



2025:DHC:5109



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.07.2025*+ **CRL.REV.P.(MAT.) 50/2024 & CRL.M.A. 29468/2024**

.....Petitioner

Through: Mr. Hari Shankar, Advocate
along with petitioner in person.

versus

.....Respondents

Through: Ms. Payal Seth, Amicus Curiae
along with R-1 in person.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this revision petition, the petitioner-husband has challenged the order dated 01.08.2024 [hereafter '*impugned order*'] passed by the learned Principal Judge, Family Court, East District, Karkardooma Court, New Delhi [hereafter '*Family Court*'] *vide* which the learned Family Court has awarded sum of ₹45,000/- (₹22,500/- for each respondent, i.e. respondent no. 1/wife and respondent no. 2/the minor child) per month to the respondents from the date of filing of the petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] till its disposal.

2. Briefly stated, the facts of the present case are that the



marriage between the petitioner and the respondent no. 1 was solemnized on 11.02.2015, and a female child was born out of their wedlock on 19.08.2017, who is currently in the custody of respondent no.1. Due to the alleged acts of cruelty committed by the petitioner and his family members, the respondent no. 1 had left the matrimonial home and subsequently filed the petition under Section 125 of Cr.P.C. before the learned Family Court seeking maintenance.

3. The petitioner has preferred the present petition against the impugned order dated 01.08.2024 granting interim maintenance, passed by the learned Family Court. The petitioner claims that he was always willing to reside with the respondents. It is the case of the petitioner that he is presently residing in rented accommodation and that his aged parents are financially dependent on him. It is also his case that he has taken loans amounting to ₹35,00,000/- from various banks for the construction of a house at his native place. The petitioner contends that respondent no. 1 did not file an affidavit of income and assets before the learned Trial Court, and despite this, the learned Trial Court *vide* order dated 19.03.2024 had earlier erroneously directed him to pay ad-interim maintenance of ₹15,000/- per month (₹7,500/- each for the wife and child).

4. The learned counsel appearing for the petitioner argues that the impugned order is a non-speaking order, as it merely records the submissions made by the parties, and does not assign any reasons for the conclusions drawn. It is argued that the learned Family Court failed to consider the financial liabilities of the petitioner, including



the maintenance and medical expenses of his aged parents, who are entirely dependent upon him. The petitioner is also burdened with the repayment of a home loan, for which he is paying an EMI of ₹66,216/- per month, in addition to the monthly rent of his residence. The learned counsel submits that the petitioner has been regularly paying the school fees of the minor child amounting to ₹5,500/- per month even prior to the filing of the present proceedings and remains willing to bear all educational expenses of the child. It is contended that if the petitioner is directed to pay ₹45,000/- per month as maintenance to the respondents, he will be financially incapable of meeting his loan obligations, particularly the EMI payable to the bank. The learned counsel for the petitioner also draws attention to the income affidavit filed by respondent no.1 (wife), stating that it is inconsistent and unreliable. It is submitted that the respondent has claimed monthly expenses to the tune of ₹70,000/-, including ₹20,000/- allegedly spent on the minor child, despite the fact that the petitioner is already paying the school fee. In view of the above, the learned counsel for the petitioner prays that the impugned order dated 01.08.2024 be set aside.

5. On the other hand, the learned amicus curiae appearing for the respondents argues that the present petition is devoid of merit and warrants dismissal, as the impugned order granting maintenance to the respondents is based on settled legal principles and admitted facts. It is submitted that the petitioner-husband is gainfully employed as a Software Engineer with TLG India, earning



₹1,05,000/- per month, as admitted in his own affidavit. No material has been placed on record to dispute or reduce this admitted income. Further, the learned Family Court has rightly applied the principle laid down in case of *Annurita Vohra v. Sandeep Vohra: 110 (2004) DLT 456*, which mandates equitable apportionment of the husband's income, i.e. two parts for the husband, one part for the wife, and one part for the child. It is further submitted that although the petitioner failed to produce proof of his alleged investment under the Sukanya Samriddhi Yojana, the learned Family Court still extended its benefit by allowing a deduction of ₹15,000/- from his salary, and thus, showed due leniency in his favour. It is contended that the petitioner's claim regarding financial dependence of his aged parents is vague and remains unsubstantiated, as no documents have been filed to prove their income, expenses, or dependency. As for the petitioner's reliance on EMIs towards home loan repayment, it is submitted that this plea has no legal basis. It is argued in this regard, that this Court has in several decisions held that voluntary EMIs, especially those towards properties not owned by the petitioner, cannot be considered while determining maintenance obligations. In this case, the property for which EMIs are being paid is admittedly owned by the petitioner's father, and thus, no deduction on that ground is permissible. It is also argued that the respondent no. 1/wife was treated with cruelty by the petitioner and his family and that the petitioner was having illicit relations with some other girl and had even purchased a house for her. It is further argued that the



respondent-wife has no independent income, is only 12th pass, and is residing with her parents, and she and the minor child are entirely dependent on the maintenance awarded by the learned Family Court, and any reduction would cause serious financial hardship. In view of the above, the learned amicus curiae prays that the impugned order be upheld and the present petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

7. This Court is of the opinion that as per the petitioner and the affidavit of income and expenditure filed by him, he has himself admitted to having a monthly income of Rs.1,05,000/-. He has not disputed that he is working as a Software Engineer with TLG India Private Limited.

8. As far as the contention regarding payment of EMI of home loan is concerned, the same is not a mandatory deduction or liability, as already observed by this Court in the case of *Sodan Singh Rawat v. Vipinta (Supra)* and *Abhinav Kumar v. Swati & Anr.: Crl. Rev. P.211/2024*. The relevant observations of this Court in this regard are set out below:

“10. It is undisputed that some deductions from an employee’s salary are mandatory, while others are voluntary and made at the employee’s discretion. However, when determining the amount of maintenance, the Courts are required to consider only the mandatory deductions and compulsory contributions. In case of *Chanchal Verma v. Anurag Verma: 2022 SCC OnLine Del 2993*, this Bench had observed as under:

“32. It has been held categorically in the case of *Nitin Sharma v. Sunita, 2021 SCC OnLine Del 694*, that **only statutory mandatory**



deductions from the income of the husband are permissible to be deducted for the purpose of computation of his income for the purpose of grant of maintenance. The observations of the Court read as follows:

“...24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and **no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted...**”

33. The court further reiterated what was held by the Hon'ble Punjab & Haryana High Court in the case of *Seema v. Gourav Juneja, 2018 SCC OnLine P&H 3045* which is stated as under:

“13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary...”

(Emphasis added)

34. Similarly in *Dr. Kulbhushan Kunwar v. Raj Kumari, (1970) 3 SCC 129*, the Hon'ble Supreme Court while deciding the fixation of rate of maintenance, had made the following observations:

“...19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of “free income” as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car...”

11. Be that as it may, despite having had the opportunity, the petitioner failed to lead any evidence to establish the necessity of these loans. In such circumstances, the petitioner's argument regarding loan repayments does not hold merit and cannot be accepted as a ground to reduce or deny maintenance to the respondent.”



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9. This Court notes that the petitioner has failed to place on record, either before this Court or before the learned Family Court, any material to demonstrate that the respondent-wife has any independent source of income. There is no document, affidavit, or income proof filed to indicate that the respondent-wife is engaged in any gainful employment or possesses any financial resources of her own. Mere bald assertions made by the petitioner cannot substitute evidence, especially in proceedings concerning maintenance and sustenance of the wife and child who are unable to maintain themselves.

10. Further, the petitioner's claim regarding his parents being financially dependent upon him remains completely unsupported by any documentary evidence. Despite having filed affidavits and other documents, the petitioner has not produced any record to show the income, expenses, medical requirements, or financial liabilities concerning his parents. In the absence of any such material, this Court is unable to accept the petitioner's contention that the financial responsibility towards his parents warrants a reduction in the maintenance awarded to the respondent-wife and the minor child.

11. This Court also takes note of the fact that the EMIs being paid by the petitioner are towards his ancestral house. It is well settled that such voluntary financial obligations, especially when incurred for ancestral property that does not exclusively belong to the petitioner, cannot be considered as mandatory deductions while determining maintenance. The statutory right of the wife and child to receive



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maintenance cannot be defeated on account of EMIs that the petitioner is paying towards any property.

12. The learned counsel appearing for the petitioner had also argued that the petitioner is only left with payment of one month of outstanding maintenance, implying that there is no deliberate or substantial default on his part. However, the learned amicus curiae appearing for the respondent rightly pointed out that even a single day's delay in the payment of maintenance leaves a profound impact on the respondent, who struggles to meet her daily expenses, sustain herself, and provide for the minor child. This Court notes that while the petitioner continues to sleep in peace, secure in the knowledge of his regular income and resources, the respondent suffers in silence, grappling with uncertainty and anxiety about how she will meet her basic needs if maintenance is not paid in a timely manner. The hardship faced by a dependent spouse or child is not measured merely by the quantum of arrears but by the immediate consequences of financial deprivation that even short delays in maintenance can cause. The very object of maintenance under the statutory framework is to ensure financial stability and a sense of security for the dependent spouse and child. Maintenance is intended to safeguard their right to live with dignity and meet basic expenses such as food, shelter, clothing, healthcare, and education. It is not a benevolence or charity to be delayed at the convenience of the earning spouse. The legislative intent is to prevent precisely the kind of fear, helplessness, and financial insecurity that the respondent has expressed due to such



delays. Thus, this Court finds no merit in the petitioner's argument that minimal outstanding maintenance is a ground to dilute or defer his legal obligation. Even a day's lapse compromises the welfare of the dependent wife and child, which defeats the purpose of maintenance provisions.

13. This Court cannot lose sight of the fact that maintenance is not merely a monetary obligation but a legal and moral duty designed to preserve the dignity and security of the dependent spouse and child. In the present case, while the petitioner argues that only one month's maintenance is outstanding, the impact of such delay on the respondent cannot be trivialised. The reality is that even a day's uncertainty over basic expenses causes distress and hardship to the respondent, who is entirely dependent on the maintenance for her survival and for providing for the minor child. **When financial support is delayed, dignity is the first casualty.** The respondent should not be left to suffer in silence, questioning how her immediate needs will be met while the petitioner enjoys financial stability. The very object of maintenance is defeated if its disbursement is left at the convenience of the earning spouse. **Financial support delayed is dignity denied**, and this Court is conscious of the fact that timely maintenance is integral to safeguarding not only subsistence but the basic dignity of those who are legally entitled to such support.

14. This Court also notes that it is unclear whether the petitioner is paying the entire school fee of the minor child. However, the petitioner has stated that he is paying ₹5,500/- towards the child's



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school fee, which was not considered by the learned Family Court. In her affidavit of income and expenditure, the respondent-wife has also not claimed that she is paying the school fees of the minor child. To this extent, this Court is of the opinion that the said amount ought to have been taken into account while determining the maintenance payable by the petitioner to the respondents. It is further noted that the minor child, who is six years of age and studying in Class II at Mayo International School, I.P. Extension, Delhi, incurs approximately ₹16,650/- as quarterly school fee and other related expenses. Accordingly, this Court directs that the interim maintenance payable to the respondent no.1-wife shall remain to be ₹22,500/- per month, however, the respondent no.2/minor child shall be entitled to interim maintenance of ₹17,500/- per month. The impugned order shall stand modified to this extent.

15. Needless to say, any amount of interim maintenance paid by the petitioner shall remain adjustable in the future amount of maintenance awarded by the learned Family Court at the time of final disposal of the case by the learned Trial Court.

16. With above directions, the present petition along with pending application stands disposed of.

17. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

18. This Court also appreciates the efforts of Ms. Payal Seth, Advocate who was appointed as *amicus curiae* in the present matter



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to represent the respondents.

19. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 01, 2025/zp/ns