



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

Date of decision: 31st AUGUST, 2023

IN THE MATTER OF:

+ **CRL.REV.P. 604/2018 & CRL.M.A. 28262/2018**

ZAHIR ABDULLAH & ANR Petitioners
Through: Mr. Prosenjeet Banerjee, Ms. Shreya
Singhal, Mr. Sarthak Bhardwaj,
Advocates with Petitioners-in-person

versus

OMAR ABDULLAH Respondent
Through: Ms. Malvika Rajkotia, Mr. Ramakant
Sharma, Ms. Trisha Gupta, Mr.
Prateek Awasthi, Advocates

+ **CRL.REV.P. 605/2018**

PAYAL ABDULLAH Petitioner
Through: Mr. Prosenjeet Banerjee, Ms. Shreya
Singhal, Mr. Sarthak Bhardwaj,
Advocates with Petitioner-in-person

versus

OMAR ABDULLAH Respondent
Through: Ms. Malvika Rajkotia, Mr. Ramakant
Sharma, Ms. Trisha Gupta, Mr.
Prateek Awasthi, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. CRL.REV.P. 604/2018 has been filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, (*hereinafter referred to as the "Code"*) challenging the Order dated 26.04.2018 passed by Ld. Principal Judge, Family Court, Patiala House, New Delhi, in M-Petition



No. 111/2016, whereby the grant of maintenance to both the Petitioners in CRL.REV.P. 604/2018 under Section 125 of the Code was rejected and the Petitioner No.1 in CRL.REV.P. 604/2018 was granted maintenance of Rs. 25,000/- for a limited period of 3 months till he attained the age of majority.

2. CRL.REV.P. 605/2018 has been filed under Sections 397/401 read with Section 482 Cr.P.C challenging the Order dated 26.04.2018 passed by Ld. Principal Judge, Family Court, Patiala House, New Delhi, in M-Petition No. 111/2016, wherein a sum of Rs. 75,000/- as interim maintenance was granted to the Petitioner in CRL.REV.P. 605/2018.

3. For ease of comprehension, the Petitioners in both the petitions shall be referred to by their names, i.e. Zahir Abdullah and Zamir Abdullah who are Petitioners No.1 and 2 in CRL.REV.P. 604/2018, and Payal Abdullah, who is the Petitioner in CRL.REV.P. 605/2018.

4. The facts, in brief, leading to the filing of the petitions are as follows:

- a) It is stated that the marriage between Payal Abdullah and Omar Abdullah was solemnized on 01.09.1994 under civil law in England. Two children, namely the Petitioners in CRL.REV.P. 604/2018, were born to the couple, and during the pendency of the petition, they were pursuing law at Jindal Global Law School, Sonipat.
- b) It is stated that Omar Abdullah, the Respondent, is the son of Mr. Farooq Abdullah, and the grand-son of Sheikh Abdullah; both are well-known politicians and were Chief Ministers of the erstwhile State of Jammu and Kashmir during their point of time. The Respondent himself is the former Chief Minister of the erstwhile State of Jammu and Kashmir.



- c) It is stated that the Respondent has abandoned the Petitioners since 2013 and filed for dissolution of marriage under the Foreign Marriage Act read with Sections 27(1)(b) and (d) of the Special Marriage Act, 1954, on the grounds of desertion and cruelty. The Ld. Principal Judge, Family Court, Patiala House, *vide* Order dated 30.08.2016 dismissed the FMA No. 01/2013. An appeal against the same has been filed by the Respondent before this Hon'ble Court, being MAT. APP. (F.C.) No. 135/2016.
- d) It is stated that thereafter, the Respondent physically threw the Petitioners out of their house at Akbar Road, New Delhi without any prior notice on 22.08.2016. The Petitioners were rendered homeless and were forced to take refuge at various places before finding a rented accommodation at Kapashera, Delhi.
- e) It is stated that Payal Abdullah has single-handedly raised her two children, one of whom was a minor at the time of filing of the application before the District Court. Further, she is unemployed and is also a recipient of "Z" security with her children being "Z+" protectees. It is stated that Omar Abdullah has refused to maintain the Petitioners despite having sufficient financial means and is currently living in luxury at a 2200 Sq. Yard plot in Nizamuddin, New Delhi.
- f) It is stated that in absence of the Respondent coming forward to discharge his responsibilities as a father and a husband, Payal Abdullah was constrained to file an application under Section 125 Cr.P.C. for maintenance of herself and the two children,



vide M-Petition bearing No. 111/2016.

- g) It is stated that during the pendency of the aforementioned MAT Petition No. 111/2016, the Respondent herein challenged the Order dated 09.09.2016 passed in M-Petition, 111/2016 and sought the quashing of the proceedings under Section 125 Cr.P.C before this Hon'ble Court. *Vide* Order dated 01.12.2017 in CRL.M.C. 4717/2017, this Court observed that *“maintainability of the petition under Section 125 Cr.P.C. and question of award of interim maintenance are inseparable. In order to award interim maintenance, the Court concerned shall first arrive at a finding that whether the husband/petitioner neglected or refused to give maintenance to his wife/respondent No.1 and that whether the wife/respondent was unable to maintain herself. The Court will also necessarily have to determine before awarding the interim maintenance whether respondents No.2 and 3 are entitled for the same as both the respondents have attained majority. Therefore the question of grant of interim maintenance can be determined only after the determination of the maintainability of the petition under Section 125 Cr.P.C.”*
- h) *Vide* Order dated 26.04.2018, the Ld. Principal Judge, Family Court, Patiala House, New Delhi, held that Petitioner No.2 in CRL.REV.P. 604/2018 was a major at the time of filing of the application of maintenance and, therefore, was not entitled to maintenance under Section 125 Cr.P.C. However, it was directed that Payal Abdullah was entitled to an interim



maintenance of Rs. 75,000/- by the Respondent from the date of filing of the application under Section 125 Cr.P.C. to its disposal, and that Petitioner No.1 in CRL.REV.P. 605/2018 was entitled to an interim maintenance of Rs. 25,000/-.

- i) Aggrieved by the aforesaid Order, the Petitioners herein have approached this Court, praying for a revision of the Order dated 26.04.2018.

5. Mr. Prosenjeet Banerjee, learned Counsel appearing for the Petitioners, submits that the impugned Order dated 26.04.2018 is bad in law as it fails to take into consideration the aspect of the Respondent deliberately concealing his real income and assets to avoid maintaining the Petitioners. He submits that the Respondent has only paid for utilities on being specifically asked for it and has levelled false allegations pertaining to the financial stability of Payal Abdullah in order to avoid providing financial support to his family. He further submits that the reason behind the delayed filing of the maintenance plea was on account of the fact that Payal Abdullah wished to repair matrimonial relations with the Respondent. Therefore, despite estrangement for a number of years, she did not claim maintenance.

6. Mr. Banerjee argues that the claims of the Respondent that Payal Abdullah is the owner of a luxurious flat worth Rs. 12 crores at Westend, New Delhi and can reside there with the children, instead of claiming rent for alternate residence, are false. He states that she is a simple homemaker who is currently subsisting on the pension and savings of her father who is a retired General from the Army, and the flat in question is a small plot of 600 square yards and that it is accessible to other flat owners. Further, as it is adjacent to flyover with heavy traffic, it raises concerns about the



Petitioners' security, and cannot accommodate the wife, the children, their pets along with the security that they have been provided which includes 90+ security personnel. He further brings to the attention of this Court that the father of Payal Abdullah is aged and cannot support her, and that the Petitioners are being forced to take refuge wherever it is possible for them.

7. The learned Counsel for the Petitioners submits that the Respondent has deliberately failed to showcase any of his income and has calculated the interim maintenance of a mere Rs. 75,000/- on the basis of a false income affidavit filed by the Respondent as well as false allegations levelled by the Respondent with regard to Payal Abdullah's income. He states that in contravention of Kusum Sharma v. Mahinder Kumar Sharma, **AIR 2015 Delhi 53**, the Respondent is liable to provide an entire account of his income and expenditure, and in absence of the same, a negative inference can be drawn. He further states that the wife has no source of income and is drawing a meagre Rs. 60,000/- as interest from an FDR deposit which has been loaned to her by her father.

8. Mr. Banerjee concludes his submissions by stating that the Petitioners are under dire financial stress while the Respondent has been enjoying an opulent lifestyle where he visits countries like Dubai and London, and lives in five-star hotels. The learned Counsel states that he has enormous properties, staff, and membership to elite clubs. He argues that there is a responsibility on the husband to maintain his wife and children, and provide them with the same standard of living that they previously enjoyed. Accordingly, the Impugned Order deserves to be set aside.

9. *Per contra*, Ms. Malvika Rajkotia, learned Counsel appearing on behalf of the Respondent, submits that the Respondent has consistently



discharged his duties of maintaining his children and has paid for utility bills and other expenses, unlike what is being portrayed by the Petitioners. He has also been paying Rs.75,000/- as directed by the learned Family Court. She states that Section 125 Cr.P.C. categorically notes that maintenance can only be claimed by a “wife” who is “unable to maintain herself” and that in the instant case, Payal Abdullah has the means to live comfortably as can be showcased by the financial affidavit filed by the Respondent with the Election Commission of India.

10. Ms. Rajkotia, learned Counsel for the Respondent, argues that this is an elaborate attempt by the wife of the Respondent to harass the Respondent, a fact which is evident from the particulars of the financial affidavit filed by Payal Abdullah which contains information that is damaging to the reputation of the Respondent who is a well-respected political leader. She takes this Court through the Income Affidavit of Payal Abdullah and states that Payal Abdullah has submitted her Income Tax Return (ITR) receipt which computes the current year loss, however, she has failed to supply the sheet which showcases the details of incomes and expenditures of the sole proprietorship of a natural mineral water bottling plant.

11. The learned Counsel submits that records available online display how Payal Abdullah is the director in Golden Sunshine Tours and Travels Pvt. Ltd., an active director in Rahwan Travels Pvt. Ltd. and PA Energy Pvt. Ltd., along with her parents. She further submits that there has been a clear misrepresentation of the financial assets of Payal Abdullah who has stated that her total income is merely Rs. 60,000/-. Ms. Rajkotia also argues that despite showing vasty expenditures in the Statement of Expenditures, Payal Abdullah has not provided any substantial or authentic proofs of the



expenses.

12. With regard to the Statement of Liabilities, the learned Counsel for the Respondent submits that Payal Abdullah has stated that a loan of Rs. 1 crore has been taken from her father and that her father has incurred expenses of Rs. 5 crores on the Petitioners herein. She states that such an expenditure by a retired General from the Army is preposterous and that he should be put to strict proof regarding the nature of these expenses. Ms. Rajkotia further submits that the submissions on the Petitioners having been rendered homeless are untrue as Payal Abdullah owns a flat worth Rs. 12 crores in Westend, New Delhi, which is lying vacant, and therefore, she cannot seek alternate residence. Further, the eviction only took place because the property was a government property and the order of eviction was rendered by the government under the Public Premises Act. She states that Payal Abdullah is making exaggerated claims with regard to the security threats being received by her and the children, and that their security cover, which is now Y+, remains intact and can be accommodated in the Westend flat.

13. Ms. Rajkotia submits that the instant petition is a gross abuse of the law as the wife has consistently misrepresented and hidden her actual financial position and has painted a false picture which depicts her as a destitute who does not have any financial resources to either contest eviction or even continue litigation, and is solely reliant on her father's pension for her sustenance as well as that of her children. She argues that the wife wants to portray herself as a victim of cruelty despite it being that the Respondent has undergone immense cruelty at the hands of his wife and has yet ensured that the safety and security of his family remains intact.

14. The learned Counsel for the Respondent submits that the wife has



sought for litigation expenses to the tune of Rs. 3,00,000/-, however, the litigation of expenses of Rs. 25,000/-, as directed by the Court, have already been paid. She further submits that it is difficult to take the arguments of financial stress on face value as the wife is enjoying a lavish lifestyle which would not be possible if she was truly receiving a meagre income of Rs. 60,000/-. She states that substantial assets of the wife are lying unused and the wife is only agitating the matter at hand to cause mental distress and ruin the reputation of the Respondent.

15. Heard Mr. Prosenjeet Banerjee, appearing for the Petitioners, Ms. Malvika Rajkotia, appearing for the Respondent, and perused the material on record.

16. At the outset, this Court seeks to deliberate upon the scope of a revision petition under Sections 397/401 Cr.P.C. which has been succinctly explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460. The relevant portion of the said judgement has been reproduced as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial



discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."*

17. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, the Supreme Court had observed as under:

"5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional



jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence."

18. In a 2018 judgement of the High Court of Andhra Pradesh, titled Dr. J. Muralidhar Goud v. State of Telangana rep. by its Special Public



Prosecutor for CBI, 2018 SCC OnLine Hyd 470, though the matter therein was not related to grant of maintenance, the principles underlying scope of revision under Sections 397/401 Cr.P.C. have been comprehensively discussed. The same has been reproduced below:

"17. Section 397 Cr.P.C. empowers the High Court and a Sessions Judge to call for and examine the record any proceedings before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court. This section simply lays down the matters which a revisional Court may investigate. The object of this section in conferring the power of revision is that the revisional Court is given a supervisory jurisdiction to secure the correction of a patent error or defect which has resulted in miscarriage of the justice and this may arise from misconception of law or irregularity of procedure. But, the power conferred by this section should not be so exercised as to convert it into a right of appeal, where such a right is excluded by the Code. But unlike Sections 100 and 115 of the Cr.P.C, the power of revision under Cr.P.C. is not so rigidly circumscribed, within the rule requiring clear question of law or of jurisdiction, as to exclude this Court's jurisdiction to interfere where the conclusions of the court below are grossly erroneous and even though grave injustice may have resulted therefrom. Thus, it is clear from the language used in Section 397 Cr.P.C. that the revisional Court can exercise power only to call for record to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order as to the regularity of the proceeding. It is a correcting Court. A revisional Court can revise the order of an inferior criminal Court not only on the ground of



jurisdiction, but also on the ground that it is illegal or erroneous. 'Legality' and 'propriety' in Section 397 Cr.P.C. both include questions of law as to whether a finding, sentence or order was legal or proper having regard to the evidence. 'Correctness' in the section does not mean that the revisional Court may inquire whether the finding was acceptable to it on a balance of the evidence recorded in the Trial Court. The correctness of the finding, sentence or order also implies a legal defence, such as the finding being based on no evidence or being incorrect in the sense that the witnesses may have said. Any finding which is correct on the evidence must necessarily be held to be proper and the order of dismissal which follows the finding must be held to be both correct and proper. No finding can be said to be either correct or proper when the material on which it is based cannot possibly lead any reasonable man to arrive at that finding and in such a case, it will be open to the revisional Court to set it aside and to replace it by what according to it would be the legitimate finding on the evidence. Therefore, this Court unless concludes that the findings of the Trial Court are not legal and proper or correct or regular, the Court can't interfere with such order.

18. Section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. (vide Amar Chand Agarwalla v. Shanti Bose¹²). The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice.



Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Thus, the jurisdiction of this Court under Section 401 Cr.P.C. is limited and it cannot be exercised in a casual manner by this Court and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Inferior Court is without any evidence or material. In the present case, when the Inferior Criminal Court followed the procedure in accordance with law, irrespective of the correctness and legality of the order, this Court cannot interfere with such orders passed by the Inferior Court. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court."

19. It is evident from the above judicial pronouncements that the scope of interference in a revision petition is extremely narrow. The statutory provisions under Cr.P.C. bestows upon the High Court jurisdiction to consider the correctness, legality or propriety of any finding *inter se* an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, the revisional court does not dwell upon the facts and evidence in a case at length. It solely considers the material for the purpose of satisfying itself that the impugned decision is legal and proper with respect to the findings, sentence and order; it refrains from substituting its own conclusion on an elaborate consideration of evidence [Refer to Taron Mohan v. State, 2021 SCC OnLine Del 312].



20. Having discussed the powers of a Court assuming revisional jurisdiction, along with the fetters with which it is bound, this Court deems it fit to proceed to the facts that arise out of the material on record and arguments presented before it by the learned Counsel, and the law governing these facts.

21. The principle underlying Section 125 Cr.P.C. is that it is in furtherance of social justice and has been enacted to ensure that women and children remain protected from a life of destitution and potential vagrancy. The object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim for support. This was observed concisely by the Supreme Court in Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 where it stated as follows:

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food,



clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself."

22. The receipt of maintenance is not, however, exclusive to woman and children who are on the edge of destitution and potential vagrancy. In fact, there is no straitjacket formula for fixing the quantum of maintenance to be awarded. The Supreme Court in Rajnish v. Neha, (2021) 2 SCC 324, had comprehensively listed all the factors that must be taken into consideration and how a careful and just balance must be drawn between. Therein, the Apex Court had observed that an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is in position to earn sufficient to maintain his family. Further, the Court is required to have due regard to the standard of



living of the husband, as well as the spiralling inflation rates and high cost of living. To understand the reasoning of the Court, it would be prudent to refer to the following paragraphs of the said Judgement:

"III. Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290].

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An



order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. *On the other hand, 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 court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]*

81. *A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuji v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] **The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should***



neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

23. It is also settled law that other factors like age and employment of the parties, and the factum of the wife earning income, must also be considered. In Rajnish v. Neha (supra), the Supreme Court elaborately dealt with these two factors and observed the following:

"86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:



90.1. *In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)]* , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [*Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356*] Sustenance does not mean, and cannot be allowed to mean mere survival. [*Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451*]

90.2. *In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589]* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694]* while relying upon the judgment in *Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589]* , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.



90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."

24. Thus, in addition to the fact that if a wife is earning some income, it does not operate as a bar from being awarded maintenance by the husband, it is further settled law that applicants in a maintenance proceeding are entitled to the same standard of living as they would have enjoyed if the dispute had not occurred. In Jayant Bhargava v. Priya Bhargava, **2011 SCC OnLine Del 1651**, this Hon'ble Court had stated that it was the duty of the Courts to ensure that it should not be that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation and poverty. Further, this Court also noticed that there was a tendency of spouses in proceedings



for maintenance to not truthfully disclose their income, and that in such cases, some guesswork on the part of the Court would be permissible. The paragraphs of the said Judgement stating the same are as under:

"12. It is settled position of law that a wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home. It is the duty of the courts to ensure that it should not be a case that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation, poverty. During the pendency of divorce proceedings the parties should be able to maintain themselves and should be sufficiently entitled to be represented in judicial proceedings. If in case the party is unable to do so on account of insufficient income, the other spouse shall be liable to pay the same. (See Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun, (1997) 7 SCC 7).

14. Further it has been noticed by the Courts that the tendency of the spouses in proceedings for maintenance is to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible.

15. The Supreme Court of India in the case of Jasbir Kaur (Smt.) (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that? considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision?.

16. Although there cannot be an exhaustive list of factors, which are to be considered in guessing the



income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse, when the sources of income are either not disclosed or not correctly disclosed, the Court can take into consideration amongst others the following factors:

- (i) Life style of the spouse;*
- (ii) The amount spent at the time of marriage and the manner in which marriage was performed;*
- (iii) Destination of honeymoon;*
- (iv) Ownership of motor vehicles;*
- (v) Household facilities;*
- (vi) Facility of driver, cook and other help;*
- (vii) Credit cards;*
- (viii) Bank account details;*
- (ix) Club Membership;*
- (x) Amount of Insurance Premium paid;*
- (xi) Property or properties purchased;*
- (xii) Rental income;*
- (xiii) Amount of rent paid;*
- (xiv) Amount spent on travel/holiday;*
- (xv) Locality of residence;*



(xvi) Number of mobile phones;

(xvii) Qualification of spouse;

(xviii) School(s) where the child or children are studying when parties were residing together;

(xix) Amount spent on fees and other expenses incurred;

(xx) Amount spend on extra-curricular activities of children when parties were residing together;

(xxi) Capacity to repay loan.

17. These are some of the factors, which may be considered by any court in guesstimating or having a rough idea or to guess the income of a spouse. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of her husband. In this case, the stand taken by the respondent with respect to his earning is unbelievable."

25. However, it is pertinent to note that while calculating amount of maintenance to be awarded to the parties, though the Court must consider the state of the parties and the mode of life that the wife was used to as well as the capacity to pay of the husband after allowing for his own expenses and obligations, this maintenance amount should permit reasonable comfort to the wife and ability to prosecute her case, yet it should not be excessive or extortionate. This finding was rendered by the Apex Court early in Jasbir Kaur Sehgal (Smt) v. District Judge, Dehradun and Ors., (1997) 7 SCC 7,



and has been consistently followed since then. The relevant portion of the said Judgement is as follows:

"8. The wife has no fixed abode of residence. She says she is living in a Gurdwara with her eldest daughter for safety. On the other hand the husband has sufficient income and a house to himself. The wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs 5000 per month payable by the respondent-husband to the appellant-wife."

26. In Chaturbhuj v. Sita Bai (supra), the Supreme Court held that the test of deciding a claim for maintenance is whether the wife is in a position to maintain herself in the way that she was used to in the place of her husband. The Supreme Court in Shri Bhagwan Dutt v. Smt. Kamla Devi and Anr., (1975) 2 SCC 386, stated that in view of the objective of the provision for maintenance, it is necessary for the Courts to discern what is required by the



wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family.

27. In the instant case, a bare perusal of the record indicates that the Respondent is a man of means, and has access to financial privilege that evades the common man. While it is understandable that being a politician, revealing all information pertaining to financial assets might be dangerous, however, there is no iota of doubt that the Respondent does have the resources to provide for his wife and children.

28. On the aspect of maintenance being paid to a major son, the Supreme Court as well as the High Courts have concurred on the observation that attainment of majority by a son should not absolve a father of his responsibilities of maintaining his children and ensuring that they secure proper education. The Supreme Court in Kirti Malhotra v. M.K. Malhotra, **1995 Supp (3) SCC 522**, had in fact noted that Rs. 1000/- per month of maintenance to an 18-year-old boy was on the lower side and directed it to be increased to Rs. 3,000/-. This direction was given despite the fact that the son had reached the age of 18. Though this Court cannot delve deep into the minute and excruciating details of the matter, it can arrive at the well comprehended conclusion that a father has an equal duty to provide for his children and there cannot be a situation wherein it is only the mother who has to bear the burden of expenses for raising and educating the children [Refer to Urvashi Aggarwal & Ors. v. Inderpaul Aggarwal, **2021 SCC OnLine Del 3242**].

29. This Court finds weight in the submission of the learned Counsel for the Petitioners that the language of Section 125 Cr.P.C. was not meant to oust the duty of the father to provide for his son. Keeping in mind the



purpose and intent of the provision in question, along with the growing importance of obtaining higher undergraduate education for the purpose of securing employment, the father is legally and morally bound to ensure that his children, even if it is a major son. The Court also is inclined to agree with the argument of the learned Counsel for the Petitioners that the wife and the children must not be put in a position where they are deprived of the lifestyle and the comfort that they previously enjoyed. Even if the wife has sufficient financial means to sustain herself, the husband cannot wash his hands off the responsibilities that are bestowed upon him when it comes to the upbringing of his children.

30. Further, in the instant case, a perusal of the Income Affidavits of the husband and the wife indicates that the husband does indeed leads a lavish lifestyle. Documents have been attached with the petition which reveal that the Respondent has been travelling to Dubai and London, living in five star and seven star hotels and spending lakhs on such luxuries. These documents belie the submission that he does not have the means to live an extravagant life. He evidently has the financial means to provide support to his wife and children. Additionally, the wife, on the other hand is the Director of three loss making companies. She has also studied only till 12th standard and her father is a retired Army General. However, it must also be noted that, though unemployed, the wife is also not a complete destitute. But, as observed in Chaturbhuj v. Sita Bai (supra), that even if the wife is earning some income, it is not sufficient to rule out the application of Section 125 Cr.P.C. Therefore, the question of awarding an excessive amount of maintenance does not arise, but the question of no maintenance or very low maintenance also does not arise. In this regard, this Court is not inclined to accept the



submission of the learned Counsel for the wife that the maintenance must be exorbitantly inflated, or to accept the submission of the learned Counsel for the Respondent that the wife is financially secure enough to sustain herself and the children, and that there is no requirement for the Respondent to discharge his paternal duties and pay any maintenance.

31. This Court also does not find any merit in the submission on behalf of the Petitioners that rent needs to be paid by the Respondent for the farmhouse at Kapashera. The learned Family Court has rightly observed in the impugned order that the property owned by the wife, which is located at Westend, New Delhi, is lying vacant. It is not only at the disposal of Payal Abdullah for her to take up residence there, but is also available to her for fetching rent out of it. At this juncture of calculation of interim maintenance, this Court does not find it necessary to increase the maintenance amount for the purpose of payment of rent.

32. This Court is of the view that in light of the financial capacity of the Respondent to provide a decent standard of living to his wife and children commensurate with his income and the standard of living that the Petitioners enjoyed previously, there is no reason that the maintenance amount awarded to Payal Abdullah should not be enhanced to that extent. Accordingly, this Court observes that there is limited merit in the instant petition and directs the interim maintenance amount to be increased from Rs. 75,000/- per month to Rs. 1,50,000/- per month for the Petitioner in CRL.REV.P. 605/2018 from the date of the application.

33. Both the Petitioners are majors and, therefore, under Section 125 Cr.P.C, they are not entitled to maintenance. However, this Court is of the opinion that the Respondent cannot abandon his children and ought not to



abdicate his duties as a father. The Petitioner in CRL.REV.P. 605/2018 has been saddled with the responsibility of paying the entire fee for the education of both the children, however, it was the duty of the father to also contribute towards their education. Therefore, even though the Petitioners in CRL.REV.P 604/2018 are not entitled to any maintenance as per the law, this Court is of the opinion that the Respondent should compensate the Petitioner in CRL.REV.P. 605/2018 by sharing the burden of the amount spent by her towards the expenses and upkeep of the children.

34. Resultantly, this Court directs the Respondent to pay a sum of Rs. 60,000/- per month per son to the Petitioner in CRL.REV.P. 605/2018 for the purpose of their education. The period of compensation shall commence from the date when the children were enrolled in the law college, and shall subsist till their graduation from the law college. As the financial status of the Petitioner in CRL.REV.P. 605/2018 is not particularly dire, this Court abstains from directing the Respondent providing compensation for the children's schooling. However, taking judicial notice of the fact that the fee of the law school where the two children were enrolled was exorbitant, this Court deems it fit to direct the Respondent to pay a sum of Rs. 60,000/- per month for each son to the Petitioner in CRL.REV.P. 605/2018, for the period that they were enrolled in law school. This Court is pained to note that in such acrimonious proceedings, the parents tend to make their children their pawns, thereby side-lining their children's happiness in order to vindicate themselves.

35. M-Petition No. 111/2016, in which the Impugned Order has been rendered, was filed in the year 2016. The learned Family Court is directed to dispose of the petition as expeditiously as possible, preferably within 12



months of the receipt of the copy of this Order.

36. Accordingly, the revision petitions and the pending application(s), if any, are disposed of in the above terms. The other conditions imposed in the Impugned Order are left undisturbed.

AUGUST 31, 2023

Rahul

SUBRAMONIUM PRASAD, J.