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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.04.2025*+ **CRL.REV.P.(MAT.) 154/2024 & CRL.M.A. 37477/2024**

MOHAN LAL

..... Petitioner

Through: Ms. Juhi Arora, Advocate

versus

BARKHA & ORS.

..... Respondents

Through: Ms. Sunita Arora, Advocate

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

1. By way of the present criminal revision petition, the petitioner seeks to challenge the judgment dated 31.08.2024 [hereafter '*impugned judgment*'], passed by the learned Principal Judge, Family Court, South-West District, Dwarka, New Delhi [hereafter '*Family Court*'] in Maintenance Petition No. 596/2019.

2. Pithily put, the facts of the case are that the marriage between the petitioner (husband) and respondent no. 1 (wife) was solemnized on 11.07.2007, as per Hindu rites and ceremonies in New Delhi. Out of the wedlock, two children i.e. one boy and one girl (respondent no. 2 and 3 respectively) were born, who are residing with respondent no. 1 (wife). It was the case of respondent no. 1 that the petitioner and his



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family members used to harass and torture her in respect of demand of dowry. The respondent no. 1 also alleged that on one occasion i.e. in March, 2017, she was beaten by the petitioner and his family members and she had to be taken to Deen Dayal Hospital, following which she had also lodged a complaint at Madipur Police Chowki. It is alleged that on 30.08.2017, she was mercilessly beaten by the petitioner and his family members and was thrown out of the matrimonial home. Thereafter, the respondent no. 1 had a complaint under Protection of Women from Domestic Violence Act, 2005 [hereafter '*PWDV Act*'], i.e., CC No. 23765/2017, against the petitioner herein. Vide order dated 20.03.2019, the learned Metropolitan Magistrate, Mahila Court-02, Dwarka Courts, Delhi was pleased to direct the petitioner to ₹3,000/- as interim maintenance to the children, whereas no interim maintenance was awarded in favour of the respondent no. 1.

3. Subsequently, the respondent no. 1 had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], i.e. MT No. 596/2019, since she was unable to maintain herself and her earnings were insufficient (as claimed by respondent no. 1). The said petition was initially decided ex-parte, vide order dated 06.10.2021 passed by the learned Family Court, as the petitioner had failed to file his reply despite being granted multiple opportunities by the Court. By way of the said order, the learned Family Court had assessed the petitioner's income at ₹15,000/- per month and had awarded maintenance to the tune of ₹2,500/- per



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month each to the wife and two children. Moreover, it was directed that the amount of maintenance would be increased by 10%, every two years, from the date of the said order.

4. The aforesaid order was challenged by the petitioner by way of Criminal Revision Petition No. 131/2022 before this Court, primarily on the ground that the learned Family Court had not considered the fact that interim maintenance @ ₹3,000/- had already been awarded in favour of the children in the proceedings pending under PWDV Act vide order dated 20.03.2019 by the learned MM, Mahila Court-02, Dwarka Courts, Delhi. By way of order dated 10.05.2024, the Coordinate Bench of this Court, after taking note of the observations of the Hon'ble Supreme Court in case of **Rajnish v. Neha: (2021) 2 SCC 324**, on the issue of overlapping jurisdiction, had remanded back to the matter, on this limited ground, to the learned Family Court for deciding afresh, expeditiously.

5. On 30.05.2024, the proceedings in MT No. 596/2019 were revived. The petitioner-husband had filed his written statement, reply to application seeking interim maintenance, and his income affidavit. Thereafter, issues were framed by the learned Family Court, and evidence was led by both the parties. Final arguments were heard on 24.08.2024 and the matter was put up for judgment.

6. By way of the impugned judgment dated 31.08.2024, the learned Family Court was pleased to award maintenance of ₹3,200/- per month, each to respondent no. 1, 2 and 3, after assessing the



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income of the petitioner at ₹16,000/- per month. The said order has been assailed in the present petition.

7. The learned counsel appearing for the petitioner-husband argues that the learned Family Court has erred in not acknowledging the fact that respondent no. 1 has done an IT Diploma in tailoring and is earning a monthly salary of about ₹30,000/- from her boutique. It is contended that the learned Mahila Court had acknowledged this fact and had not awarded any interim maintenance to her *vide* order dated 20.03.2019, passed in CC No. 23765/2017. It is submitted that the petitioner is suffering from a medical issue in his spine due to which he cannot lift heavy weights, which has reduced his work opportunities and, consequently his earnings. It is also submitted that the learned Family Court did not take into consideration the EWS certificate issued by the Revenue Department, which clearly states that the petitioner has an income of ₹84,000/- per annum, i.e. about ₹7,000/- per month. The learned counsel further submits that the respondent has been living separately without any sufficient reason, and therefore, the present case also falls under the purview of Section 125(4) of Cr.P.C. On these grounds, it is urged that the present petition be allowed and the impugned judgment be set aside.

8. The learned counsel appearing for the respondents, on the other hand, submits that in March 2017, the respondent no. 1 was beaten by the petitioner and his family members, after which she was taken to Deen Dayal Hospital for treatment. Thereafter, on 30.08.2017, she was thrown out of her matrimonial home by the



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petitioner due to which she started doing stitching work to sustain herself. It is further submitted that the petitioner is an able-bodied man, doing iron welding work and is earning approximately ₹30,000/- per month and has no other dependents to maintain. The learned counsel for the respondent further states that both children i.e. respondent no. 2 and 3 were initially admitted in S.M. Arya Public School, Delhi, which shows that the petitioner was earning enough to be able to send his children to the aforementioned school. However, after being thrown out of her matrimonial home and due to financial constraints, she was forced to shift the children to a Government School in Dwarka, Sector-2, Delhi. It is also submitted that due to the said circumstances, the children did not attend school for one year during the transition. The learned counsel for the respondent draws this Court's attention to the fact that the petitioner herein has himself admitted that he had stopped paying the maintenance amount of ₹3,000 towards the children which he was directed to pay *vide* order dated 20.03.2019 passed in proceedings under the PWDV Act. It is argued that the impugned judgment 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. Therefore, it is prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material available on record, including the Trial Court Record.



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10. The issue for consideration before this Court is as to whether the learned Family Court, in the given facts and circumstances, has correctly assessed the petitioner's income and, on that basis, appropriately determined the quantum of maintenance awarded to the respondents by way of the impugned judgment.

11. The learned counsel for the petitioner has assailed the impugned judgment – essentially on three grounds. *First*, that the learned Family Court erred in assessing the petitioner's income at ₹16,000/- per month, whereas his actual earnings are only around ₹7,000/- per month, particularly in view of his medical condition affecting his ability to undertake heavy work. *Second*, that respondent no. 1, having completed a diploma in tailoring and running a boutique, is independently earning and thus not entitled to maintenance. *Third*, that respondent no. 1 had voluntarily left the matrimonial home without sufficient cause, amounting to desertion, thereby disentitling her to maintenance under Section 125(4) of Cr.P.C.

12. *Firstly*, insofar as the assessment of the petitioner's income is concerned, this Court notes that the petitioner, in his income affidavit filed before the learned Family Court, had stated that he had studied till Class 10th, was working as a welder, and was earning about ₹7,000/- per month. Respondent no. 1, on the other hand, alleged in her income affidavit that the petitioner had studied till Class 12th, was working as a steel fabricator, and was earning about ₹30,000/- per month. The learned Family Court, in the impugned judgment,



noted that although the petitioner had filed an EWS certificate to show that his annual income was ₹84,000/- only, the said certificate had been issued on the basis of the income declared by the petitioner himself, and not on the basis of any independent assessment. There were also regular deposits of small amounts being made into the petitioner's bank account, which were duly noted by the learned Family Court. In these circumstances, since the learned Family Court was of the view that the petitioner had been concealing his true income, the Court assessed the petitioner's income based on the prevailing rates of minimum wages in Delhi.

13. In this Court's opinion, in cases where determining the actual income of a spouse is difficult due to the absence of reliable documentary evidence or formal employment records, the Court may draw judicial notice of the prevailing minimum wage rates as notified by the appropriate Government. Thus, the learned Family Court rightly observed that the petitioner was an able-bodied man who himself had claimed that he was working as a welder and earning money, and even the prevailing rate of minimum wages for unskilled employees as notified by the Government of Delhi was ₹14,468/-, and ₹17,508/- per month for a skilled worker. Thus, on broad parameters, the petitioner's income was assessed at ₹16,000/- per month.

14. As far as the petitioner's argument that he suffers from spinal medical issues and cannot lift heavy weights is concerned, it is material to note that although the petitioner had filed some medical



documents regarding the treatment received by him before the learned Family Court, no medical expert or doctor was examined by him to establish the nature, extent, or duration of his medical issues. Further, it is also not the case that the petitioner is completely incapable of undertaking any form of work to earn his livelihood. In this regard, it shall be relevant to take note of the following observations of the Hon'ble Supreme Court in ***Rajnish v. Neha & Anr.***: (2021) 2 SCC 324:

“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 position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash v Shila Rani*. 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.”

15. Therefore, this Court finds no infirmity insofar as the assessment of petitioner's monthly income is concerned.

16. *Secondly*, it is the petitioner's contention that respondent no. 1 had completed a diploma in tailoring, was running a boutique, and was earning about ₹30,000/- per month from the said business. In this regard, the records reveal that respondent no. 1, in her income



affidavit, only mentioned that she had studied till Class 12th and was not earning any income. Further, a perusal of the evidence recorded before the learned Family Court reveals that respondent no. 1 had admitted that earlier, she used to earn some money by doing stitching work. The petitioner, in his cross-examination, also admitted that he had not filed any proof to show that respondent no. 1 was running a boutique and earning ₹30,000/- per month, and only stated that respondent no. 1 used to do some stitching work from their rented accommodation after marriage. Clearly, no proof of any sort has been placed on record by the petitioner to show that respondent no. 1 was running any boutique by the name - *Barkha's* and earning money therefrom.

17. Even otherwise, it is settled law that 'capability to earn' and 'actual earnings' are two different concepts, and merely because the wife is capable of earning, she cannot be denied maintenance [Ref: ***Shailja & Anr. v Khobbanna***: (2018) 12 SCC 199]. Further, even if the wife is able to earn some meagre amount, that by itself cannot be a ground to deny her maintenance [Ref: ***Sunita Kachwaha & Ors. v Anil Kachwaha***: (2014) 16 SCC 715].

18. Therefore, the learned Family Court has committed no error in holding that the respondent no. 1 was entitled to grant of maintenance.

19. *Thirdly*, it was argued that the respondent wife had left the company of the petitioner on her own, thereby committing desertion,



and thus, she was not entitled to seek maintenance in view of Section 125(4) of Cr.P.C. In this regard, it is relevant to note that the respondent, after leaving her matrimonial home, had filed a complaint under Section 12 of the PWDV Act, alleging harassment and cruelty committed upon her by the petitioner and his family members. There were specific allegations of the respondent no. 1 being beaten and receiving treatment at different hospitals. Further, she had also registered an FIR against the petitioner and his family members for offences under Section 498A of IPC.

20. In these circumstances, the learned Family Court correctly noted that the proceedings under Section 125 of Cr.P.C. are summary in nature and a court is to take only a *prima facie* view of the matter, and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. In this regard, it shall be apposite to take note of following observations of Hon'ble Supreme Court in case of ***Sunita Kachwaha & Ors. v Anil Kachwaha*** (*supra*):

“6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.”

21. At this stage, there is nothing on record to show that the



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respondent no. 1 had refused to live with the petitioner without any sufficient reason; rather, she has levelled specific allegations of domestic violence and cruelty committed upon her. Thus, this argument of the learned counsel for the petitioner is also liable to be rejected.

22. In view of the aforesaid, this Court is of the view that the learned Family Court has committed no error by assessing the petitioner's monthly income at ₹16,000/- and thereafter, applying the formula propounded in case of **Annurita Vohra v. Sandeep Vohra: 2004 SCC OnLine Del 192**, and dividing the said income into five shares, and keeping two shares ($₹3,200 \times 2 = ₹6,400/-$) for the petitioner and remaining three shares ($₹3,200/-$ each) for the three respondents i.e. wife and two minor children.

23. Additionally, insofar as the issue of overlapping jurisdiction and an earlier order granting interim maintenance of ₹3,000/- to the minor children in proceedings under PWDV Act is concerned, the learned Family Court, in view of the order dated 10.05.2024 passed by the Coordinate Bench in Criminal Revision Petition 131/2022, has specifically directed as under in paragraph 37(v) of impugned judgment:

“v. Any amount paid as maintenance to the petitioners in the present proceedings or in any other proceeding shall be adjusted/deducted from the amounts of maintenance payable under this judgment.”

24. Ergo, this Court finds no reasons to interfere with the



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impugned judgment passed by the learned Family Court.

25. The present petition is accordingly dismissed, alongwith pending application.

26. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 21, 2025/zp