

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

+ **CRL.REV.P. 179/2019 & CRL.M.A. 11998/2021**

Reserved on: 12.07.2022

Date of Decision: 18.07.2022

IN THE MATTER OF:

SANDEEP WALIA

..... Petitioner

Through: Mr. Saurabh Kansal, Advocate
alongwith Ms. Pallavi Sharma, Ms. Ashu
Chaudhary & Mr. Manish Kumar, Advocates.

Versus

MONIKA UPPAL

..... Respondent

Through: Ms. Sunita Arora, Advocate
(DHCLSC).

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. This petition is directed against the order dated 21.12.2018 passed in MT No. 361/2018 by the Principal Judge, Family Courts, West, Tis Hazari Courts, Delhi, whereby an application under Section 125 of Cr.P.C. filed by the respondent-wife has been allowed in part.

2. The facts of the case show that the marriage between the parties was solemnized on 25.10.2015. Soon after the marriage, on account of some family disputes between them, they started living separately. There is no issue out of the wedlock. The respondent-wife filed an application under Section 125 of Cr.P.C. before the Family Court. She stated that on account of harassment being caused by her husband at the matrimonial

house, she had to undergo intense mental agony. She narrated various instances in her application and she further stated that her husband i.e. revisionist is doing a job of a Graphic Designer in NIIT Company at Gurugram and is earning Rs.40,000/- per month. She also stated that her husband has rental income from the house bearing No. *B-4/152, Tulsi Lodge, Committee Bazaar, Hoshiarpur, Punjab-146001*, and is getting an additional sum of Rs.40,000/- per month. That apart, she further stated that her husband has his own residential accommodation. She further stated that there is no liability on her husband and the mother of her husband is also getting pension of Rs.25,000/- per month and he is the only son. According to her, she did not have any sources of income to run her livelihood. The respondent-wife further stated that she is fully dependent on her widowed mother. Accordingly, she prayed for a grant of a sum of Rs.40,000/- per month towards maintenance and Rs.25,000/- towards litigation expenses.

3. The aforesaid application was opposed by the revisionist-husband before the Family Court by filing his reply. The revisionist-husband stated that the respondent-wife herself is guilty of causing mental cruelty and torture to the revisionist. He stated that the respondent-wife had left the matrimonial house without any reason and justification. He also stated that his wife made a false complaint before CAW cell and thereafter she herself remained absent during the counseling proceedings being conducted by CAW cell. He also stated that earlier he was working in NIIT, as Graphic Designer, however, he left the job and had become jobless. According to the revisionist, respondent-wife, is well-qualified and is earning a handsome amount, hence she is not entitled for any maintenance.

4. The learned Family Court recorded the evidence of the parties and after consideration of the entire material available on record, has held that the respondent-wife is entitled for a sum of Rs.10,000/- per month towards maintenance.

5. The revisionist feeling aggrieved by the said order, has filed the instant revision.

6. Mr. Saurabh Kansal, alongwith Ms. Pallavi Sharma, learned counsel appearing on behalf of the revisionist submits that the impugned order is in complete ignorance of the settled principle of law. The same also ignores important material available on record and therefore, the same requires to be set-aside by this Court. Learned counsel has pointed out that as on the date of passing of the impugned order, there was nothing on record, so as to indicate actual income of the revisionist. No salary certificate or employment details etc. are available on record and hence, the learned Family Court has grossly erred in assuming that when the revisionist was under an employment of NIIT Ltd., he was earning about Rs.30,000/- per month and therefore, after leaving the earlier job, the revisionist must be earning more than his earlier income. Such an assumption is not permissible in law. He also submits that in view of the provisions of Section 125 (4) of Cr.P.C., the respondent-wife has left the matrimonial house and is living separately without their being any justification, and hence, she is not entitled for any maintenance.

7. Ms. Sunita Arora, learned counsel appearing on behalf of the respondent-wife vehemently opposed the present revision and submitted that the instant case has to be considered from a different perspective. According to her the revisionist-husband is not truthful in his disclosure in affidavit of income filed before the Family Court. She has drawn the

attention of this court to various paragraphs to show that the revisionist claiming himself to be jobless is still incurring a monthly expenditure of about Rs.35,210/- per month. She also points out that the revisionist has shown his mother to be dependent on him, however, has not disclosed that she is already getting a pension of Rs.25,000/- per month. She further states that in column No.26, which relates to a number of the bank account, the revisionist has shown only one account of ICICI Bank whereas he is maintaining a different joint account in the State Bank of India, which has been admitted by him in his cross-examination. She also points out that the revisionist in his educational and professional qualification column has mentioned only graduation, whereas, in his cross-examination, he unequivocally admits that he has done one year diploma in Graphic Designing. She also submits that the revisionist is maintaining a motorcycle and a car and is living in a 3-BHK Flat.

8. From the material available on record, including the cross-examination, she points out that there are various credit entries in the account of her husband. He has also invested amount in mutual funds and he is getting regular dividends therefrom. According to her, if the entire facts of the case are considered in the right perspective, it would be apparent that the revisionist is earning more than his earlier income and therefore, the learned court below has not committed any error while passing the impugned order. She, therefore, submits that even assuming that there is no document of proof of employment of the husband as on date, still he is legally bound to maintain his legally married wife. She also states that it is the sacrosanct duty of the husband to financially support his wife. He is an able-bodied person and while considering an application for maintenance, all relevant factors such as circumstances

and the lifestyle being enjoyed by the parties, will have to be kept in mind. She placed reliance on the judgments of the Hon'ble Supreme Court in *Bhuwan Mohan Singh v. Meena and Others*¹, *Shailja & Anr. v. Khobbanna*², *Sunita Kachwaha & Ors. v. Anil Kachwaha*³ and the decision of this Court in *Khem Chand v. Bhagwati @ Laxmi & Anr*⁴, & the decision of the Allahabad High Court in *Shiv Kumar Singh v. State of U.P.*⁵

9. In rejoinder, the learned counsel appearing for the revisionist submits that the current employer is maternal uncle of the revisionist with whom the revisionist is working as a driver and secondly, after leaving his job, there is hardly any credit entry in his bank account and therefore, all those documents cannot be taken into consideration.

10. I have heard learned counsel for the parties and perused the record.

11. The petitioner-husband in his cross-examination has admitted that he did B.Com & Diploma in Graphic Designing from Bombay. He has also admitted that before marriage he was employed as an Artist in NIIT Ltd. and he was earning Rs.30,000/- per month. He left the job on 31.12.2016 with the hope to get better opportunities. However, on account of recession, he stated that he could not get any employment thereafter. According to him, he was working as a Driver with his maternal uncle *Kuljeet Kumar*. He further states that he is maintaining a Mobile, Laptop. His affidavit of income also suggested that he is maintaining a Motorcycle and a Car. It is also seen that as per his admission his grandfather had purchased a house bearing No. *B-4/152*,

¹ (2015) 6 SCC 353

² (2017) AIR (SC) 1174

³ (2014) 16 SCC 715

⁴ CrI.M.C. No. 812/2016

⁵ 2007 SCC OnLine All 1230

Tulsi Lodge, Committee Bazaar, Hoshiarpur, Punjab-146001, consisting of five rooms, one store room with two floors and a shop attached to it. He has also stated that he is maintaining a 3 BHK flat and paying rent of Rs.12,000/- per month excluding electricity charges of about Rs.2,000/-. Even as per his own showing his monthly expenditure is Rs.35,210/- approximately per month. The documents placed on record also show that he has invested money in mutual fund and getting regular dividends therefrom.

12. Under the aforesaid circumstances, as noted above, it can be safely concluded that the petitioner was not truthful in disclosure of his correct income. His employment as a Driver with his own maternal uncle is also highly unreliable. The lifestyle, which the petitioner is maintaining, would clearly demonstrate that he is capable of earning sufficient money to run not only his livelihood but of his wife also. The respondent-wife while placing documents on record has clearly proved that the petitioner is capable of earning a handsome salary. The petitioner also admitted that he had been earning about Rs.30,000/- per month. It is thus seen that the initial burden placed upon the respondent to show the means of her husband is sufficiently discharged. The argument of the petitioner to accept that the petitioner is earning equal to minimum wages fixed by the Delhi Government is untenable. The living standard of the petitioner, his conduct in suppressing relevant information from the Court and the fact that he is not only qualified but is capable of earning good money shows that the learned Family Court has not committed any error in passing the impugned order.

13. The plea of the petitioner that he does not have any means to pay is therefore, rejected. He is healthy able-bodied person and is in a

position to support his wife. He is under the legal obligation to support his wife and to pay maintenance under Section 125 of Cr.P.C. It is sacrosanct duty to render the financial support and there is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds. Bald submission that the petitioner does not have any source of income is no ground to exonerate him from the liability of maintaining his wife under the facts of the present case. Even experience shows that actual income is normally not disclosed by the parties. Under such circumstances, it is always safe to come to a realistic conclusion considering the status of the parties and their lifestyle etc.

14. So far as an argument of the learned counsel appearing for the petitioner with respect to voluntarily leaving the company of the petitioner by the respondent is concerned, it is seen from the evidence of the petitioner that she was subjected to harassment on day-to-day basis, and therefore, under compelling circumstances she had to leave the company of the petitioner, and therefore, there is proper justification for her to live separately.

15. In view of the aforesaid, this Court does not find any substance in the submissions made by learned counsel for the petitioner to interfere into the well-reasoned order passed by the Family Court.

16. Hence, the instant revision petition is accordingly dismissed alongwith the pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 18, 2022

p'ma