



2025:DHC:5603



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on :15.07.2025*+ **CRL.REV.P. 622/2024 & CRL.M.A. 14402/2024**

.....Petitioner

Through: Mr. Bimlesh Kumar, Mr.
Sushil Kumar Singh and Ms.
Monika Gupta, Advs.

Versus

.....Respondent

Through: Mr. Sumit Rana, Adv.

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

1. By way of this petition, the petitioner seeks setting aside of the judgment dated 06.04.2024 passed by the learned Additional Sessions Judge-09, West Tis Hazari Courts, Delhi *vide* which the appeal filed by the petitioner husband challenging the order dated 31.10.2023, passed by the learned Mahila Court-05, West, Tis Hazari Courts, in case titled as '*Sakshi Bhatara v. Rakesh Bhatara*' was dismissed and he was directed to pay a sum of Rs.1,00,000/- per month to the respondent wife from the date of the filing of the petition till the final disposal.

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



2025:DHC:5603



wife had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, 'D.V. Act'), seeking reliefs under Sections 18, 19, 20, and 22 of the said Act. During the proceedings, both parties had filed their respective income affidavits. The learned Mahila Court had, vide order dated 24.02.2021, directed the petitioner husband to pay ad interim maintenance of Rs. 12,000/- per month to the respondent wife. Subsequently, the respondent wife had preferred an appeal under Section 23 of the D.V. Act. The learned Trial Court had, vide order dated 31.10.2023, enhanced the maintenance to Rs. 33,000/- per month, payable from the date of filing of the application. Aggrieved by the said order, the respondent wife had filed an appeal challenging the same. The learned Additional Sessions Judge had disposed of both Criminal Appeal Nos. 393/2023 and 396/2023 by a common judgment dated 06.04.2024, whereby the maintenance amount had been further enhanced from Rs. 33,000/- to Rs. 1,00,000/- per month. The petitioner husband had also been directed not to sell his property without obtaining prior permission from the learned Mahila Court.

3. The learned counsel for the petitioner husband has challenged the impugned order on the ground that the learned Additional Sessions Judge had failed to consider the grave medical condition of the petitioner, who is suffering from Ankylosing Spondylitis, a chronic and incurable disease that requires continuous treatment, care, and assistance. It is submitted that the petitioner has to incur medical expenses amounting to approximately Rs. 1,56,000/- per



month, and in the absence of such expenditure, his life would be at serious risk. It is further argued that the respondent wife had voluntarily left the matrimonial home and has made no effort to return or reconcile. She is admittedly an able-bodied person, fully capable of maintaining herself. Moreover, she has not satisfactorily explained the basis of her claimed monthly expenditure, which she pegs at Rs. 2,00,000/-, as per her income affidavit dated 04.07.2022. Of this, Rs. 50,000/- per month are stated to be spent on her sons, both of whom are major and therefore not legally entitled to maintenance under the D.V. Act. The respondent has claimed that she earns Rs. 12,000/- per month, and that the remainder of her expenses are met by borrowings, which, the petitioner submits, lacks credibility and specificity. The learned counsel further argues that even assuming the petitioner's income to be Rs. 2,00,000/- per month, as alleged, the direction to pay Rs. 1,00,000/- as maintenance is grossly disproportionate and not sustainable in law. It is also pointed out that the petitioner's income, as reflected in his income tax returns, has been consistently decreasing over the years, and he has no family support to care for his daily and medical needs. It is submitted that the petitioner husband requires the assistance of a domestic help, driver, cleaner, and dresser, and is compelled to seek treatment from private medical institutions, resulting in substantial monthly expenditure. It is further argued that the marriage between the parties was a second marriage, and the petitioner had accepted the respondent along with her two sons from her first marriage,



demonstrating his good faith and intentions. Lastly, it is contended that the respondent wife had never been subjected to any domestic violence at the hands of the petitioner, and has unjustifiably chosen to abandon him despite his deteriorating health. Accordingly, it is prayed that the impugned order awarding enhanced maintenance be set aside or suitably modified, keeping in view the financial constraints and medical condition of the petitioner.

4. The learned counsel for the respondent wife submits that she is presently residing in her ancestral home, having been repeatedly subjected to mental, physical, financial, and emotional abuse by the petitioner husband. After the death of her first husband in 1987, and while raising two sons alone, the petitioner had approached her for marriage with promises of care and fatherly affection for her children. On these assurances, she had agreed to marry him. However, after the marriage, the petitioner began insulting and distancing the children, whom he had earlier claimed to adopt. He prohibited them from using his car, television, or belongings, and frequently asked them to leave the house. He also began excessive drinking and mistreated the respondent, eventually compelling her to leave the matrimonial home and seek maintenance and alternative accommodation. It is further argued that the petitioner has misrepresented his financial status. His income tax returns and documents show an average annual income exceeding Rs. 32 lakhs, ownership of multiple properties, investments in mutual funds and shares, and 200 acres of agricultural land, generating over Rs. 15



lakhs per month. Despite this, he has attempted to reduce his declared income each year to evade maintenance. It is alleged that he even transferred properties without consideration to his sister during the proceedings, prompting the learned Trial Court to restrain him from alienating assets. The learned counsel states that the impugned order is based on the financial documents, affidavits, and lifestyle of the parties, and no illegality or perversity can be attributed to it. It is therefore prayed that the impugned order be upheld, as it is well-reasoned, just, and supported by the material on record.

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

6. This petitioner has challenged the impugned order before this Court on the ground that the learned Additional Sessions Judge had failed to appreciate the medical condition of the petitioner husband, who is suffering from Ankylosing Spondylitis and requires monthly medical expenditure of approximately ₹1.56 lakhs. It is contended that the respondent wife had voluntarily left the matrimonial home and is an able-bodied person, capable of earning. The petitioner had also argued that the respondent has not properly explained her own expenses and that the maintenance amount of ₹1 lakh per month is excessive, and that the petitioner's income has been declining and that he has no other dependents or support system. The relevant portion of the impugned order reads as under:

“16. As far as the income of complainant is concerned there is nothing on record to indicate that complainant is gainfully employed or she is having any source of income.



17. Respondent in his affidavit of assets and liabilities specifically mentioned that his income is Rs.10-12 Lakhs per annum. In his affidavit, respondent has given details of his monthly expenses as under:

- a. Rs 8000/- towards maintenance of house.
- b. Rs 5000/- towards caretaker.
- c. Rs 8000/- towards cook.
- d. Rs 4000/- towards maid.
- e. Rs 20000/- towards electricity bills.
- f. Rs 40000/- towards medical expenditure.
- g. Rs 31000/- towards car driver & fuel.
- h. Rs 15000/- towards grocery.
- i. Rs 10000/- towards clothing.
- j. Rs 2500/- towards mobile/ recharge.
- k. Rs 10,000/- towards gifts/ entertainment.
- l. Rs 2500/- towards Health Insurance.

18. Total monthly expenses of respondent is shown to be Rs 1.56 Lakhs. It is beyond comprehension that a person who is having income of less than Rs 1 lakh a month would be spending Rs 1.58 lakhs on himself. ITR of respondent reflects that total income of respondent in assessment year 2020-21 is around Rs. 28 lakhs total income of the respondent in assessment year 2021-22 is more than Rs. 36 lakhs. Record also reflects that respondent has substantial investments in mutual funds as well besides having shares.

19. In *Anju Garg and Another vs, Deepak Kumar Garg, 2022 SCC OnLine SC 1314*, Hon'ble Supreme Court of India held, as under:

"10....The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide Financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute...."

20. In *Shamima Farooqui vs, Shahid Khan, (2015) s SCC 705*, Hon'ble Supreme Court of India held as under:

"14.....Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive



maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning."

21. It is the settled preposition of law that husband is not only required to maintain his wife but also to maintain her with such dignity and with such status which either she is already enjoying or is capable enough or entitled to enjoy in the life, it is only then, that it could be regarded as maintenance in true sense.

22. Respondent is spending Rs10,000/- per month on his entertainment and gifts, Rs 310001- on his travel besides that he is also having services of cook, care taker and is also spending on maintenance of his house. Thus, it is evident that respondent has not disclosed his true income to the court rather respondent himself admits his monthly expenses to be Rs 1.56 lacs and as such, monthly income of respondent is much more than Rs. 1 lacs per month as claimed by him and it must be around Rs 2 lacs per month, if not more.

23. In my opinion complainant is not only entitled to receive an interim maintenance from respondent for herself but also she has a right to live in a dignified way and manner with the status which is being enjoyed by complainant himself before the society. Ld Trial Court though fixed the interim maintenance in the sum of Rs.33,000/- per month but it is far less in view of the earnings of respondent, spending of respondent on himself (Rs.1.58 Lakhs as per respondent himself) and his financial status.

24. Keeping in view of the status of parties and above observations, respondent is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh) per month to the complainant from the date of the filing of the petition till final disposal of the case. Amount already given to the complainant shall be liable to be adjusted while calculating the arrears of maintenance. Respondent husband is further directed not to alienate any of his property without informing Ld. Trial Court.

25. In view of the above, impugned order dated 31.10.2023 is set aside and is modified in above stated terms. In consequence thereof, appeal preferred by complainant stands allowed and appeal



preferred by respondent stands dismissed. Copy of order be placed in both the connected appeals.”

7. It is not in dispute that the petitioner husband, as per his own income tax returns, had declared an annual income of ₹28 lakhs for the assessment year 2020–2021 and ₹36 lakhs for 2021–2022. Even though the petitioner has claimed that he is incurring monthly medical expenses of ₹1.8 lakhs for treatment of Ankylosing Spondylitis, no medical bills, prescriptions, or supporting treatment records have been placed on record to substantiate such a claim. The learned Trial Court has rightly observed that in the absence of documentary proof, such claims remain bald and self-serving assertions.

8. From the income affidavit filed by the petitioner, it is also evident that he is maintaining a high standard of living. He has himself admitted to employing a driver, cook, caretaker, and maid, with monthly expenses of ₹31,000 on driver and fuel, ₹10,000 on entertainment, and ₹4,000 on domestic help. These figures establish that the petitioner is leading a comfortable lifestyle and has the financial capacity to bear the awarded maintenance.

9. Furthermore, it is also admitted that the petitioner husband has no dependents other than the respondent wife. The learned Trial Court has, therefore, justifiably held that the respondent wife is entitled to enjoy the same standard of living, especially in light of the fact that the petitioner’s own disclosures reflect monthly expenses in excess of ₹1.5 to ₹2 lakhs.



10. This Court is also not persuaded by the contention of the petitioner that the respondent wife is capable of earning and, therefore, should be denied maintenance. While capability to earn may be a relevant factor, it must be demonstrated that the wife is gainfully employed or receiving income sufficient to maintain herself, which is not the case here. The income affidavit filed by the respondent wife reveals a meagre income of ₹12,000 per month, with remaining expenses reportedly met through loans or borrowings. In contrast, the petitioner's declared and admitted assets and lifestyle clearly reflect substantial financial resources.

11. This Court also finds merit in the respondent's grievance that the petitioner has attempted to alienate his properties during the pendency of the proceedings, allegedly to defeat her legitimate claims. The learned Trial Court has rightly directed the petitioner not to dispose of his immovable assets without permission of the Court. Such conduct lends further credence to the apprehension of the respondent wife and undermines the petitioner's credibility.

12. As regards the petitioner's submission that the respondent's marriage with him was her second and that she had children from a previous marriage, such a submission is wholly misconceived. The Domestic Violence Act does not distinguish between a first or subsequent marriage for the purpose of entitlement to maintenance. Once the petitioner voluntarily entered into the marriage and accepted the respondent and her children, he cannot now use that as a defence to resist his statutory obligations.



2025:DHC:5603



13. This Court also finds no infirmity in the order of the learned Trial Court declining maintenance to the major sons of the respondent wife, as they are not legally entitled to the same, in the absence of any material indicating continued dependency.

14. In view of the above, this Court finds no illegality, perversity, or material irregularity in the impugned order. The petition is, accordingly, dismissed. Pending application also stands disposed of.

15. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 15, 2025/A