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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 25.02.2025*+ **CRL.REV.P.(MAT.) 48/2024 & CRL.M.A. 29357/2024**

SODAN SINGH RAWAT

.....Petitioner

Through: Mr Rajbir Singh Sagar,
Advocate

versus

VIPINTA

.....Respondent

Through: Mr. Brijesh Kumar Sharma,
Advocate**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The present revision petition has been filed under Section 19(4) of the Family Courts Act, 1984 read with Section 397/401 of the Code of Criminal Procedure, 1973 [hereafter 'Cr.P.C.'] on behalf of the petitioner seeking setting aside of the judgment dated 27.05.2024 [hereafter 'the impugned judgment'] passed by the learned Judge, Family Court-01, District Shahdara, Karkardooma Courts, Delhi [hereafter 'Family Court'] in a petition filed under Section 125 of Cr.P.C. by the respondent (MT No. 363/2017), by way of which the petitioner/husband has been directed to pay maintenance to the respondent/wife at the rate of ₹10,000/- per month



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from the date of filing of the application until the judgment, and ₹20,000/- per month from the date of the judgment and till the subsistence of marriage between the parties.

2. The brief facts of the case, as discernible from the records, are that the marriage between the petitioner and the respondent was solemnized on 27.04.2015 as per Hindu rites and ceremonies at Kota, Rajasthan. The parties do not have any children from this wedlock. The respondent alleges that after marriage, the petitioner started demanding dowry, despite her family having already given adequate dowry articles, and subjected her to cruelty. It is further alleged that the petitioner deliberately neglected the respondent, stating that he was in an extramarital relationship and had no interest in her, as he wished to marry someone else. On 15.10.2016, the respondent left the matrimonial home and lodged a police complaint against the petitioner and his family members on 17.10.2016. Subsequently, on 01.08.2017, the respondent filed a petition under Section 125 of Cr.P.C. seeking maintenance. She stated that she had been residing separately, while the petitioner, who is employed with the Railways and earns more than ₹60,000/- per month, besides additional earnings of ₹50,000/-, had not been providing any financial support to her. The respondent, therefore, sought a monthly maintenance of ₹25,000/- from the petitioner.

3. By way of the impugned judgment, the learned Family Court disposed of the application filed under Section 125 of Cr.P.C. and



awarded maintenance to the respondent wife. The relevant portion of the impugned judgment is set out below:

“17. Petitioner has further proved that she has not been working or earning, whereas the respondent has alleged she is highly qualified and has been earning Rs. 70,000/- per month by giving tuitions, whereas the respondent has not proved any document to prove this earning of the petitioner. Petitioner has filed her affidavit of income and assets, as per which, she has no source of earning. No doubt the petitioner is highly qualified and has completed M.A. B.Ed, but she has claimed herself to be house wife. Though her bank statement has reflected certain regular entries, yet income of the petitioner is not enough to maintain her. Even certain entries are pertaining to maintenance being paid by the respondent. As such, the petitioner has not been earning sufficiently to maintain her.

18. Contrary to it, the respondent has been working as JE with Indian Railway and his salary slips pertaining to the month of January and February, 2022 along with Form 16 are on record, as per which, the respondent has gross salary of Rs. 77,603/- and drawing net salary of Rs.25,973/- pm after paying insurance, pension contribution, Income Tax and other loans. Admittedly, the petitioner has been residing separately since 15.10.2016 and she has filed this petition in the year 2017, whereas the respondent has availed JCCS Loan Kota, JP Bank Loan Kota/RECB and paying EMIs of Rs. 18,656/- and Rs. 12,803/- respectively. However, these loans cannot be attributed to the welfare of family as the petitioner is not beneficiary of such loans. In fact, deductions of LIC program, New Pension Scheme, Income Tax and other Railway deductions may be considered necessary but rest of loan recovery cannot be adjusted against his income to determine his income. As such, the respondent has deductions of Rs. 17,000/- (rounded off) which are to be deducted from salary of Rs. 77,603/- and monthly earning of the respondent comes to Rs. 60,000/- per month (rounded off). However, income of the respondent is pertaining to the month of January and February, 2022, and income might have increased during this period as well.

19. Petitioner is wife of the respondent and has been residing separately, whereas the respondent has no other financial dependency except his wife, due to his earning @ Rs. 60,000/-



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per month has to be divided into three shares and the petitioner shall be entitled for one share @ Rs. 20,000/- per month. However, earlier earning of the respondent was much lesser than and his affidavit of income and assets filed way back on 07.02.2018 has proved earning of the respondent @ Rs. 31,790/- pm, due to the petitioner shall be entitled for maintenance @ Rs. 10,000/- per month from the date of filing of application and till judgment. Thereafter, she shall be entitled for maintenance @ Rs. 20,000/- from the date of judgment and during subsisting relationship of the husband and wife between them. With these observations this present petition is hereby disposed of.

20. Any ad-interim/interim maintenance in this petition or in any other petition, if any shall also be subject to adjustment/ set off.

4. The learned counsel for the petitioner submits that both parties had filed their affidavits of assets and liabilities, and thereafter, by the impugned judgment dated 27.05.2024, the learned Family Court allowed the respondent's application for maintenance without proper application of judicial mind. It is argued that the learned Family Court failed to appreciate that the petitioner is a salaried employee, whose net take-home salary is only ₹25,973/-, and did not consider that he is already paying EMIs of ₹18,656/- and ₹12,803/- per month for loans. The learned counsel contends that the Family Court passed the impugned order without properly considering the loan repayment records. It is further argued that the respondent is guilty of desertion, having left the matrimonial home of her own volition, and that she earns an independent income by giving private tuitions, making her ineligible for grant of maintenance. He however states that the petitioner is willing to pay ₹10,000/- per month as maintenance to the



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respondent. The learned counsel draws this Court's attention to Annexures R-6 and R-7, which reflect the deduction of monthly EMIs of ₹18,656/- and ₹12,803/- from the petitioner's bank account. Accordingly, it is prayed that the impugned order be set aside.

5. On the other hand, the learned counsel for the respondent contends that the impugned order granting maintenance was passed after due consideration of the documents placed on record and a proper assessment of the petitioner's income. It is stated that the petitioner is a man of means and is employed as a Junior Engineer with Indian Railways. The learned counsel for the respondent further argues that the petitioner's claim regarding loan repayments for his father's cancer treatment is unjustified, as his father is a retired government employee capable of bearing his own medical expenses, whereas the respondent has no independent financial support and requires maintenance for her sustenance. The learned counsel for the respondent also submitted that as of March, 2023, the gross salary of the petitioner was about ₹88,000/- per month (as evident from his salary slip of March 2023 placed on record), and as of now, he earns more than ₹1,00,000/- Therefore, it is prayed that the present petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record.

7. Having considered the arguments advanced by the parties and the findings recorded by the learned Family Court, this Court notes at



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the outset that the petitioner/husband, despite being granted the opportunity to do so, had failed to lead any evidence before the learned Family Court. As per order dated 13.03.2024, the counsel for petitioner had conceded before the learned Family Court that the petitioner had no defence on merit and therefore, there was no necessity to lead defence evidence. It is also apparent from the perusal of Family Court record that the defence of the petitioner herein had also been struck off due to his conduct before the learned Family Court, and costs had also been imposed on him on certain occasions.

8. The records reveal that the petitioner's gross monthly salary was approximately ₹80,000/-, as per the salary slips placed on record, and after accounting for statutory and mandatory deductions, his net income stood at around ₹60,000/- per month.

9. The petitioner has contended that he is repaying two loans and that the EMIs of ₹18,656/- and ₹12,803/- per month being deducted from his income should be factored in while determining the maintenance amount, and thus, his net salary which stood at about ₹26,000/- per month should be considered as his income for the purpose of determining the amount of maintenance. However, as noted by the learned Family Court, these loans were not taken for the welfare of his wife or for the necessity of the common household. Instead, the petitioner claims that the loans were availed for the medical treatment of his father. However, the learned counsel for the



respondent/wife has specifically argued before this Court that the petitioner's father is a retired government employee who is entitled to medical benefits and does not require financial assistance from the petitioner for his treatment. The petitioner has been unable to controvert the said submission. Furthermore, it appears that both these loans were obtained after the respondent had filed her petition under Section 125 of Cr.P.C. for grant of maintenance, inasmuch as the petitioner did not disclose any details of these loans in the income affidavit filed by him before the learned Family Court.

10. It is undisputed that some deductions from an employee's salary are mandatory, while others are voluntary and made at the employee's discretion. However, when determining the amount of maintenance, the Courts are required to consider only the mandatory deductions and compulsory contributions. In case of *Chanchal Verma v. Anurag Verma*: 2022 SCC OnLine Del 2993, this Bench had observed as under:

“32. It has been held categorically in the case of *Nitin Sharma v. Sunita*, 2021 SCC OnLine Del 694, that **only statutory mandatory deductions from the income of the husband are permissible to be deducted for the purpose of computation of his income for the purpose of grant of maintenance**. The observations of the Court read as follows:

“...24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and **no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted...**”



33. The court further reiterated what was held by the Hon'ble Punjab & Haryana High Court in the case of *Seema v. Gourav Juneja*, 2018 SCC OnLine P&H 3045 which is stated as under:

“13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary...”

(Emphasis added)

11. Be that as it may, despite having had the opportunity, the petitioner failed to lead any evidence to establish the necessity of these loans. In such circumstances, the petitioner's argument regarding loan repayments does not hold merit and cannot be accepted as a ground to reduce or deny maintenance to the respondent.

12. The petitioner has further contended that the respondent/wife is highly educated and earns an independent income by giving private tuitions. However, once again, he had failed to produce any material evidence before the learned Family Court to support the claim that the respondent earns any income. Even otherwise, as held by the Hon'ble Supreme Court in *Shailja & Anr. v. Khobbanna*: (2018) 12 SCC 199, mere capacity to earn and actual earning are two distinct concepts. It is not the potential earning capacity of the wife but her actual income at the relevant time that is to be considered while determining the amount of maintenance. In the absence of any credible proof to show that the respondent is financially independent,



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this Court finds no reason to interfere with the findings of the learned Family Court.

13. In this Court's view, the learned Family Court has rightly assessed the income of the petitioner at ₹60,000/- per month, and divided the same into three equal shares, and awarded one share of ₹20,000/- to the respondent herein. The learned Family Court has also ensured that maintenance is granted in a manner proportionate to the petitioner's financial growth, thereby awarding ₹10,000/- per month from the date of filing of the petition and ₹20,000/- per month from the date of judgment.

14. In view of the above, this Court finds that the impugned judgment suffers from no illegality, perversity, or infirmity warranting interference.

15. Accordingly, the present petition is dismissed, alongwith pending application.

16. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025/zp