

versus

SMT. MAYA & ORS.

.....Respondents

Through: Counsel (appearance not
given)**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The present revision petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] has been filed on behalf of the petitioner, seeking setting aside of the order dated 25.04.2024 [hereafter '*the impugned order*'] passed by the learned Principal Judge, Family Court, Central District, Tis Hazari Court, Delhi [hereafter '*Family Court*'] in MT No. 221/2017.

2. Briefly stated, the facts of the present case are that the marriage of the petitioner and respondent no.1 was solemnized on 13.04.2000 according to Hindu rites and ceremonies at Delhi. At the



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time of marriage, the petitioner was aged about 30 years and respondent no. 1 was aged about 18 years. The marriage was duly consummated and two children i.e., one son and one daughter (respondents nos. 2 and 3) were born out of the said wedlock. The respondent no. 1 had alleged that her parents had spent Rs. 15 lakhs at the time of marriage; however, from the very beginning of the matrimonial life, she was not provided with basic amenities of life. It is alleged that the petitioner, his parents, sister and brother-in-law used to taunt respondent no. 1 for bringing only a meagre amount as dowry, and for that reason, they had also mercilessly beaten up respondent no. 1. It is also alleged that the said incident was informed by respondent no. 1 to her parents and resultantly, the parents of respondent no. 1 had called *biradari panchayat* on various occasions, in which the matter had initially been settled. However, in the year 2011, the respondent no. 1 was thrown out of her matrimonial home along with her children by the petitioner, upon being instigated by his family members and since then, the parties have been residing separately.

3. The respondent no. 1 had filed an application under Section 125 of Cr.P.C. seeking maintenance for herself and the children, wherein she had averred that the petitioner was earning more than Rs. 2 lakhs per month from his own business of general store as well as the stationary shop. It was also averred that the petitioner was having property in his name and also having rental income from various properties including the ancestral property. Accordingly, the



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respondent no. 1 had prayed that the petitioner herein be directed to pay maintenance at the rate of Rs.20,000/- per month to her, and Rs.10,000/- per month each to the two children.

4. By way of the impugned order, the learned Family Court directed the petitioner to pay Rs.4,000/- per month each, to respondent no.1/wife from the date of filing of the petition till she is entitled for maintenance, as well as to respondent nos. 2 and 3 from the date of filing of the petition till both of them attain the age of majority. The concluding portion of the impugned order is set out below:

“24. Since no evidence in support of claim of petitioner that respondent is earning Rs. Two lakhs per month has been filed by the petitioner, the assessment of estimated income can only be made by this Court on the basis of able-bodied criteria in terms of the directions of the Hon’ble Superior Courts. Judicial notice can be taken of the fact that **generally an able-bodied person can earn about Rs.20,000/- per month** as this assessment is based on the minimum wages chart issued by the Government from time to time under minimum wages Act. This Court is left with no other option for determination of income of respondent but only realistic assessment is made on the basis of guess work as to what amount an able-bodied man can earn per month based upon minimum Wages Act. Hence the income of the respondent is assessed to be as Rs.20,000/- per month.

25. In *Annurita Vohra vs Sandeep Vohra; 2004(3) AD 252* it has been held that family income should be divided equally between the petitioner and the respondent but one extra portion/share should go to respondent as an earning spouse because extra expenses would necessarily occur to earning hand. Therefore, instead of dividing the estimated income in four shares, Rs. 20,000/- shall be divisible by five shares which cases out to be around Rs. 4,000/- and accordingly Rs. 4,000/- per month each falls to share of the petitioner no. 1/wife as well



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as for petitioners no. 2 & 3/minor son and daughter for their maintenance.

26. Respondent husband is under moral and social obligation to provide suitable maintenance to his wife. It has been proved by the petitioner that she is living separately from respondent and that the respondent having sufficient means has neglected and refused to maintain the petitioner. For a decent living and to meet other expenses, sufficient funds are required. The cost of living is escalating day by day. The petitioner has not filed any record/documents showing her earnings. Accordingly, the respondent/husband is ordered to pay a monthly amount of Rs. 4,000/- each as maintenance to the petitioner no. 1/wife from the date of filing of this petition till she is entitled for maintenance as well as to petitioners no. 2 & 3/minor son and daughter from the date of filing of this petition till both of them attains majority.”

5. While assailing the impugned order, the learned counsel appearing for the petitioner argues that the learned Family Court has passed the impugned order in a mechanical manner, without considering the fact that respondent no. 1 had given a statement on 21.02.2023 before the learned Family Court that she was ready to join the company of the petitioner but later on, she had not joined his company. It is also submitted that the petition filed by respondent no. 1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter ‘*PWDV Act*’] had been dismissed by the learned Magistrate on merits, as respondent no. 1 had failed to prove any type of domestic violence against her. It is also submitted that respondent no. 1 had failed to prove that the petitioner was earning more than Rs.7,800/- per month and also the fact that the petitioner was not even cross-examined on behalf of respondent no. 1. It is, therefore, prayed that the impugned order 25.04.2024 be set



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aside.

6. The learned counsel appearing for the respondents has opposed the prayer made in the present petition. He submits that the impugned order does not suffer from any illegality or perversity, as the same has been passed by the learned Family Court, after considering the oral and documentary evidence placed by both the parties. Accordingly, it is prayed that the present petition be dismissed.

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

8. The issue before this Court is whether the quantum of maintenance fixed by the learned Family Court *vide* the impugned order passed under Section 125 of Cr.P.C. is excessive or not, in the given set of facts and circumstances.

9. Firstly, insofar as the contention of the petitioner – that the complaint filed by the respondent no. 1 under PWDV Act was dismissed on merits – is concerned, this Court is of the opinion that proceedings under Section 12 of PWDV Act are substantially different from the proceedings under Section 125 of Cr.P.C. In fact, the order, *vide* which the complaint of respondent no. 1 was dismissed by the learned Magistrate, itself observes that the respondent no. 1 herein would be at liberty to claim maintenance for herself and her children under other provisions of law such as Section 125 of Cr.P.C.

10. Secondly, a perusal of the impugned order reveals that the



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learned Family Court had taken note of the fact that while deciding the application in question, the wife had to establish that she does not have the means to support herself, while the husband, despite having sufficient means, is neglecting and refusing to maintain her. In this regard, the learned Family Court noted from the income affidavits filed by both the parties that the wife had claimed herself to be 9th class pass, not having any income, whereas the husband was 10th class pass and earning about Rs. 2 lakhs per month from his business of general store and stationary shop. On the other hand, the husband in his affidavit had claimed himself to be 10th class pass but earning only Rs.7,800/- per month, whereas he had claimed that his wife was earning about Rs.10,000/- per month from doing stitching work. However, on the basis of documentary and oral evidence, the learned Family Court concluded that there was no evidence on record, to either substantiate the claim that husband was earning Rs. 2 lakhs per month or the wife was earning Rs.10,000/- per month. Insofar as this finding is concerned, after perusing the trial court record, this Court finds no infirmity with the same.

11. It is the case of the petitioner that the learned Family Court has ordered excessive maintenance to his wife and children i.e. the respondents herein, by assessing his income as Rs.20,000/- per month, while ignoring the fact that the petitioner is, in fact, not earning such an amount.

12. In this background, it shall be first relevant to take note of a few judicial precedents. The intent of Section 125 Cr.P.C. and the



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objectives which it aims to achieve were discussed by Hon'ble Supreme Court in case of ***Bhuwan Mohan Singh v. Meena***: (2015) 6 SCC 353 with the following observations:

"2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

(Emphasis supplied)

13. In the context of the present case, a reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Shamima Farooqui v. Shahid Khan***: (2015) 5 SCC 705, wherein it was observed that sometimes, bald excuses are given by the husband that he does not have means to pay maintenance, however the same have



no acceptability in law. The relevant observations are set out below:

“14. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. **If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.**

17. This being the position in law, **it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.**

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

(Emphasis supplied)

14. Similarly, the Hon’ble Supreme Court in *Rajnesh v. Neha and Anr.*: (2021) 2 SCC 324 had observed as under:

“80. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

90.4. **An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a**



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position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash Bodhraj v Shila Rani Chander Prakash* 1968 SCC OnLine Del 52. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligation for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court."

(Emphasis supplied)

15. Reiterating the same principle, the Hon'ble Supreme Court in *Anju Garg v. Deepak Kumar Garg*: 2022 SCC OnLine SC 1314 held as under:

"13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child."

(Emphasis supplied)

16. In view of the legal propositions as discussed above, petitioner being an able bodied man, cannot shy away from his responsibilities towards his wife and his minor children. As noted above, a perusal of the impugned order clearly shows that there was no substantial evidence before the learned Family Court, which could prove the rival claims of the petitioner and respondent no. 1 regarding their monthly incomes. Therefore, in such circumstances, the learned Family Court had no other option but to rely upon the decisions of the Hon'ble Supreme Court, on the principle that an able bodied man



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cannot refuse to maintain his wife and children, for deciding the issue in question. The learned Family Court thus assessed the income of the petitioner as Rs.20,000/- per month on the ground that an able bodied man could earn this much amount in Delhi, as per the standard outlined in Minimum Wages Act.

17. Insofar as the assessment of petitioner's monthly income is concerned, this Court is of the view that the rate of Minimum wages in Delhi is as follows: (i) Rs.18,000/- (approximately) for an unskilled person, (ii) Rs.19,000/- (approximately) for a semi-skilled person, and (iii) Rs.20,000/- (approximately) for a skilled person. The petitioner herein has, concededly, studied only till class 10th. Neither in the pleadings nor during the course of arguments, has the respondent no. 1 contended that the petitioner possesses any special skill, which would make him fall under the category of 'skilled person'. Therefore, in this Court's opinion, the interest of justice would be served by assessing the income of the petitioner as Rs.18,000/- per month.

18. As far as the distribution of petitioner's income, among his wife and children, is concerned, this Court is of the view that the learned Family Court has rightly followed the decision of this Court in *Annurita Vohra v. Sandeep Vohra*: 2004 SCC OnLine Del 192, and divided the petitioner's income into five equal shares, and apportioned two shares to the petitioner and three shares each to the respondents herein.



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19. However, since the income of the petitioner has been now assessed as Rs.18,000/-, the quantum of maintenance stands modified to Rs.3,600/- per month, payable to each of the respondent herein. All other conditions mentioned in the impugned order shall remain intact.

20. The impugned order is therefore modified to the aforesaid extent. The petition is accordingly disposed of, alongwith pending applications, if any.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 13, 2025/zp