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

% *Judgment reserved on: 15.04.2026*
Judgment pronounced on: 05.05.2026
Judgment uploaded on: 08.05.2026

\+ **CRL.REV.P. 993/2024**

JYOTI & ANR. .....Petitioners

Through: Ms. Divya Malhotra, Advocate

versus

THE STATE NCT OF DELHI & ANR. .....Respondents

Through: Ms Sneha Rani, Mr Abhishek Verma and Mr. Satayam Singh, Advocates for R-2.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present petition, the petitioners seek setting aside of the judgment dated 14.09.2023 [hereafter '*impugned judgment*'] passed by the learned Principal Judge, Family Court, Karkardooma Courts, Delhi [hereafter '*Family Court*'] in CT No. 2015/2016 titled '*Jyoti & Anr. v. Rajeev Ranjan*', filed under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'].

2. *Vide* the impugned judgment, the petitioner no. 1-wife and petitioner no. 2-minor daughter were awarded maintenance of ₹8,000/- and ₹5,000/- per month respectively, i.e., a total sum of

₹13,000/- per month, from the date of filing of the petition.

FACTS OF THE CASE

3. Briefly stated, the marriage between petitioner no. 1 and the respondent no. 2 was solemnized on 24.06.2014. It is alleged that prior to and after the marriage, the petitioner no. 1 was subjected to cruelty and harassment on account of dowry demands, including demand of cash and a car, and that her jewellery was retained by the respondent no.2's family. It is further alleged that she was physically and mentally harassed on multiple occasions and was ultimately compelled to leave the matrimonial home. A female child was born out of the wedlock on 19.04.2015. Despite having a regular source of income, the respondent no. 2 allegedly neglected and refused to maintain the petitioners, compelling them to file the petition under Section 125 of the Cr.P.C., in September 2016, seeking maintenance. By way of order dated 17.05.2018, the petitioners herein were awarded ad-interim maintenance in the sum of ₹20,000/- per month.

4. Thereafter, petitioner no. 1 led evidence, whereas the respondent did not lead any evidence. Upon hearing arguments on behalf of both parties, the learned Family Court observed that although the respondent was earning about ₹1 lakh per month, his net income, after deductions, was about ₹50,000/- per month. Taking into account that the respondent had one additional dependent, i.e., his aged mother, the learned Family Court apportioned the said income into five shares, out of which two shares were attributed to the

petitioners, two for the respondent and one for the old mother. However, it was further held that the petitioners were not entitled to these two equal shares, in view of the earning capacity of petitioner no. 1 and the fact that petitioner no. 2 is the joint responsibility of both parents. Accordingly, maintenance of ₹8,000/- and ₹5,000/- per month was awarded to petitioner no. 1 and petitioner no. 2 respectively. The findings of the learned Family Court are set out below:

> "14. Petitioner no. 1 has alleged that she is residing separately and is not carning, whereas she is maintaining her school going daughter. She has further admitted that she is highly educated and M.A. (Sociology) and earlier was earning by tuitions but now she is not earning. It is further deposed that petitioners are being maintained by her father and unmarried sister, who is working. However, is beyond explanation as to why petitioner no.1, who a highly educated and qualified lady, is not working or carning despite a separation of 8 years. She has admitted that she has been residing in a joint family and other family members may take care of petitioner no. 2, which suggests that cither petitioner no. 1 is not earning deliberately despite having capacity to earn or has concealed her actual carning from this court to claim maintenance. No doubt, bank statement of petitioner no. has not supported her carning but merely on this ground caring of petitioner no. 1 may not be disputed, as cash carning may not be denied. In fact, this court has to keep in mind the status of petitioner no. 1 while considering quantum of maintenance that she may earn easily but is not carning despite having no impediment.
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> 15. On the other hand, respondent is doing a government job and fact is not disputed by WS, affidavit of income and assets and salary slip of respondent. Respondent has filed his pay slip, as per which, he is working as Senior Assistant and drawing a salary of Rs. 99,914/- pm, with net salary of Rs. 50,833/- after deduction of Rs. 49,081/-. Ld. Counsel for petitioners has argued that all deductions in salary of respondent are not required to be considered while calculating his monthly income, which is strongly opposed by Ld. Counsel for

respondent. However, one fact is to be kept in mind that respondent got this job in lieu of his father after his death and has furnished a undertaking to maintain his family members including mother, due to respondent cannot escape of his responsibility to maintain his mother and other family members. Salary Slip of respondent would show that he has deductions of EPF & APF contribution, professional tax, Income Tax deduction and property loan cic. All such deductions out of salary of respondent must be considered because of necessity. Respondent is a government servant and two-wheeler vehicle is required for travel and loan advance against it is liable to be adjusted. Similarly, housing loan is also requirement of family of respondent and housing advance is also to be deducted from salary of respondent. As such, deductions from salary of respondent are necessary deductions and must be considered by this court while calculating monthly income of respondent. As such, monthly income of respondent is @ Rs. 50,833/- for determination of maintenance of petitioners.

16. Further, mother of respondent, though getting pension yet dependent upon respondent, whereas his other family members / brothers/ sisters are major and not dependent upon him. Respondent has dependency of four persons including two petitioners, accordingly, income of Rs. 50,833/- of respondent has to be divided into five shares. However, petitioners shall not be entitled for equal shares in view of educational qualification and capacity to car of petitioner no 1 and also to maintain petitioner no.2, who is joint responsibility of both parties. Petitioner no. 1 shall be entitled for monthly maintenance @ Rs. 8,000/- and petitioner no. 2 shall be entitled for Rs.5,000/- pm, which shall be payable on 10 of each succeeding calendar month from the date of filing of this petition and during subsisting relationship of husband and wife between petitioner no.1 and respondent no. I. Petitioner no.2 shall be entitled for maintenance till she attains age of majority/start carning/gets married, whichever is carlier."

SUBMISSIONS BEFORE THE COURT

5. The learned counsel appearing for the petitioners submits that the learned Family Court has misapplied the settled principles of law

and relevant judicial precedents, including the judgment of the Hon'ble Supreme Court in ***Rajnesh v. Neha:** (2021) 2 SCC 324*. It is contended that the learned Family Court, after assessing the disposable income of respondent no. 2 at about ₹50,833/- per month, erred in reducing the maintenance to ₹13,000/- per month by applying an arbitrary apportionment. The learned counsel submits that respondent no. 2 is employed as a Senior Manager with the State Bank of India at Ranchi and earns about ₹1 lakh per month. It is pointed out that, on the basis of such income, ad-interim maintenance of ₹20,000/- per month (₹15,000/- to petitioner no. 1 and ₹5,000/- to petitioner no. 2) was granted *vide* order dated 17.05.2018. However, in the final order dated 14.09.2023, the learned Family Court has reduced the maintenance without any cogent material or change in circumstances being brought on record. It is further submitted that deductions towards housing loan, vehicle loan, and other such liabilities are not statutory or mandatory deductions, and therefore cannot be relied upon to artificially reduce the income of respondent no. 2 for the purposes of determining maintenance. It is thus argued that, in view of the respondent's income, the petitioners are entitled to higher maintenance, commensurate with his earning capacity.

6. *Per contra*, the learned counsel appearing for respondent no. 2 submits that there is no ground for enhancement of maintenance in the present case. It is argued that the learned Family Court has passed a well-reasoned order after duly considering the income, deductions, and financial liabilities of respondent no. 2. It is further submitted

that petitioner no. 1 is educated and capable of earning, and therefore would not fall within the category of a woman "unable to maintain herself." The learned counsel contends that the learned Family Court has correctly assessed the income and overall financial capacity of respondent no. 2 on the basis of the oral and documentary evidence on record, and that the maintenance awarded, i.e., ₹8,000/- per month to petitioner no. 1 and ₹5,000/- per month to petitioner no. 2, is neither arbitrary nor excessive. It is further submitted that the ad-interim maintenance was granted on a *prima facie* assessment, whereas the final determination has been made after a full-fledged trial. The learned Family Court has rightly taken into account that respondent no. 2, after the demise of his father, is responsible for maintaining his dependent mother and siblings. It is argued that the deductions reflected in his salary, including housing and vehicle loans, are genuine financial liabilities and cannot be disregarded as artificial or inflated. It is also contended that the entitlement to government accommodation does not negate the existence of such liabilities. Further, reliance is placed on the admitted fact that petitioner no. 1 had previously been giving tuition, to establish her earning capacity. It is thus submitted that the impugned judgment does not suffer from any perversity or illegality.

7. This Court has **heard** arguments addressed on behalf of the petitioners as well as respondent no. 2, and has perused the material available on record.

ANALYSIS & FINDINGS

8. The issue that arises for consideration in the present petition is whether the quantum of maintenance awarded by the learned Family Court *vide* impugned judgment dated 14.09.2023 suffers from illegality or perversity, warranting interference by this Court.

9. After hearing the learned counsel for the parties and perusing the material available on record, this Court is of the considered opinion that the impugned judgment cannot be sustained, for the reasons recorded in the succeeding paragraphs.

Incorrect assessment of income by considering non-statutory deductions

10. It is an admitted position that the respondent is employed as a Senior Assistant and is drawing a gross monthly salary of about ₹99,914/-. However, the learned Family Court has taken the net salary of ₹50,833/- as the basis for determining maintenance, after deducting various amounts including EMIs towards housing loan and vehicle loan. In this Court's view, the approach adopted by the learned Family Court is contrary to the settled position of law. It is well-settled that while determining the income of the earning spouse, only statutory and compulsory deductions are to be considered. Deductions arising out of voluntary financial commitments, such as loan repayments for acquisition of assets or vehicles, cannot be permitted to dilute the obligation to pay maintenance. In this regard, the Hon'ble Supreme Court in ***Jasbir Kaur Sehgal v. District Judge,***

Dehradun: *(1997) 7 SCC 7* had observed that only statutory and involuntary deductions are to be taken into account. In this regard, reference may also be made to the decision of the Division Bench of this Court in ***Subhash v. Mamta @ Raksha:*** *MAT. APP. (F.C.) No. 195/2025, decided on 26.05.2025*, wherein it was categorically held that repayment of personal loans and EMIs voluntarily undertaken by the earning spouse cannot be treated as permissible deductions so as to dilute or override the primary obligation to maintain a dependent spouse or child. The Court reiterated that the determination of maintenance must be based on the "free income" of the earning spouse and not on the net income that remains after accounting for voluntary financial commitments.

11. More recently, the Hon'ble Supreme Court in ***Deepa Joshi v. Gourav Joshi:*** *2026 INSC 370* has categorically held that deductions arising out of loan repayments, particularly those contributing to creation of assets, cannot be treated as necessary expenses so as to reduce maintenance liability. The relevant observations are set out below:

> "12. Tested on the aforesaid principles, it emerges that the determination of maintenance must be guided by a balanced assessment of the earning capacity of the husband and the reasonable needs of the wife. In the present case, it is not in dispute that the respondent is in salaried employment and has a regular source of income. The Family Court, while determining maintenance, appears to have accorded considerable weight to deductions reflected in the salary, and the High Court has, to an extent, corrected the inadequacy by enhancing the amount.
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> 13. However, deductions arising out of financial commitments such as loan repayments, particularly where they contribute

> towards creation of assets, cannot be placed on the same footing as necessary expenditure so as to substantially reduce the liability of maintenance. The liability to maintain a spouse is a primary obligation and cannot be subordinated to such financial arrangements."

12. Thus, the learned Family Court has clearly committed an error in treating EMIs towards housing loan and vehicle loan as necessary deductions and in assessing the respondent's income on the basis of net salary.

Erroneous consideration of dependents

13. Furthermore, the learned Family Court has proceeded on the premise that the respondent has one additional dependent, i.e., his mother, and has accordingly apportioned his income into five shares, i.e. two shares for the husband, one for his mother, one for the wife (petitioner no. 1) and one for the minor daughter (petitioner no. 2), as per the judgment of ***Annurita Vohra v. Sandeep Vohra:*** *2004 SCC OnLine Del 192*.

14. In this regard, it is not in dispute that the respondent's mother is receiving pension. While it is true that a son has a legal and moral obligation to maintain his parents, the extent of such dependency has to be assessed on the basis of the financial position of the parent. Where the parent is receiving a regular pension, the dependency cannot be treated as absolute so as to substantially reduce the share of the wife and minor child.

15. The learned Family Court, however, has mechanically treated

the mother of the respondent as fully dependent upon him, without examining the effect of the pension being received by her. Thus, the assessment of dependent members by the learned Family Court is not based on proper appreciation of the material on record.

16. Insofar as the contention raised before this Court by the learned counsel for respondent no. 2 that his siblings are also dependent upon him is concerned, the same cannot be accepted. There is no material on record to show that the siblings of the respondent, who are major, are dependent upon him on account of any incapacity or special circumstance. In the absence of any such pleading or proof, major siblings cannot be treated as dependents for the purpose of determining maintenance.

Reduction of maintenance on the ground of earning capacity of petitioner no. 1

17. The learned Family Court, after dividing the income of the respondent no. 2-husband into five shares, has further reduced the share of the petitioners on the ground that petitioner no. 1 is educated and capable of earning, and that the responsibility of maintaining the minor child is a joint obligation of both parents. Consequently, even though on such division the petitioners would have been entitled to two shares (i.e., ₹20,000/- in total, taking the assessed income as ₹50,000/-), the learned Family Court has awarded only ₹13,000/- (₹8,000/- to petitioner no. 1 and ₹5,000/- to petitioner no. 2).

18. In this Court's opinion, the above-noted approach is contrary

to settled law. It is well established that mere capacity to earn is not a ground to deny or reduce maintenance. The Hon'ble Supreme Court in ***Shailja & Anr. v. Khobbanna:*** *(2018) 12 SCC 199* has categorically held that the capability of the wife to earn is not sufficient to deny maintenance. In ***Rajnesh v. Neha:*** *(2021) 2 SCC 324*, the Supreme Court has further observed that where a woman has remained out of employment for a considerable period due to matrimonial responsibilities, it would be unrealistic to expect her to immediately become self-sufficient. Similarly, in ***Sunita Kachwaha v. Anil Kachwaha:*** *(2014) 16 SCC 715*, it has been held that even if the wife is earning, she is entitled to maintenance if her income is insufficient to maintain herself in accordance with the standard of living in the matrimonial home.

19. In the present case, there is no material on record to show that petitioner no. 1 is actually earning any income. The finding of the learned Family Court that she may be earning or deliberately not earning is only speculative and cannot form the basis for reducing the amount of maintenance and not granting even one-fifth share of the husband's assessed income.

Resultant perversity in fixation of maintenance

20. In view of the above errors, the approach adopted by the learned Family Court in first reducing the income of the respondent to about ₹50,000/- by including non-statutory deductions, then further inflating the number of dependents, and thereafter reducing

the share of the petitioners on speculative grounds, has resulted in fixation of total maintenance at ₹13,000/- per month for both petitioners, which is apparently disproportionate to the admitted gross income of the respondent, which is about ₹1 lakh per month.

Directions

21. In view of the above discussion, the impugned judgment dated 14.09.2023 is set aside.

22. The matter is remanded back to the learned Family Court for fresh determination of maintenance, in accordance with law and in light of the observations made herein, within a period of one month from the date of receipt of this order.

23. The petition stands disposed of in the above terms.

24. A copy of this order be sent to the learned Family Court for information and necessary compliance.

25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 05, 2026/ns

T.D.