



2026:DHC:913



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

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*Judgment reserved on: 07.11.2025**Judgment pronounced on: 04.02.2026**Judgment uploaded on: 04.02.2026*+ **CRL.REV.P. 335/2024, CRL.M.A. 7628/2024 & CRL.M.A. 32853/2025**

ATEET JAIN

.....Petitioner

Through: Mr. Rajiv Khosla, Ms. Kashika Kapoor, Mr. Apoorva Khosla, Ms. Shreya Kumar Sharma and Mr. Surender Chauhan, Advocates, with petitioner.

versus

CHHAVI JAIN

.....Respondent

Through: Mr. Roopenshu Pratap Singh, Mr. Manish Sharma, Mr. Abhinav Bhatnagar and Mr. Aditya Taneja, Advocates.

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

1. The present revision petition has been filed by the petitioner-husband, assailing the order dated 31.10.2023 [hereafter '*impugned order*'], passed by the learned ASJ-05, Central District, Tis Hazari Courts, Delhi [hereafter '*Sessions Court*'] *vide* which the appeal filed by the petitioner under Section 29 of the Protection of Women from



Domestic Violence Act, 2005 [hereafter '*PWDV Act*'] was dismissed, and the order dated 22.10.2021, passed by the learned MM-03, Mahila Court, Central, Tis Hazari Courts [hereafter '*Magistrate*'] was upheld.

FACTUAL BACKGROUND

2. Brief facts of the case are that the petitioner-husband and the respondent-wife were married on 26.09.2014, according to Hindu rites and ceremonies. No child was born from the wedlock. Owing to differences between the parties, the respondent-wife left the matrimonial home and filed an application under Section 12 of the PWDV Act along with an application under Section 23 of the PWDV Act, inter alia, alleging that she had been subjected to sexual, verbal, emotional and economic harassment, as well as harassment on account of dowry demands. Reply to the said application was thereafter filed by the petitioner-husband. The parties subsequently filed their respective affidavits of income and assets, along with their bank statements and income tax returns (ITRs).

3. The learned Magistrate, vide order dated 22.10.2021, allowed the application under Section 23 of the PWDV Act and directed the petitioner-husband to pay an amount of ₹26,000/- per month to the respondent-wife, from the date of filing of the petition till disposal of the case, towards interim maintenance.

4. The petitioner-husband, being aggrieved by the said order, challenged the same by way of an appeal under Section 29 of the



PWDV Act, which came to be dismissed by the impugned order. Aggrieved therefrom, the present revision petition has been filed.

SUBMISSIONS BEFORE THE COURT

5. The learned counsel appearing for the petitioner-husband primarily contends that the respondent-wife is not entitled to any monetary relief under the PWDV Act as she is allegedly living in adultery and is involved in a live-in relationship with one 'X' during the subsistence of her marriage with the petitioner. It is argued that a woman living in adultery cannot be treated as an "aggrieved person" within the meaning of Section 2(a) of the PWDV Act and, therefore, no order of maintenance could have been passed in her favour. The learned counsel submits that photographs placed on record clearly depict the respondent in a compromising position with the said person and that both the learned Magistrate as well as the learned Sessions Court failed to properly appreciate the said material. It is further argued that the learned Sessions Court erred in doubting the genuineness and veracity of the photographs at the interim stage, despite the same *prima facie* indicating an illicit relationship. It is also pointed out that the petitioner has already filed a petition seeking dissolution of marriage on the ground of cruelty, which is pending adjudication. According to the learned counsel, once such conduct of the respondent is apparent, even *prima facie*, the grant of interim maintenance was wholly unwarranted. He also states that the petitioner is willing to deposit the maintenance amount in Court till



the issue of adultery is finally decided after evidence is led by both the parties.

6. On the aspect of income and financial capacity, the learned counsel appearing for the petitioner submits that both the learned Magistrate and the learned Sessions Court have grossly erred in assessing the monthly income of the petitioner at ₹79,000/- per month. It is argued that the petitioner is only 10th pass and is working merely as a commission agent, earning about ₹25,000/- per month, whereas the respondent is a graduate, admittedly more qualified than the petitioner, and is earning about ₹30,000/- per month. The learned counsel contends that the Courts below have wrongly relied upon credit entries amounting to ₹28,45,120/- over a period of three years reflected in the petitioner's bank account, without appreciating that the major portion of these entries pertained to proceeds of PPF, recurring deposits and fixed deposits made by the petitioner's parents during his childhood, which were credited to his account upon maturity, which cannot be treated as the actual income of the petitioner for the purpose of determining interim maintenance. It is, therefore, argued that the assessment of income is arbitrary, and the impugned orders directing the petitioner to pay interim maintenance deserve to be set aside.

7. The learned counsel appearing for the respondent, on the other hand, argues that the respondent was subjected to domestic violence and cruelty at the hands of the petitioner. It is submitted that the



petitioner repeatedly addressed the respondent with derogatory remarks and consistently indulged in her character assassination. It is further argued that there is no infirmity or illegality in the orders passed by the learned Magistrate as well as the learned Sessions Court. Insofar as the income of the petitioner is concerned, it is contended that the petitioner has failed to place any material on record to substantiate his claim that the amounts credited in his bank account were towards PPF, fixed deposits or recurring deposits made by his parents. It is also argued that the petitioner has not provided any corroboration for his claim regarding withdrawal of large sums from his bank account towards repayment of any loan. The learned counsel further submits that the petitioner has deliberately concealed his own conduct and that he had been engaging in extra-marital relationships with several other women, which fact is supported by the material placed on record by the respondent. It is also argued that the respondent had suffered two miscarriages during the period of cruelty and atrocities allegedly committed by the petitioner and his family members.

8. The learned counsel appearing for the respondent further contends that the allegation that the respondent is living in adultery cannot be presumed to be established without evidence being led. It is argued that, at the stage of interim maintenance, such disputed questions of fact cannot be decided. It is also contended that unproven allegations of isolated acts of adultery cannot be a ground for denying interim maintenance under the PWDV Act. The learned



counsel submits that denial of interim maintenance at this stage would cause grave hardship to the respondent and make it extremely difficult for her to sustain herself during the pendency of the proceedings. It is, therefore, contended that the grant of interim maintenance was justified and calls for no interference.

9. This Court has **heard** arguments addressed by the learned counsel for the petitioner and the learned counsel for the respondent, and has perused the material on record.

ANALYSIS & FINDINGS

10. The issue for consideration before this Court is whether, at the stage of deciding the respondent-wife's prayer for interim maintenance, the Court can accept the plea of the petitioner-husband that the wife is "living in adultery" and, on that basis alone, hold that she is not an "aggrieved person" within the meaning of Section 2(a) of the PWDV Act.

11. At the outset, this Court notes that the existence of a domestic relationship between the parties is not in dispute. The respondent-wife has alleged that during the subsistence of cohabitation with the petitioner-husband, she was subjected to physical, sexual, verbal and economic abuse, including repeated humiliation, derogatory remarks and character assassination. It has been alleged that she was compelled to leave her employment soon after marriage, was thereafter not provided money even for her basic needs, and was required to repeatedly seek financial assistance from the petitioner for



household expenses. The respondent has further alleged instances of physical abuse during the honeymoon, followed by repeated humiliation thereafter, and has stated that she suffered two miscarriages on account of the continued cruelty and ill-treatment. It is also alleged that she was falsely accused by the petitioner of committing theft in the matrimonial home, an allegation which was found to be unsubstantiated upon police inquiry, and that she was ultimately constrained to leave the matrimonial home and reside with her parental family. The respondent has placed on record WhatsApp chats wherein the petitioner-husband is stated to have used abusive and derogatory language, including calling her a “prostitute”. *Prima facie*, such allegations, if taken at face value, fall within the broad contours of “domestic violence” as defined under the PWDV Act. The domestic incident report filed by the Protection Officer, which is available on record, also lends *prima facie* support to the allegations made by the respondent.

12. Thus, if the above factual backdrop and the averments contained in the application filed under Section 12 of the PWDV Act are taken into consideration, this Court is of the view that, at least at this stage, the respondent-wife satisfies the requirements of an “aggrieved person” as defined under Section 2(a) of the PWDV Act, since the existence of a domestic relationship and allegations of domestic violence during the subsistence of such relationship are *prima facie* borne out from the record.



13. This Court now turns to the contention raised on behalf of the petitioner-husband that the respondent-wife, being allegedly “living in adultery”, is disentitled to claim maintenance under the PWDV Act.

14. In the facts of the present case, the petitioner-husband has placed reliance upon certain photographs, which were filed before the Courts below, to contend that the respondent-wife was living in adultery with one Mr. X. It is the submission of the petitioner that the said photographs depict the respondent-wife in compromising positions and allegedly engaged in sexually explicit acts with the said person and, therefore, she ought to be denied interim maintenance.

15. However, it is an admitted position that the said photographs are yet to be proved in accordance with law during the course of trial, after evidence is led by the parties. It is also noted that while the learned Magistrate did not deal with this contention in detail, the learned Sessions Court has recorded the submission of the learned counsel appearing for the respondent-wife that the photographs relied upon by the petitioner are morphed and fabricated. The learned Sessions Court has thereafter observed that the genuineness and veracity of the said photographs can be examined only after the parties lead evidence during trial.

16. In this context, it would be apposite to take note of the legal position laid down by this Court. In *Ajay Kumar v. Uma*: 2024 SCC OnLine Del 148, a Coordinate Bench of this Court held that interim



maintenance under the PWDV Act cannot be denied merely on the basis of unproven allegations of an illicit relationship.

17. Similarly, in ***Parveen Tandon v. Tanika Tandon***: 2021 SCC OnLine Del 3044, a Coordinate Bench of this Court observed that the question as to whether the respondent therein had been duped by the petitioner or whether she was a party to an adulterous or bigamous relationship, and whether such conduct would disentitle her to any protection under the PWDV Act, could be determined only after evidence was led. In the said case, the Coordinate Bench directed that in the event the Magistrate, upon appreciation of evidence, comes to the conclusion that the respondent was not entitled to protection under the PWDV Act, it may direct the respondent therein to return the amount received by her as interim maintenance.

18. In ***Nirmaan Malhotra v. Tushita Kaul***: 2024 SCC OnLine Del 4326, while upholding the order passed under Section 24 of the Hindu Marriage Act, 1955 granting maintenance pendente lite, the Division Bench of this Court held that allegations of adultery are matters of trial and that the photographs placed on record for the first time before the Court could not be said to conclusively establish whether the person concerned was the wife. The Division Bench also took judicial notice of the prevalence of deepfakes in generating fake images and, therefore, held that this is an aspect which the appellant-husband would have to prove by leading evidence before the Family Court. Since the divorce petition was pending, it was further directed



that if this issue is raised by the husband, the parties would be afforded an opportunity to lead evidence in this regard.

19. It is also to be noted that Section 125 of the Code of Criminal Procedure, 1973 contains an express statutory bar under Section 125(4), which provides that a wife shall not be entitled to receive maintenance if she is living in adultery. Section 125 of the Cr.P.C. is a summary provision which casts an obligation upon a person having sufficient means to maintain his wife, who is unable to maintain herself, subject to the limitations contained therein.

20. On the other hand, the scope of the PWDV Act is considerably wider. The Act provides a comprehensive definition of “domestic violence”, which includes physical, verbal and emotional, sexual and economic abuse. It also contemplates multiple forms of reliefs to an aggrieved woman, including protection orders, residence orders, monetary reliefs (including maintenance), custody orders and compensation. It is well settled that monetary relief, including maintenance, can be granted under the PWDV Act in addition to maintenance awarded under Section 125 of the Cr.P.C.

21. Notably, unlike Section 125(4) of the Cr.P.C., there is *no express statutory bar* under the PWDV Act disentitling a woman from seeking reliefs merely on the allegation that she is living in adultery. However, ***Explanation II to Section 3*** of the PWDV Act clarifies that, for the purposes of determining whether any act, omission or conduct constitutes “domestic violence”, the overall facts



and circumstances of the case are required to be taken into consideration. Thus, any material or evidence relating to the conduct of the wife, including allegations of adultery, would undoubtedly be a relevant factor; however, the same would essentially be a matter requiring adjudication after evidence is led.

22. At the stage of passing interim orders, the Court is required to take only a *prima facie* view based on the material placed on record. In the present case, it is noted that in the application filed under Section 12 of the PWDV Act, the respondent-wife has levelled allegations of domestic violence commencing soon after the solemnisation of marriage and continuing over a period of several years. The learned Sessions Court, in the impugned order, has observed that the wife had placed on record WhatsApp chats reflecting repeated name-calling and use of vulgar and abusive language by the petitioner-husband. It was also specifically observed that the voluminous WhatsApp chat record *prima facie* indicates that the respondent was subjected to domestic violence.

23. It is also relevant to note that while the petitioner-husband has relied upon certain photographs alleging an illicit relationship of the respondent-wife, the respondent-wife has, in turn, filed along with her replication certain chats allegedly showing the petitioner-husband engaged in sexually explicit conversations with other women. Both sets of allegations pertain to disputed questions of fact and would



necessarily be examined by the Courts below during the course of trial, upon appreciation of evidence led by the parties.

24. **Therefore**, at this stage, this Court is not inclined to interfere with the order granting interim maintenance only on the ground of allegations levelled by the petitioner-husband that the respondent-wife is living in an adulterous relationship.

25. Turning now to the contention regarding *assessment of income of the petitioner-husband and the quantum of interim maintenance*, this Court is of the view that the record reveals that the petitioner-husband himself had filed his ITR for the Assessment Year (AY) 2014–15, reflecting a gross income of ₹6,58,514/-. Another ITR was filed for the AY 2019-20 which showed gross income of ₹3,37,196/-. He had also placed on record his bank statements for the period between 01.01.2018 and 22.12.2020, which disclose multiple credit entries of substantial amounts, including credits running into lakhs of rupees. The learned Magistrate, upon a cumulative consideration of these credit entries, noted that the total credits over a span of three years amounted to ₹28,45,120/-. In the absence of any explanation demonstrating a genuine reduction in the income, the learned Magistrate held that the petitioner's income could not be presumed to have drastically diminished merely on the basis of subsequent ITRs (for AY 2019-20) reflecting a lower income. The learned Sessions Court, while adjudicating the appeal, examined the reasoning adopted by the learned Magistrate and, upon scrutiny of the material available



on record, concurred with the said assessment. The learned Sessions Court specifically held that, in view of the ITRs placed on record and the substantial credit entries reflected in the bank account statements, the plea of the petitioner-husband that he was earning only ₹25,000/- per month could not be accepted, and consequently upheld both the assessment of income and the quantum of interim maintenance awarded.

26. As regards the contention raised before this Court that the credit entries reflected in the bank account pertained to proceeds of PPF, fixed deposits or recurring deposits allegedly made by the parents of the petitioner-husband, this Court notes that such a plea was raised as an explanation to dislodge the income assessment made by the Courts below. However, at the stage of interim maintenance, and in revisional jurisdiction, this Court is not persuaded to interfere with the concurrent findings merely on the basis of such assertions, particularly when the assessment made by the learned Magistrate and affirmed by the learned Sessions Court is founded on material placed on record by the petitioner himself. Whether the said credit entries are attributable to income or otherwise is a matter which can be examined in detail during trial, but the same does not render the impugned orders perverse or illegal so as to warrant interference at this stage.



27. Therefore, for the above reasons, the grant of interim maintenance of ₹26,000/- per month to the respondent-wife cannot be said to be excessive or unreasonable.

28. Accordingly, in view of the foregoing discussion, the impugned order does not call for any interference at this stage.

29. **However**, considering that the parties have raised serious allegations against each other, this Court deems it appropriate to direct the learned Magistrate, presently seized of the proceedings under Section 12 of the PWDV Act, to make all endeavours to decide the said petition expeditiously, preferably within a period of one year from the date of receipt of a copy of this judgment.

30. It is **further clarified** that in the event the learned Magistrate/Trial Court, upon appreciation of evidence led by the parties, comes to the conclusion that the respondent-wife is not entitled to maintenance on account of living in adultery, the respondent-wife shall be liable to return the entire amount of interim maintenance received by her to the petitioner-husband, along with interest at the rate of 6% per annum, in accordance with law.

31. The respondent-wife shall also file an affidavit before the learned Magistrate/Trial Court, before receiving any further amount of maintenance, undertaking to return the amount of interim maintenance received by her, along with interest at the rate of 6% per annum, in the event she is ultimately found not entitled to maintenance on the ground of living in adultery, in the manner and



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more of return of such amount as may be fixed or determined by the learned Trial Court upon final adjudication of the matter.

32. The present petition alongwith pending applications, if any, is disposed of in above terms.

33. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

FEBRUARY 04, 2026/A

T.D.