



2025:DHC:7925



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

% *Judgment delivered on: 10.09.2025*

+ **CRL.REV.P. 489/2024**

DIVYA SHARMA & ANR.Petitioners

Through: Mr. Kartik Sandal, Mrs. Raveena Dewan Sandal, Mr. Rohan Sandal and Ms. Jhanavi Dewan, Advocates

versus

MUDIT VASHISHTHARespondent

Through: Ms. Sonali Sharma and Ms. Toshiba Sharma, Advocates.

+ **CRL.REV.P. 750/2024 & CRL.M.A. 29832/2024**

MUDIT VASHISTAPetitioner

Through: Mr. R.K. Mehta, Mr. Anshuman Gupta and Mr. Ajay Jawatkar, Advocates.

versus

DIVYA SHARMA & ANR.Respondents

Through: Mr. Kartik Sandal, Mrs. Raveena Dewan Sandal, Mr. Rohan Sandal and Ms. Jhanavi Dewan, Advocates
Mr. Sanjay Padam Jain and Mr. Vinay Kumar Bhasin, Advocates for R-3.



CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. *Vide* this common judgment, this Court shall dispose of the cross-petitions filed by the petitioner and the respondent who are legally wedded to each other. By way of both these petitions, the parties assail the order dated 16.02.2024 [hereafter '*impugned order*'], passed by the learned Additional Principal Judge, Family Court, South-West District, Dwarka Courts, Delhi [hereafter '*Family Court*'] in M.T. No. 402/2021 titled '*Divya Sharma vs. Mudit Vashist*'.

2. In CRL.REV.P. 489/2024, the petitioner-wife seeks grant of the following prayers:

“a. Allow the Revision Petition and modify the order Dated 16.02.2024 Passed by LD. Sh. Vipin Kumar Rai, Additional Principal Judge, Family Court, South-West Dwarka, New Delhi.

b. Allow the present revision and enhance the maintenance awarded to the Petitioner.”

3. Conversely, in CRL.REV.P. 750/2024, the petitioner-husband seeks grant of the following prayer:

a) Allow the present Appeal;

b) Review the Order dated 16.02.2024 passed by the Ld. Sh. Vipin Kumar Rai, Additional Principal Judge, Family Court, South West, Dwarka, New Delhi in Mt. No. 402/2021 Titled As Divya Sharma Vs. Mudit Vashista and revise the interim maintenance awarded to an amount which can be sustainably paid by the Petitioner until the pendency of the Petition;



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c) Direct the Ld. Sh. Vipin Kumar Rai, Additional Principal Judge, Family Court, South West, Dwarka, New Delhi in Mt. No. 402/2021 Titled As Divya Sharma Vs. Mudit Vashista to adjudicate and decide the said Petition in an time bound manner within a time period as decided by this Hon`ble Court;”

4. Briefly stated, the facts of the present case are that the marriage between the parties was solemnized on 25.01.2019 according to Hindu rites and ceremonies at Chhatarpur Farms, Delhi. Out of the said wedlock, one child was born on 16.04.2020. Due to differences between the parties, the wife had left the matrimonial home and had started living separately since 24.04.2020 alongwith her son. The wife alleges that throughout the aforementioned period, she was harassed mentally and physically and subjected to cruelty by her husband and in-laws, whereas the husband disputes the same and alleges that she had wilfully deserted him. Eventually, the wife in April, 2021 filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter ‘*Cr.P.C.*’] seeking maintenance from the husband to the tune of Rs.2,00,000/- per month.

5. By way of the impugned order dated 16.02.2024, the learned Family Court, while granting interim maintenance in the sum of Rs.25,000/- per month in favour of the wife and the child, observed as under:

“ Parties were married on 25.01.2019 and have been staying separately since 24.04.2020. She claims to have been removed with 8 days old son. She states that she is having no means of subsistence as she is not earning. She has stated that she is not CA and is B.Com Graduate and is pursuing CA final and still 8 papers are to be cleared and had done her CA Inter in the year



2017. She clarified this aspect on inquiry during arguments and stated that her Articleship is already over. Respondent is a practicing Lawyer and it is claimed by the petitioner that he is having rental income and other income also and ITRs filed by him also suggests so and he had recently purchased property worth crores. There is one DV case and one 498A/406 IPC case filed by the petitioner. Respondent/husband has filed a divorce case. There is a suit filed by the petitioner for injunction in respect of ancestral properties of the respondent to be not sold.

ITR for the year 2018-2019 reflect income of respondent as Rs. 10,17,803/- out of which Rs. 3,25,780/- was from house property and Rs. 6,92,023/- was from other sources. For the year 2020-2021 it was Rs. 1,80,000/-. It was contended on behalf of respondent that none of the property belongs to him and the Sale Deed was in the joint name of his mother and himself and he was incorporated as a joint owner only for name sake and subsequently her mother took the property. Further reference was made by the counsel for respondent to the Jamabandi to buttress the contention that there was partition between father and his brothers and he is having no share in it. He further stated that honeymoon in Europe was financed by father of respondent only. It is important to note that mother and father have been shown as dependent by respondent in the income affidavit. Respondent has given his monthly income as Rs. 14,000/- per month as Advocate.

Contention was raised as to respondent having a Fortuner car also but on inquiry respondent had denied having any Fortuner car but on further inquiry stated that Fortuner car belong to his father.

Given the living standard and social status of the parties, it does not appeal that respondent is having income of Rs. 14,000/- per month only. His ITR after separation, for the assessment year 2020-2021 has been for total income of Rs. 1,80,000/- only, whereas for assessment year 2018-2019 it was Rs. 10,17,803/-, out of which Rs. 3,25,780/- was from house property. Deliberately attempt to reduce income by ensuring transfer of property etc. on paper is clearly reflected in the facts and circumstances of this case.

In the factual setting of this case, for interim maintenance, I am constrained to take income of respondent as per ITR for assessment year 2018-2019 as the basis. His income after



deduction of the tax liability for assessment year 2018-2019 is Rs. 9,10,000/- approximately. The disposable income therefore turns out to be Rs. 75,000/- per month. Respective contentions of the parties as to justification or otherwise for staying separately will be matter of trial. Petitioner is having one small child also who is going to be four years old shortly; as an interim measure, I deem it proper to award maintenance of Rs. 25,000/- per month in total to the petitioner for herself and the child. Arrears be cleared within four months from the date of filing of the application. Interim application stands allowed accordingly.”

6. The learned counsel appearing for the wife submits that she is merely a B.Com. graduate and is presently pursuing further studies with the objective of qualifying as a Chartered Accountant. It is argued that the husband, on the other hand, is a practicing advocate who also derives substantial rental income and has recently acquired property worth several crores. It is urged that the husband and his family are affluent, owning multiple residential and commercial properties. It is contended that the wife is entitled to maintenance of ₹2,00,000/- per month, as she is legally entitled to enjoy the same standard of living as that of the husband. The learned counsel points out that in her pleadings, the wife has specifically provided details of several immovable properties owned by the husband and his family. Attention of this Court is drawn to the husband’s ITR for the assessment year 2018–19, which reflects an income of ₹10,17,803/-, out of which ₹3,25,780/- was shown as income from house property. It is submitted that this figure was deliberately reduced in the ITR for 2020–21 to ₹1,80,000/-, after the parties had separated, in order to downplay his financial capacity. It is further argued that the minor



child of the parties is school-going and significant expenses are incurred towards his education and extracurricular activities. The wife, it is contended, has been left to shoulder the responsibility of raising the child single-handedly, while also dealing with financial and emotional hardship. It is urged that the amount of ₹25,000/- awarded as interim maintenance by the learned Family Court is grossly inadequate, and the same deserves to be enhanced to ₹2,00,000/- per month to enable the wife and child to live with dignity.

7. *Per contra*, the learned counsel appearing for the husband submits that the properties mentioned by the wife in her pleadings do not belong exclusively to him. While he admits that one of the sale deeds bears his name along with that of his mother, it is argued that his inclusion as a joint owner is only nominal and he has no independent ownership or financial interest in the said property. It is further submitted that their honeymoon trip to Europe was entirely financed by his father, as was the purchase of the Fortuner car, which stands in the name of his father. The learned counsel contends that the husband has only a meagre income of about ₹14,000/- per month. He relies upon his ITR for the assessment year 2020–21, showing a total income of ₹1,80,000/-, and submits that this reflects his true financial position after the parties had separated. It is argued that the learned Family Court erred in placing reliance on his ITR for 2018–19, which reflected a higher income of ₹10,17,803/-, including ₹3,25,780/- from house property, since those figures no longer reflect



his current income. It is thus urged that the order granting interim maintenance of ₹25,000/- per month is based on incorrect presumptions rather than the actual record. It is also argued that the wife has deliberately concealed her income and earning capacity. Being a B.Com graduate, she is fully capable of earning, but is deliberately choosing not to do so. It is submitted that maintenance under Section 125 of Cr.P.C. cannot be claimed by a person who has the capacity to maintain herself but refuses to do so. The husband further alleges that it was in fact the wife who indulged in excessive drinking and often compelled him to purchase liquor for her, and when he resisted, she resorted to filing false complaints against him. On these grounds, it is prayed by the learned counsel for the husband that the order of the learned Family Court be set aside or suitably modified by reducing the quantum of interim maintenance to a figure that the husband can reasonably afford, until disposal of the main petition pending before the learned Family Court.

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

9. After considering the submissions of both the parties and perusing the record, this Court finds that the husband has not placed on record any material to show that the wife is gainfully employed or has any independent source of income. His contention is that it is not a case of her inability to earn but a case of refusal to earn. However, the distinction between the capacity to earn and actual earning has been clearly drawn by the Hon'ble Supreme Court in *Shailja v.*



Khobbanna: (2018) 12 SCC 199. Moreover, this argument also overlooks the fact that the wife is a B.Com. graduate who is still pursuing her Chartered Accountancy qualification and, more importantly, has the responsibility of caring for a minor child of barely five years of age. In such circumstances, the expectation that she should immediately secure employment is neither realistic nor justified.

10. It is noteworthy that the husband, while projecting himself as financially dependent upon his parents, has at the same time contended that he is ready and willing to help the wife find employment so that she may maintain herself. This line of argument is contradictory and self-defeating. On the one hand, he claims that his father financed their 15-day honeymoon trip to Europe, that the Fortuner car belongs to his father, and that the property in which his name appears as joint owner with his mother was only nominally so. On the other hand, he asserts that he earns only ₹14,000/- per month as a lawyer and is preparing for judicial examinations.

11. In this Court's view, the learned Family Court has rightly observed that the ITR of the husband for the year 2018–19 reflected the husband's total income as ₹10,17,803/-, of which ₹3,25,780/- was from house property and ₹6,92,023/- from other sources. However, in the ITR filed for 2020–21, soon after the separation between the parties, his income was reduced to ₹1,80,000/-. This sharp decline in declared income, without any convincing explanation, indicates a deliberate attempt to understate his financial capacity. As the Family



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Court correctly held, in such a factual matrix, it was appropriate to take the 2018–19 ITR as the basis for determining his disposable income.

12. This Court's attention has also been drawn by learned counsel for the wife to the transfer deeds dated 29.05.2020, whereby the husband had transferred certain valuable properties in favour of his parents. *Prima facie*, such transfers, executed soon after the separation between the parties, appear to have been made with the object of shielding assets and thereby reducing his apparent financial capacity so as to avoid liability towards payment of maintenance. However, authenticity and genuineness of such documents will be a matter of evidence during the course of trial.

13. In the impugned order, the learned Family Court assessed that, after deduction of tax liability, the husband's disposable income would be approximately ₹9,10,000/- per annum, or about ₹75,000/- per month. Against this backdrop, the award of interim maintenance of ₹25,000/- per month in favour of the wife and minor child cannot be said to be excessive or unreasonable. Rather, it represents a fair balancing of the needs of the wife and child on the one hand and the financial capacity of the husband on the other.

14. It must also be borne in mind that the wife, apart from her own sustenance, bears the sole responsibility of raising a young school-going child, which involves expenditure on his education, health and overall upbringing. At the same time, this Court is also of the view



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that the impugned order under challenge is only an interim arrangement and the final determination of maintenance will be made on the basis of evidence adduced by the parties during trial.

15. In view of the above discussion, this Court is of the opinion that the learned Family Court has committed no error in relying upon the ITR of 2018–19 as the most reliable indicator of the husband's true financial status and in awarding interim maintenance of ₹25,000/- per month in total to the wife and the minor son.

16. The impugned order, therefore, calls for no interference in these revision petitions. The petitions alongwith pending applications, if any, are accordingly dismissed.

17. The husband is directed to clear arrears of maintenance, if any, within a period of 2 months from date.

18. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

19. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
SEPTEMBER 10, 2025/zp