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

\+ CRL.REV.P.(MAT.) 496/2025, CRL.M.As. 33568-71/2025

MR RAJEEV SHARMA .....Petitioner

Through: Ms. Gayatri Puri, Mr. Siddhant Sahil, Mr. Jayant Singh Chauhan, Advs.

versus

MS PALLAVI SHARMA AND ANR .....Respondents

Through:

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**<u>O R D E R</u>**

% **13.11.2025**

1. This revision petition under Sections 438 and 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] assails the impugned judgment dated 31st July, 2025, passed by Judge, Family Court-01, Central District, Tis Hazari Court, Delhi in MT No. 5861915/2016 tiled "***Pallavi Sharma & Anr. v. Rajeev Sharma***".

2. By the impugned judgment, the Family Court has directed the Petitioner to pay maintenance of INR 10,000 per month to Respondent No.1 from the date of filing of the petition, payable for her lifetime or until she re-marries, along with INR 10,000 per month to Respondent No.2 till his attainment of majority. The Petitioner has also been directed to clear the arrears of maintenance accruing from the date of filing of the petition within the time stipulated in the impugned order. The direction concerning Respondent No.2 is not under challenge, and the present revision is confined

[1] "BNSS"



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to the maintenance awarded to Respondent No.1.

3. The marriage between the parties was solemnized on 30th April, 2006, according to Hindu rites and ceremonies. The parties have a son, Vaibhav, born on 24th March 2007 and his custody has remained with Respondent No.1. Owing to matrimonial discord, the parties had been residing separately since 2009 and have since engaged in multiple litigations *inter se*. The present proceedings arise from the petition under Section 125 of the Code of Criminal Procedure, 1973,[2] from which the impugned order emanates.

4. The Petitioner presses the following grounds in challenge:

4.1 The Trial Court overlooked the order dated 18th July, 2025 in SLP (C) No. 4900/2024, by which the Petitioner has been directed to clear arrears in terms of the order dated 05th December, 2022 under the Hindu Marriage Act, 1955 and to continue paying INR 10,000 per month. He has already discharged substantial arrears arising from earlier maintenance orders, including those under Section 24 HMA and pursuant to directions of the High Court and the Supreme Court, amounting to approximately INR 21,55,000. The corresponding execution proceedings were disposed of as satisfied on 24th May, 2025. According to the Petitioner, the impugned order overlooks these directions and recomputes arrears under Section 125 Cr.P.C. at about INR 35,50,000 from the date of filing, thereby creating what he characterises as a duplicative financial burden.

4.2. The Trial Court erred in assessing his income at INR 40,000-50,000 per month. He asserts that he is only a driver earning a modest amount and that the alleged distributorship and stationery business had long closed and, in any event, belonged to his late father. Hence, the presumption of higher



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earnings is unfounded.

4.3. Respondent No.1 is an able-bodied and qualified person capable of earning, and her capacity was not duly considered. Her choice not to work should not result in an automatic entitlement to maintenance.

4.4. The scheme of Section 125 Cr.P.C. is to prevent destitution and cannot be invoked to enrich a spouse who is residing in her parental home and has no financial responsibilities.

4.5. The parties have been divorced since 2023; the Petitioner has re-married and bears responsibilities towards his present wife and aged mother, making the award of INR 10,000 per month to Respondent No.1 an undue financial burden.

5. The Court has considered the abovementioned submissions and examined the record. The impugned order is a final order passed upon appreciation of the evidence led by both sides. The Family Court has dealt with the material placed before it in detail. The primary grievance of the Petitioner concerns three aspects: (i) the assessment of Respondent No.1's income as nil, and (ii) the estimation of the Petitioner's earning capacity (iii) the failure to give due credit for arrears already paid by the Petitioner, which, according to him, have not been adjusted by the Trial Court.

6. Insofar as Respondent No.1 is concerned, the material on record does not show that she is presently employed or earning. The Petitioner was unable to produce any evidence indicating actual income. Reliance on her educational qualifications and general capacity to earn, without more, cannot displace the finding that she remains financially dependent. The parties have been living separately since 2009, and the custody and day-to-day care of

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[2] "Cr.P.C."



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the child has consistently remained with Respondent No.1. Her role as the primary caregiver over the years reasonably explains the absence of formal employment and cannot, by itself, be treated as a ground to deny maintenance.

7. The contention that Respondent No.1 is "qualified" or "capable" of earning, therefore, does not carry the matter further. The law recognises that capacity to earn is distinct from actual earnings, and an able-bodied spouse who is not, in fact, working cannot be denied maintenance solely on that basis. In ***Shailja & Anr. v. Khobbanna***[3] the Supreme Court drew a clear distinction between the capacity to earn and the fact of earning, holding that it is the latter which is decisive for determining whether maintenance should be awarded. The Trial Court also recorded that despite alleging that the respondent was capable of earning, the Petitioner could not produce any documentary evidence showing that she was actually employed or deriving any income:

> *"(B) **Income of the petitioner**:*
> *B.1 The petitioner has filed her income affidavit, as per which, she is qualified till B.A.–B.Ed. but is unemployed and is a housewife and not earning any income.* ***Though the respondent has alleged that petitioner is capable of earning but he has not placed on record any documentary evidence to show that the petitioner is actually employed and earning any income per month to be able to maintain herself and the child. Thus, there is nothing on record to show that the petitioner is working or is having any source of income.***
> *B.2 In the case of "Rajnesh vs. Neha reported in (2021) 2 SCC 324" the Supreme Court of India has observed as under:*
>
> > *"In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family, being the primary caregiver to the minor children, and the elder*

[3] (2018) 12 SCC 199



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*members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards; the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years."*

[Emphasis Supplied]

8. The Family Court also recorded that the Petitioner had, at an early stage, left Respondent No.1 and their minor child in the tenanted accommodation without making provision for their maintenance or even the rent, compelling Respondent No.1, then a nursing mother with a child of about two-and-a-half years, to depend upon her parents. The Trial Court noted that these circumstances, coupled with the Petitioner's subsequent initiation of divorce and eviction proceedings, demonstrated a continuing failure on his part to discharge his responsibility towards his wife and child.

9. Accordingly, the Trial Court's assessment that Respondent No.1 has no independent income is fully supported by the record.

10. With respect to the Petitioner's income, the grievance is that the Trial Court assessed his earning capacity at INR 40,000-50,000 per month. The record indicates that the Trial Court arrived at this conclusion after considering the income affidavits, the Petitioner's past earnings, and the overall material placed on record. The relevant findings of the Trial Court on this aspect are as follows:

*(C)* ***Income of the respondent:***

*C.1 The respondent has filed his income affidavit, as per which, he is educated till 12th Class. As per the income affidavit filed by the respondent, the respondent was employed as "****Field Executive" in a private firm namely M/s Aparna Electricals situated in Chandani Chowk, Delhi and his salary was alleged to be Rs. 6,500/- per month but no salary certificate has been proved in evidence of respondent****. It*



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*was alleged in the income affidavit that respondent does not have any bank deposits, FDRs, Post Office Schemes or any other Policies. He has further alleged in the income affidavit that though his father is independent but his mother is residing with him.*

*C.2 On the other hand, petitioner has filed on record the Income Tax Returns of the respondent and bank account statements of respondent and "M/s Guru Kirpa Sales" to prove that the respondent was running the business of stationery shop and was also a distributor of Navneet Publications. Copy of balance sheets of M/s Guru Kirpa Sales have also been filed on record to show that the respondent was running the business of stationery under the name and style of M/s Guru Kirpa Sales in year 2008-2009. The petitioner has also placed on record copy of mobile bill dated 19.01.2012 of Aircel Company in name of respondent to show that the respondent was having a mobile phone in year 2012 and was enjoying affluent standard of living.*

*C.3* ***All the documents filed on record and exhibited / marked by petitioner in her evidence are sufficient to prove that the respondent was running the business of M/s Guru Kirpa Sales and was also having distributorship of Navneet Publications.*** *As per the Income Tax Returns, the gross total income of respondent as "Proprietor" of M/s Guru Kirpa Sales from year 2007 to 2009 was about Rs.1,20,000/- to Rs.1,25,000/- per annum which is reasonably expected to have grown substantially since past 15 years. Though, the respondent has alleged that the business of M/s Guru Kirpa Sales as well as distributorship had closed long time back, but no documentary proof or any other evidence has been brought on record by the respondent to prove his averments.*

*C.4 The petitioner has also placed on record copy of receipt of LIC in name of respondent, having sum assured as Rs.2,00,000/- (Rupees Two Lakhs). Copy of bill of 'Pulsar Motorcycle' dated 07.01.2009 and copy of RC of vehicle Wagon-R LXI having registration no. DL4CAA 0591 has also been placed on record by the petitioner to show that the respondent was having motorcycle and a car in his name in year 2009 which reflects his affluent status of living.*

*C.5 The petitioner has filed on record various documents of expenditure, medical documents and school fees of child Vaibhav Sharma to show that all the expenses of day-to-day living of petitioner and her child, their medical expenses and school fees of the child were being borne by the petitioner with the financial help from her parents and respondent was not making any efforts to maintain them or to deposit school fees of the child.*

*C.6 Certain deposits by respondent into the bank account of petitioner are reflected as per the bank account statements of petitioner, which had been paid by the respondent towards arrears of interim maintenance awarded in this case or awarded under Section 24 of HMA in divorce petition.*



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*C.7 The respondent examined himself as RW-1 and reiterated the facts mentioned in the written statement in his evidence by way of affidavit dated 10.08.2023 but he did not file on record or exhibit any documentary evidence to show his past or present income, his status of living or dependency of any other family member upon the respondent.*

*C.8 In his cross-examination, he alleged that presently he is residing in Alwar with his mother but he did not file any documentary proof of his present address. He admitted that the child Vaibhav Sharma was born on 24.03.2007 out of the wedlock. He admitted that he had filed Guardianship petition in Family Courts, THC, Delhi but he had withdrawn it. He alleged in his cross-examination that presently, he is working as a "Driver" and is driving commercial vehicle since year 2015 with M/s Sharma Tour and Travels having their office at Noida, UP but he did not place on record any driving licence, employment identity card or salary certificate to prove his contentions. He stated that his father had passed away on 16.02.2025 and his mother is a retired Teacher.* ***He alleged that presently, he is earning Rs. 9,000/- per month as a Driver but he did not file any salary certificate to prove his present income. He admitted that his mother is not financially dependent upon him.*** *He also admitted that the divorce decree passed in his favour has been stayed by the Supreme Court of India vide order dated 04.03.2024.*

*C.9 In his cross-examination dated 17.05.2025, RW-1 / respondent admitted that he was distributor of Navneet Publications but he stated that he was distributor for only 3-4 months.* ***He admitted that the Car bearing no. DL 8CAR 2093 (Creta) belongs to his mother. Photocopy of challan Ex.RW-1/P3 qua the said vehicle was shown to him and he admitted that the Challan was in his name and he sometimes used to drive the said vehicle.*** *Certain photographs reflecting the lifestyle of respondent were placed on record by the petitioner as Ex.RW-1/P1 and Ex.RW-1/P4 and the respondent admitted that the person reflected in the photographs is respondent himself. He denied the suggestion that it is apparent from the photographs that he is leading a luxurious lifestyle.*

*C.10 In his cross-examination dated 24.05.2025,* ***the respondent alleged that the business of M/s Guru Kirpa Stationery was being run by his father and it was closed in year 2019 but he did not place on record any supporting documents to substantiate his averments.***

*C.11 The Delhi High Court in case titled Chander Parkash v. Shila Rani (1968 SCC OnLine Del 52; AIR 1968 Del 174) observed as under:*

> *"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 position to earn sufficiently to maintain his family. 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 obligations for reasons*



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*beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court."*

*C.12* ***Therefore, in absence of any documentary or other evidence brought on record by the respondent, it can be safely concluded that the respondent was running the business of M/s Guru Kirpa Sales and stationery and was also having distributorship of Navneet Publications and was earning a handsome income per month which was sufficient to maintain his wife and child.****"*

[Emphasis supplied]

11. The Trial Court, after examining the income affidavits, documents and cross-examination, found that the husband's claim of earning only INR 6,500/- to INR 9,000/- per month was unsubstantiated by any documentary proof. In contrast, the Respondent produced Income Tax Returns, bank statements, balance sheets and other records showing that the Petitioner had been running M/s Guru Kirpa Sales, had distributorship of Navneet Publications, and possessed assets such as a motorcycle, a Wagon-R and insurance policies, reflecting an established and reasonably affluent standard of living.

12. The Petitioner admitted several of these facts in cross-examination, including prior distributorship, use of a Creta car, and possession of assets, but produced no material to substantiate his alleged low income, closure of business, or dependency of any family member. Relying on these circumstances and the principle that an able-bodied husband is presumed capable of earning sufficient income unless he proves otherwise, the Trial Court held that the respondent had a stable earning capacity commensurate with the material placed on record.

13. This approach of the Family Court is consistent with settled principles governing the determination of maintenance, which permit a degree of



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guesswork where income is concealed, inadequately disclosed, or not verifiable. In such cases, courts may draw reasonable inferences from factors such as qualifications, work history, lifestyle, liabilities, and overall standard of living, rather than rely solely on self-serving affidavits.[4]

14. The Supreme Court has elucidated in its judgement in ***Chaturbhuj v. Sita Bai***[5] that maintenance must be "reasonable and realistic": it should not be oppressive to the payer, yet cannot be so meagre as to drive dependents to penury. While there exists no straight-jacket formula for the same, the assessment of the Petitioner's income and the consequent award in the present case bears the stamp of reasonableness and meets the essential needs of the dependents.

15. Accordingly, the assessment of his earning capacity at INR 40,000-50,000/- per month is founded on a comprehensive appreciation of the material on record and does not disclose any perversity warranting interference.

16. The contention that the Petitioner has re-married and now bears responsibilities towards his present wife and aged mother does not advance his case. This circumstance cannot, in law, defeat the entitlement of a divorced wife to maintenance under Section 125 Cr.P.C., so long as she has not re-married and is unable to maintain herself.

17. Lastly, the Court also has to take stock of the limited scope of interference at the stage of revision. Under Section 442 BNSS (formerly Section 401 of Cr.P.C.), interference lies only for jurisdictional error, patent perversity, or manifest miscarriage of justice, and not to substitute an

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[4] Rajnesh v. Neha, (2021) 2 SCC 324; Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622.

[5] Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705; Anju Garg v. Deepak Kumar Garg (2022) 4



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alternative view on quantum if the Family Court's view is reasonably open on the record.[6] The impugned order applies the correct tests, marshals the material, and fashions relief proportionate to need and capacity. No ground for revisional correction is made out.

18. As regards the contention that the arrears have been recomputed without giving credit for amounts already paid, the Court finds no merit in the submission. The Family Court has expressly directed that adjustment/set-off be made for all amounts earlier paid towards interim or ad-interim maintenance, and has further clarified that the Respondents shall be entitled to receive the highest amount awarded by the various Courts. The relevant portion of the order reads as follows:

> *14. Petitioner no.1 is also entitled to enhancement of maintenance @10% after every two years from the date of this order. The respondent is directed to clear the arrears of the maintenance* ***within 6 months from today and adjustment / set off be made for the amount already paid by the respondent towards ad interim / interim maintenance. As per the settled law, the petitioners shall be entitled to receive the highest amount of the various allowances, if any, awarded to them by various Courts.*** *Litigation expenses of Rs.11,000/- are also awarded to the petitioner no.1."*

[Emphasis Supplied]

19. Nonetheless, it is clarified that the question of adjustment of any amount already paid by the Petitioner towards maintenance shall be examined and given effect to by the Execution Court, which shall compute the Petitioner's liability in accordance with law.

20. Accordingly, the present petition is dismissed with pending application(s).

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SCC 443).

[6] State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452.



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**SANJEEV NARULA, J**

**NOVEMBER 13, 2025**
*Pallavi*



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