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

+ **CRL.REV.P.(MAT.) 31/2025 & CRL.M.A. 1972/2025, CRL.M.A. 1973/2025**

MADAN LAL GAMBHIR

..... Petitioner

Through: Ms. Priya Puri and Ms. Pinki Aggarwal, Advocates.

versus

STATE (GNCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sunil Kumar Gautam, APP with SI Preeti Ahlawat, PS: South Rohini.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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23.01.2025

CRL.M.A. 1974/2025(seeking condonation of delay)

1. For the grounds and reasons stated in the application, the same is allowed. Delay of 90 days in re-filing the petition is condoned.
2. Disposed of.

CRL.REV.P.(MAT.) 31/2025

3. The present revision petition under Section 438 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita 2023 (previously Section 397 read with Section 482 of the Code of Criminal Procedure, 1973) challenges the order dated 03rd August, 2024¹ passed in Criminal Appeal No. 160/2023. In the Impugned order, the Additional Sessions Judge directed the Petitioner to pay maintenance of INR 5,000 to his wife, Respondent No. 2.

¹ "Impugned order"



4. Brief facts leading to the filing of the present petition is as follows:

4.1 The Petitioner married Respondent No. 2 on 31st July, 1976, and they have two sons and one daughter from this marriage. It is alleged that Respondent No. 2, along with their younger son, mentally and physically harassed the Petitioner. In response, the Petitioner filed a complaint against both Respondent No. 2 and their younger son at the Rohini police station on 21st December, 2017.

4.2 The Petitioner contends that as a counter blast to the said complaint, Respondent No. 2 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005² read with Sections 18, 19, 20 and 22 along with Section 23(2) of the said Act for grant of interim orders. The Petitioner submitted a reply along with an affidavit of assets and liabilities. Respondent No. 2 also filed an affidavit of assets and liabilities. After considering these documents, the Metropolitan Magistrate, through order dated 15th May 2023, granted interim maintenance to Respondent No. 2, to be paid by the Petitioner, under Section 23 of the DV Act. The operative portion of said order reads as follows:

“Heard. I have carefully perused the material placed on record.

In the income affidavit filed by the complainant, it is stated that respondent no. 1 is M.Com. passed and is running a business of DJ and stage lighting and gets govt. pension of Rs. 2,000/-. Thus, respondent no. 1 is stated to be earning about Rs. 40,000/- per month. It is further stated that respondent no. 1 is residing at his own accommodation. It is further stated that she is MA passed and is presently residing at her matrimonial home and is incurring an expenditure of Rs. 28,600/- per month. It has been stated by her that she is a house-wife and she has no source of income.

In income affidavit filed by respondent no. 1, it is stated that he is M. Com. and is presently getting Delhi Govt. Old

² “the DV Act”



Age Pension of Rs. 2,000/- per month. It has been further stated that his monthly expenditure is about Rs. 1,800/-3,400/- per month and that he is residing at the ground floor of his own home. It is also stated that the complainant is MA and she is running a tent house business and getting a salary of about Rs. 50,000/- per month.

Ld. Counsel for the complainant has submitted that the respondent no. 1 has concealed his income and that respondent no. 1 has no liabilities. It has been further submitted on behalf of the complainant has no source of income.

Complainant has not filed any documents in support of her contention that respondent no. 1 is earning a sum of Rs.40,000/- On the other hand, respondent no. 1 has submitted that the complainant is independent and is running a business of tent for which he used to buy material from his earning. In this regard, respondents has earlier filed copies of bills with respect to material purchase by him. The said bills are dated in the year 2009, 2011, 2013, 2014 and lastly from the year 2015. Apart from this, there is nothing on record that proves that the complainant has any source of income at present. If that is the case, then the respondent has failed to explain his source of income so as to be able to provide material to the complainant for her business. Therefore, I am of the considered opinion that the respondent no. 1 is concealing his actual income from the court to avoid his responsibility to provide maintenance to the complainant.

In view of the above discussion, while looking at the entire facts and circumstances and further on account of the obligation of the respondent to maintain his wife, the monthly income of the respondent no. 1 is assessed on the basis of guesswork to be a sum of Rs. 15,000/- atleast, excluding Rs.2000/- that he receives as pension from Delhi Government Old Age Pension Scheme.

It is relevant to point out here the observation made in *Annurita Vohra v. Sandeep Vohra*: 2004(3) AD 252, wherein it has been held by the Hon'ble High Court of Delhi that the family income should be divided equally between all the family members entitled to maintenance with one extra portion / share being allotted to the earning spouse since extra expenses would necessarily occur. On perusal of record, I am of the view that complainant being wife of respondent no. 1 is dependent upon respondent no.1 and respondent no. 1 is duty bound to maintain the complainant.

In view of the principle laid down and in light of the facts and circumstances of the present case, **respondent no. 1 is directed to pay Rs. 7500/- per month to the complainant from the date of filing of application seeking interim maintenance till disposal of**



this case. The above said interim maintenance shall be towards food, clothing, household expenses and other necessary expenses.

Payment towards maintenance recited by the complainant in this case or in any other case shall stand adjusted. Let the monthly maintenance be paid on or before 10th of each month from the date of filing of the application. Arrears of maintenance be cleared within six months from today. The observation made in the order shall not tantamount to any findings on merits of this case. Accordingly, application stands disposed of.

Complainant is directed to file list of witnesses alongwith affidavits in evidence of all the witnesses she wishes to examine, with an advance copy to the opposite party.

Put up for CE on 22.07.2023.

Copy of order be given dasti to both the parties.”

5. The Petitioner filed an appeal under Section 29 of the Domestic Violence Act, challenging the aforementioned order. The said appeal was decided through Impugned order dated 03rd August, 2024, wherein it was observed as follows:

“Findings:-

7. It is well settled that there exist no straitjacket formula for fixing the quantum of maintenance to be awarded. The financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The maintenance amount awarded is required to be reasonable and realistic. For the purpose of assessing the interim maintenance the Trial Court has to only form a prima facie opinion from the material available on the record. The purpose of granting the interim maintenance is to ensure that the petitioner does not suffer during the trial of the matter.

8. The appellant and the respondent are husband and wife, who are living separately.

9. The appellant herein being the husband is under obligation to maintain his wife. No documents have been placed on record to make the court believe as to what is the monthly income of the appellant (herein) except the fact that he is having old age pension @ Rs.2,500/- p.m. The Ld. MIM has assessed the monthly income of the appellant as Rs.15,000/- p.m (excluding Rs.2,000/- as old age pension, which at present is Rs.2,500/- p.m). In the absence of any specific evidence, the monthly income of the appellant herein was assessed to Rs. 15,000/- p.m.



Admittedly, the Ld. MM has already applied the formula laid down in the judgment of Annurita Vohra v/s Sandeep Vohra 110(2004) 546 the Family Resource Cake should be divided in three pieces out of which two pieces is required to be kept with the husband but has awarded maintenance to the respondent @ Rs.7,500/- p.m. The same is reduced to Rs 5,000/- p.m. in terms of Judgment of Annurita Votra (Supra).

This court has no hesitation to hold that Ld. Trial Court has dealt with all the other contentions of the parties.

10. In view of the discussion made herein above, the appeal is accordingly disposed of Nothing stated herein above shall tantamount to expression of opinion on the merits of the case.

11. The appeal is accordingly disposed off.

TCR alongwith the copy of this order be sent to the Court concerned."

6. Aggrieved, the Petitioner assails the aforementioned order, contending that he is a senior citizen aged 73 years, suffering from age-related ailments, and has no income except for a government pension of INR 2,500 per month. Ms. Priya Puri, counsel for the Petitioner, argues that the Trial Court failed to consider these facts and that the Impugned order will cause significant hardship to the Petitioner. She further contends that the order is oppressive, given his medical condition and financial struggles. It is further asserted that the Petitioner has spent all his savings on supporting his children and wife, and his business has been forcibly taken over by his younger son and wife, who are acting in collusion to pressurise the Petitioner into transferring his property.

7. The Court has considered the aforementioned contentions, however, remains unconvinced. It must be noted that the order under challenge is only an interim maintenance granted by the Trial court and upheld by the Appellate Court. Furthermore, it must be noted that the Petitioner has invoked the revisional jurisdiction to challenge the order passed by the Appellate Court. In this context, it is crucial to recognize that the scope of



interference by this Court in revisional proceedings is restricted to cases where the Impugned order exhibits clear arbitrariness, perversity, or unreasonableness. In the present case, the Metropolitan Magistrate, in the absence of any specific evidence, assessed the Appellant's monthly income at INR 15,000/- and his old age pension at INR 2,500/-. Based on this assessment, the Magistrate awarded interim maintenance of INR 7,500/-. Notably, the Magistrate observed that the Petitioner had concealed his true income to avoid his legal obligations, and upon a reasonable evaluation of the circumstances, concluded that the Petitioner's monthly income was INR 15,000/-. The Appellate Court, upon reviewing the matter, upheld the decision of the Metropolitan Magistrate but modified the interim maintenance award. The Court reduced the maintenance from INR 7,500/- to INR 5,000/- per month, in line with the principles established in the judgment of the Delhi High Court in *Annurita Vohra v. Sandeep Vohra*.³ Upon reviewing both the orders—that of the Metropolitan Magistrate and the Appellate Court—the Court is unable to find any arbitrariness or perversity apparent from the Impugned order. The decisions appear to be well-reasoned, grounded in the facts and applicable legal principles, and consistent with judicial precedents.

8. In view of the above, the assessment in the Impugned order is deemed reasonable, and there is no necessity for the court to intervene, particularly since we are currently only dealing with interim maintenance.

9. Accordingly, the Court finds no ground to interfere with the present petition. Dismissed, along with pending applications.

10. Before parting, it is clarified that both parties are free to present

³ 110(2004)DLT546



evidence during the trial of the DV Act case, which will be decided on its merits, by the Trial Court, uninfluenced by the observations made in this order.

JANUARY 23, 2025
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SANJEEV NARULA, J