



2025:DHC:10650



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

% ***Date of Decision: November 27, 2025***

+ **CRL.REV.P. 1262/2023, CRL.M.A. 32019/2023 & CRL.M.A. 32020/2023**

KAVITA DEVIPetitioner

Through: Mr. Karan Sharma, Adv.
(through VC)

versus

BALJEET SINGHRespondent

Through: Mr. Sagar Sehrawat, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition has been filed under section 397 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with section 19 of the Family Courts Act, 1984, assailing the judgment dated 21.09.2023 (*hereinafter 'impugned judgment'*) passed by the learned Judge, Family Court-02, Dwarka, New Delhi, in MT Petition No. 365/2018.

2. By the impugned judgment, while deciding the petition of the Petitioner/Wife under section 125 of the CrP.C., the learned Family Court assessed the monthly income of the Respondent/Husband to be ₹50,000/- to ₹70,000/- per month and of the Petitioner to be Rs. 5,000/- to Rs. 7,000/- per month and thus, awarded maintenance to the tune of ₹13,000/- per month to the Petitioner.

3. Hence, the present petition has been filed, by the Petitioner, essentially seeking enhancement of maintenance



amount awarded *vide* the impugned judgment.

4. The learned Counsel for the Petitioner submits that the learned Family Court has erroneously assessed the monthly income of the Petitioner to be Rs.5,000/- to Rs. 7,000/- based on her previously filed income affidavit and without considering her latest income affidavit dated 20.09.2021 wherein she has herself stated to that she is unemployed and has no source of income to maintain herself.

5. He further submits that though the income of the Respondent has been assessed to be ₹50,000/- to ₹70,000/- per month, only a meagre amount of Rs. 13,000/- per month has been granted towards maintenance to the Petitioner/Wife,

6. He further submits that the learned Family Court has not considered that the Respondent has admittedly sold his ancestral agricultural land for a tune of Rs. 68 lakh and this fact was not disclosed by the Respondent in his affidavit of income.

7. *Per Contra*, the learned Counsel for the Respondent submits that he is only working as a commission agent and earning a meagre amount of Rs. 25,000/- per month and it is not feasible to pay even the directed amount of maintenance in the sum of Rs. 13,000/- per month, to the Petitioner.

8. He further submits that the Petitioner has her own independent source of income and is gainfully employed in a beauty parlour and is earning about Rs. 30,000/- per month.

9. He also submits that though he had sold the ancestral land for the tune of Rs. 68 lakhs, but the amount has been used to repay several loans and debts incurred by the Respondent. Hence,



it is prayed that the present petition be dismissed and the maintenance amount may not be enhanced.

10. Submissions heard and the material placed on record perused.

11. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. The Hon'ble Apex Court, in the case of *Shamima Farooqui v. Shahid Khan : (2015) 5 SCC 705*, observed as under:

*“14. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. **The principle of sustenance gets more heightened when the children are with her.** Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. **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.”

(emphasis supplied)

12. Similarly, the Hon’ble Apex Court in the in the case of **Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314**, observed 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....***

x-x-x

*13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. **The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child....***

(emphasis supplied)

13. In the present case, a perusal of the record demonstrates that as per the income affidavit dated 19.08.2018, filed by the Respondent, he has himself shown his monthly income to be Rs. 32,000/-. It has also been admitted by the Respondent during his cross-examination dated 20.07.2023 that he has sold his ancestral agricultural land for Rs. 68 lakhs in the year 2018 and has not given any amount out of the sale consideration to the Petitioner. It has also been admitted by the Respondent/Husband that the Bank Statement filed by him show withdrawals of Rs. 50,000/- to Rs. 1,00,000/- per month.

14. Hence, considering that on the amount received from the sale, the minimum amount of return would be of Rs. 30,000/- to



Rs. 40,000/-, the learned Family Court has rightly assessed the income of the petitioner/husband to be between ₹50,000/- to ₹70,000/-.

15. However, the learned Family Court has assessed the income of the Petitioner, on an incorrect reading of the previously filed income affidavit dated 29.06.2016, which appears to be on a higher side.

16. A perusal of the income affidavit dated 29.06.2016 shows that the occupation of the Petitioner is mentioned as “*Parlour Job*”, the nature of business/profession is reflected as “*in parlour on commission basis*” and the ***annual turnover/gross receipts*** are reflected to be “*Rs. 5000/- to Rs.7,000/-*”.

17. Hence, it emerges that the learned family court has inadvertently assumed the “*annual income*” of the Petitioner as her “*monthly income*” and assessed her current monthly income as Rs. 5,000/- to Rs.7,000/-.

18. However, the latest income affidavit dated 20.09.2021, filed by the Petitioner reflects that she is neither employed nor is having any source of income.

19. There is nothing placed on record to prove by the Respondent that the Petitioner is gainfully employed or has a source of income to maintain herself. No document of employment, ID card or any other material indicating that the Petitioner has been gainfully employed has been filed by the Respondent. Even no suggestion regarding her income has been raised during her cross-examination.

20. In view of the above, it emerges that the Respondent has



failed to substantiate his averment that the Petitioner is gainfully employed and is working in a beauty parlour.

21. It is well settled that a wife earning a meagre amount is eligible for maintenance, especially if her income is not sufficient for her own sustenance or to maintain the same standard of living as her husband. A meagre income does not automatically disqualify her from receiving support from her husband. The primary goal is to ensure she can live with dignity and not suffer economic hardship.

22. Similar view was taken by the Apex Court in the case of *Shailja v. Khobbanna*, (2018) 12 SCC 199 and *Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 wherein it was reiterated that even if a wife had the capability to earn or was earning something, it does not disentitle her from claiming maintenance from her husband. The test is whether the wife was able to maintain herself more or less in the status in which her husband had maintained her. The wife is entitled not only to a mere survival but is also entitled to lead a similar life as she would have led in the house of her husband.

23. Further, this Court in the case of *Annurita Vohra v. Sandeep Vohra* : 2004 (74) DRJ 99 had observed that the court should initially determine the net disposable income of the Husband or the primary earner within the family. If the other spouse is also employed, those earnings should be taken into consideration. This collective income forms the Family Resource Cake, which is then distributed among the family members. The allocation of this "cake" should align with the financial needs of



each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members.

24. In the present case, admittedly, the parties have one son who is a major and has not stayed with the Respondent for past 3-4 years and is not dependent upon the Respondent. Thus, considering the monthly income of the husband as Rs. 70,000/-, and that the mother of the Respondent is dependent upon him, the Petitioner is held to be entitled to 25% i.e. 1/4th of the income of the Husband.

25. In view of the above settled principles and the totality of circumstances, the amount of maintenance of ₹13,000/- per month is enhanced to ₹17,500/- per month, to be paid to the Petitioner by the Respondent, from the date of filing of the petition till the petitioner remarries.

26. As regards the contention of the Respondent that there is a change in circumstances, since the passing of the impugned judgment, the respondent is at liberty to file an appropriate application in accordance with law.

27. As and when any such application is filed, the learned Trial Court shall decide the same in accordance with law.

28. The present petition is disposed in aforesaid terms, along with the pending application(s), if any.

AMIT MAHAJAN, J

NOVEMBER 27, 2025/SS