



2025:DHC:1989



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

% **Date of order: 4<sup>th</sup> March, 2025**

+ **CRL.M.C. 2839/2019 & CRL.M.A. 15095/2022**

**VIKRAM PHOGAT** .....Petitioner

Through: Appearance not given

versus

**SUMAN** .....Respondent

Through: Mr. V. P. Singh, Mr. Sandeep  
Chaudhary and Ms. Pooja Malik,  
Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023] has been filed on behalf of the petitioner seeking the following reliefs:

*"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to call for the records and may be pleased to set aside the impugned judgment dated 11.04.2019 passed by Shri Ajay Kumar Jain, Additional Session Judge-02, South District, Saket, New Delhi, in appeal No CA No- 59/2019 against the order dated 21.01.2019 passed by Ms. Niti Phutela, M.M.(Mahila Court), South District, Saket, New Delhi in C.C. No. 476324/16 Titled; SUMAN Vs. VIKRAM PHOGAT AND*



*ORS, awarding the Respondent/wife and minor son an amount of Rs 8,000/- from the date of filing of the petition as maintenance and Rs 2,000 as rent towards in lieu of alternate accommodation since 10.03.2018, in the interest of justice*

*It is also prayed that the Hon'ble Court may be pleased to further dismiss the application of the Respondent filed under Section 23 of the Protection of Women from domestic Violence Act, 2005.*

*Hon'ble Court may grant such other and further relief as deemed fit and proper under the facts and circumstances of the case.”*

2. The brief facts that led to the filing of the present petition are:
  - a. The petitioner-husband and the respondent-wife solemnized their marriage on 24<sup>th</sup> June, 2012 at Delhi according to Hindu rites and customs. It was the second marriage for both parties. The respondent, a graduate and a qualified librarian, had previously received a sum of Rs. 6 lakhs as alimony through mutual divorce from her earlier marriage. The petitioner, a 10<sup>th</sup> pass individual, was a divorcee and had a son from his previous marriage.
  - b. After their marriage, the parties cohabited and a son was born on 8<sup>th</sup> March, 2013 out of their wedlock. It is alleged by the petitioner that due to differences primarily concerning the presence of the petitioner's son from the previous marriage in the matrimonial household, coupled with other familial discord, the respondent began harassing the petitioner and his aged parents. The said situation led the petitioner's parents to file an eviction petition against the respondent under the Maintenance and Welfare of Parents and Senior Citizens



Act, 2007. The District Magistrate, South District, after considering the material placed on record, passed an order dated 15<sup>th</sup> January, 2018, directing the respondent to vacate the premises in question.

- c. Pursuant to the said eviction order, the respondent vacated the property situated at Humayunpur, Delhi and began residing at her parental home in Nangli Poonia, Delhi since 10<sup>th</sup> March, 2018.
- d. Prior to this, in December, 2016, the respondent filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter “DV Act”) along with an application under Section 23 of the said Act seeking interim relief, leading to the initiation of proceedings in CC No. 476324/2016.
- e. In her complaint, the respondent alleged that she was subjected to repeated acts of physical, emotional, verbal and economic abuse by the petitioner and his family members. She claimed that she was harassed over domestic issues, humiliated in the presence of others, denied access to household finances and subjected to controlling behavior, particularly after the birth of their child. She further contended that the petitioner failed to provide for her basic needs and medical requirements and that their child, who is 100% disabled – required regular and significant medical care and support. On these grounds, the respondent sought interim maintenance of Rs. 3,00,000/- per month for herself and an additional Rs. 2,00,000/- per month for medical expenses of their child.
- f. The learned Metropolitan Magistrate (hereinafter “MM”), *vide* order



dated 21<sup>st</sup> January, 2019, awarded interim maintenance for Rs. 4,000 each for the respondent and the minor son (total Rs. 8,000/- per month) and Rs. 2,000/- towards rent in lieu of alternate accommodation, with effect from 10<sup>th</sup> March, 2018.

- g. Aggrieved by the said order, the petitioner filed Criminal Appeal No. 59/2019 before the Additional Sessions Judge (hereinafter “ASJ”), contending, inter alia, that his actual income was only Rs. 10,000/- per month as a compounder and that he has another minor son, who is dependent on him. He also submitted that the respondent was residing at her parental home without incurring any rental expenditure and had neither pleaded nor produced any material to show that she required or intended to incur rental expenses. In this backdrop, it was contended that the learned Trial Court erred in awarding Rs. 2,000/- per month towards alternate accommodation in the absence of any such claim or necessity being demonstrated by the respondent.
- h. However, the learned ASJ, *vide* order dated 11<sup>th</sup> April, 2019 dismissed the appeal. Consequently, the petitioner has approached this Court under Section 482 of the CrPC for quashing of both orders dated 21<sup>st</sup> January, 2019 passed by the learned MM as well as 11<sup>th</sup> April, 2019 passed by the learned ASJ. In addition to seeking quashing of the said orders, the petitioner has also prayed for dismissal of the respondent’s application filed under Section 23 of the DV Act.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders dated 21<sup>st</sup> January, 2019 passed by the learned MM and



11<sup>th</sup> April, 2019 passed by the learned ASJ are contrary to law, suffer from non-application of judicial mind and are unsustainable in the eyes of law. It is further submitted that the learned Courts below failed to consider the actual income of the petitioner who is working as a compounder with a private doctor earning merely Rs. 10,000/- per month, as evidenced by a salary certificate placed on record.

4. It is submitted that the learned MM erred in presuming the petitioner's income to be Rs. 20,000/- per month based solely on two isolated credit entries in the petitioner's bank passbook, which were actually premature withdrawals from fixed deposits made by his parents for the benefit of the petitioner's first son. Moreover, the learned MM erroneously noted that the petitioner failed to file a salary certificate, when in fact the same had been duly submitted even prior to the arguments on interim relief.

5. It is submitted that the petitioner has an additional dependent – his son from his earlier marriage, who is under his exclusive care and custody – and his financial capacity to pay further maintenance is extremely limited. It is further submitted that the learned Courts below failed to appreciate that the respondent, though residing at her parental home, was erroneously awarded Rs. 2,000/- per month towards rent in lieu of alternate accommodation, even though she neither pleaded nor proved any such expense in her income affidavit.

6. It is submitted that the respondent is a graduate and professionally qualified librarian and has previously received Rs. 6,00,000/- as alimony in her first divorce, which was not disclosed in her income affidavit. The



learned Courts below also failed to consider that the petitioner is physically disabled due to complete loss of vision in his left eye and is unable to engage in continuous reading or writing work.

7. On the query made by this Court, whether any order was passed by any Court for modifying the interim maintenance or not, learned counsel for the petitioner answered in the negative.

8. In response to a specific query posed by this Court regarding payment of arrears under the interim maintenance order passed by the learned MM, it is submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is in a position to pay only a sum of Rs. 5,000/-. It is further submitted that the reason for the pendency of the present petition is the petitioner's inability to pay the entire arrears of interim maintenance as directed under the impugned orders.

9. It is submitted that the instant petition has been filed to challenge the legality and propriety of the said impugned orders passed by the learned Courts below. It is further submitted that the petitioner's inability to comply with the interim maintenance order cannot, by itself, be made the basis for deciding the present petition on merits, particularly when the legality of the underlying order itself is under challenge.

10. In view of the aforesaid submissions, it is prayed that both the impugned orders may be set aside alongwith the respondent's application under Section 23 of the DV Act.

11. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the



same is liable to be dismissed being devoid of any merit.

12. It is submitted that the impugned orders are well-reasoned and have been passed after due consideration of all relevant facts and material placed on record. It is further submitted that the respondent is entitled to claim maintenance and rent in view of the acts of domestic violence and financial needs of the dependent minor child.

13. It is submitted that the petitioner's plea of earning only Rs. 10,000/- per month is a bald assertion and is supported only by a self-serving, unverifiable salary certificate issued by a private doctor. Moreover, the respondent has filed a detailed income affidavit as per directions of the learned MM and the petitioner has not produced any ITRs or official salary slips to establish his true income.

14. It is submitted that the respondent has been compelled to bear the medical and daily expenses of her minor son, who suffers from 100% disability, without any support from the petitioner. It is further submitted that the respondent was unlawfully evicted from her matrimonial home and has since been compelled to stay in her parental house, incurring expenses. The learned MM, after considering the material on record, rightly presumed the petitioner's income to be not less than Rs. 20,000/- per month and awarded Rs. 8,000/- per month as maintenance and Rs. 2,000/- per month for rent from the date of eviction.

15. It is submitted that the petitioner has failed to disclose full and accurate details of his financial capabilities and the maintenance awarded is not only reasonable but necessary for the survival and sustenance of the



respondent and her disabled child. In light of the foregoing submissions, it is prayed that the instant petition may be dismissed.

16. Heard learned counsel appearing on behalf of the parties and perused the material on record, including the disability certificate of the child of the parties herein, issued by All India Institute of Medical Sciences, Delhi, which is taken on record.

17. The petitioner has approached this Court under Section 482 of the CrPC challenging the orders dated 21<sup>st</sup> January, 2019 and 11<sup>th</sup> April, 2019 passed by the learned MM and learned ASJ, respectively, whereby interim maintenance of Rs. 8,000/- per month and rent of Rs. 2,000/- per month was awarded to the respondent and the minor son from the date of filing of the complainant under the DV Act.

18. The principal ground urged by the petitioner is that the learned Courts below erroneously assessed his income at Rs. 20,000/- per month without adequate basis, whereas he claims to be earning only Rs. 10,000/- as a compounder with a private doctor. It is further contended that the learned Trial Court failed to consider the petitioner's salary certificate and misinterpreted the entries in his bank account. Additionally, the petitioner submits that he is financially burdened with the responsibility of another dependent son from his previous marriage and suffers from partial physical disability due to complete loss of vision in one eye.

19. On the other hand, the respondent has consistently maintained that the awarded maintenance is necessary to support herself and the minor son, who is medically certified as 100% disabled and requires constant medical and



emotional care. The respondent has also denied receipt of any part of the awarded maintenance and asserted that she is presently surviving solely with support from her parental family.

20. This Court has considered the submissions made by learned counsel for the respondent, as well as the statement of the respondent, who is present in person. The Court has also considered the statement made by learned counsel for the petitioner to the effect that 50% of the awarded amount has already been paid to the respondent.

21. However, the respondent, appearing in person, has categorically denied receipt of any such payment. She has further submitted that, due to non-receipt of interim maintenance, she is struggling to sustain herself and to provide care for her son, who is a child with 100% disability.

22. It is noted that while the petitioner claims financial hardship and limited income, he has failed to produce documentary evidence such as ITRs or authenticated salary slips to substantiate his assertions. The salary certificate relied upon is a self-serving document issued by a private clinic and does not inspire confidence. In contrast, the learned MM has drawn reasonable inferences from the petitioner's own bank statements, which show transactions inconsistent with his claimed financial position.

23. The learned ASJ has rightly observed that in the absence of reliable proof of income, courts are entitled to draw presumption based on lifestyle, bank entries and financial conduct. In such matters, the duty of financial disclosure rests with the party asserting inability and non-disclosure leads to adverse inference. This principle finds support in *Chander Parkash v. Shila*



**Rani, 1968 SCC OnLine Del 52**, wherein this Court held that an able-bodied person is presumed to capable of earning sufficiently to maintain his wife and child and it is for such a person to show cogent reasons, beyond his control for his inability to do so. It was further observed that where the husband fails to disclose his income frankly, “the presumption would be easily permissible against him.”

24. Further, this Court notes the serious nature of the respondent’s hardship, particularly in view of the fact that she is the sole caregiver to a child with total disability. The claim of the petitioner that he has paid 50% of the interim maintenance amount stands refuted by the respondent’s unequivocal statement before this Court that no amount has been received and no material has been placed on record to rebut that statement.

25. Interim maintenance under Section 23 of the DV Act is intended to serve a protective and remedial function, ensuring immediate financial support to the aggrieved person. Such orders, being discretionary in nature and based on the factual assessment of the court concerned, warrant limited interference at the revisional or supervisory stage, unless they suffer from glaring perversity, manifest illegality or result in gross miscarriage of justice. In the present case, the learned Courts below have applied their minds to the material available and reached on concurrent findings based on the cogent reasoning.

26. This Court finds no ground to interfere in the impugned orders. Accordingly, the present petition, being devoid of merits, is dismissed along with the pending applications, if any.



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27. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**MARCH 4, 2025**  
**gs/kj/mk**

*[Click here to check corrigendum, if any](#)*