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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.05.2025*+ **CRL.REV.P. 308/2024 & CRL.M.A. 7186/2024**

ANJALI MALIKPetitioner

Through: Mr. Shivam Kumar, Adv.

versus

HIMANSHU DAGARRespondent

Through: Ms. Zubeda Begum, Ms. Ishita
Mohanty and Ms. Vanessa
Singh, Advs.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present revision petition, the petitioner-wife seeks setting aside of order dated 08.12.2023 [hereafter '*impugned order*'] passed by the learned Judge, Family Court, North East District, Karkardooma Courts, Delhi [hereafter '*Family Court*'] in Mt. Case No. 201/2022, *vide* which the petitioner was granted interim maintenance of ₹20,000/- per month.

2. Briefly stated, the facts of the case are that the marriage between the petitioner and the respondent was solemnised on 17.11.2020 in accordance with Hindu rites and ceremonies at Delhi. Thereafter, the petitioner had filed an application before the learned



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Family Court seeking interim maintenance, alleging that all her jewellery articles had been retained by her mother-in-law and had not been returned. Although the petitioner had been residing on a separate floor, she had allegedly been subjected to continuous cruelty and harassment by the respondent and his family members, primarily on account of persistent dowry demands, including a demand of ₹10 lakhs and a Hyundai Creta car. It was further alleged that on 22.09.2021, an attempt had been made by the respondent and his family members to forcibly evict the petitioner from the matrimonial home, prompting her to make emergency calls to 112 and 109, following which a Medico-Legal Certificate (MLC) had been prepared. The respondent had eventually abandoned the company of the petitioner on 13.03.2022. While the petitioner was a housewife with no independent source of income, the respondent had been employed as a Train Operator with the Noida Metro Rail Corporation, drawing a monthly salary of ₹75,000/-. In these circumstances, the petitioner had sought a sum of ₹40,000/- per month as interim maintenance for her sustenance.

3. At this stage, it is pertinent to note that the learned Family Court, *vide* order dated 24.01.2023, had granted ad-interim maintenance to the petitioner, awarding a sum of ₹20,000/- per month for her sustenance.

4. However, *vide* the impugned order dated 08.12.2023, the learned Family Court reduced the quantum of maintenance and granted interim maintenance of ₹12,000/- per month to the petitioner.



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The relevant observations of the learned Family Court are as under:

“22. In light of the judgments as quoted above, the deductions which have been claimed by the respondent towards loan, EMI and rent cannot be granted.

23. So far as dependency is concerned, respondent has not claimed dependency of any person.

24. Now, in order to decide the quantum of maintenance, the income of the respondent needs to be assessed. Respondent has filed his latest salary slip as per which his net salary is Rs.65,602/-. Thus, for disposal of the present application, the income of the respondent is assessed to be Rs.66,000/-.

25. This Court vide order dated 24.01.2023, had granted a sum of Rs.20,000/- to the petitioner. It is undisputed that petitioner is residing in the matrimonial house and does not require any money for shelter. It was the submissions of the learned counsel for the petitioner that at regular intervals money is being transferred by the brother and father in order to financially support the petitioner. The separation took place on 13.03.2022, as per the petition and after that in a span of two months only a sum of Rs.20,000/- was transferred. The dispute started in August 2021 and if from that month, credit entries are taken, then till 30.04.2022 a sum of Rs.90,000/- was transferred i.e. within a span of nine month, the requirement of petitioner on an average basis is Rs.10,000/- per month. If father and brother are financially supporting the sister it is possible that entire money is not paid through bank transactions. The maintenance amount is not to be divided with mathematical precision and various factors have to be taken into consideration. The purpose is to prevent vagrancy.

26. In terms of the judgment of '*Annurita Vohra vs. Sandeep Vohra reported as, '2004 (3) AD 252*, income of the respondent is to be divided into three units. The respondent would be entitled to two units for himself and petitioner would be entitled to 1 unit. The share of the petitioner would come to Rs.22,000/-. However, it is undisputed that petitioner is residing in her matrimonial house. Hence, considering the facts and circumstances of the case, a sum of Rs.12,000/- per month is awarded as interim maintenance to the petitioner from the date of filing of the petition till further orders.

27. The judgment passed in Mat.App(F.C.) 78/2023 dated



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11.10.2023 relied upon by the learned counsel for the respondent is not applicable to the facts of the case, as in the said case, there was evidence on record that wife was getting Rs.2.5 lakh per month which is not so in the present case.

28. The amount, if any, paid towards ad-interim maintenance shall adjusted in view of the judgment of Rajnesh Vs. Neha & Ors. 2021 2 SCC 324.

29. Respondent shall clear the arrears within a period of three months from today and shall continue to pay the petitioner on 5th day of each calendar month.”

5. The learned counsel appearing for the petitioner submits that the impugned order is premised on reasons unknown to law. It is argued that the learned Family Court has erred in reducing the interim maintenance from ₹20,000/- to ₹12,000/- per month, relying on extraneous factors that have no bearing on the petitioner’s entitlement under law. The learned counsel argues that the rationale adopted by the learned Family Court – that the petitioner is being financially supported by her father and brother, and that she continues to reside in the matrimonial home – cannot be construed as grounds to diminish her right to maintenance. It is further contended that financial assistance extended by the petitioner’s family members cannot be equated with her own income or earning capacity, and such voluntary support does not absolve the respondent of his legal obligation to maintain his wife. In view of the above, it is prayed that the interim maintenance be restored to ₹20,000/- per month, in terms of the earlier order dated 24.01.2023.

6. The learned counsel appearing on behalf of the respondent defends the impugned order passed by the learned Family Court,



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submitting that it is well-reasoned and does not suffer from any illegality or procedural irregularity. It is contended that the reduction in interim maintenance is justified, as it is an admitted fact on record that the petitioner has been receiving regular financial assistance from her father and brother. This financial support, though not earned income, is nevertheless a relevant factor to be considered while assessing the petitioner's overall financial position and immediate means of sustenance. The learned counsel further submits that the Family Court has taken a balanced view by considering all surrounding circumstances, including the petitioner's residence in the matrimonial home and absence of rent liability, while modifying the amount of interim maintenance. Accordingly, it is submitted that no interference is warranted with the impugned order passed by the learned Family Court.

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

8. In the present case, this Court is of the opinion that the impugned order passed by the learned Family Court is essentially premised on the reasoning that the petitioner/wife is able to sustain herself, as she has been receiving regular financial assistance from her father and brother. The learned Family Court has further treated such financial support as a relevant consideration and has proceeded to factor it in as part of the petitioner's income, while determining the quantum of interim maintenance payable by the respondent.



9. It is, therefore, pertinent to refer to the decision of the Hon'ble Supreme Court in case of *Rajnish v. Neha: (2021) 2 SCC 324*, which directly addresses this issue and categorically holds that the financial position of the parents of the applicant-wife is not a relevant factor while determining the quantum of maintenance. The relevant portion of the judgment reads as under:

“Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependant 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 dependant 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.

79. In *Manish Jain v. Akanksha Jain (2017) 15 SCC 801* 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 dependant 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.”

(Emphasis added)

10. In light of the aforesaid legal position laid down by the Hon’ble Supreme Court in *Rajnish v. Neha (Supra)*, this Court is of the considered view that the financial assistance being extended to the petitioner/wife by her father and brother cannot be taken as a valid ground to reduce the quantum of maintenance awarded to her. The Supreme Court has categorically held that the financial position of the parents of the applicant-wife is not a relevant factor in determining her entitlement to maintenance. The guiding consideration remains whether the applicant has independent and sufficient means for her sustenance.

11. In the present case, the learned Family Court has premised the reduction of maintenance solely on the basis that the petitioner is being financially supported by her father and brother and is residing in the matrimonial home. Such reasoning is clearly contrary to the principles laid down in *Rajnish v. Neha (Supra)* and cannot be sustained. Temporary or voluntary assistance by family members



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cannot substitute the legal obligation of the husband to maintain his wife, especially when she has no independent source of income.

12. In this Court's opinion, the reasons recorded by the learned Family Court are entirely inconsistent with the well-settled principles of law and judicial guidelines governing the grant of maintenance to an estranged wife. While it is true that, in law, the Court is required to consider whether the wife has any independent source of income or earnings while determining the quantum of maintenance to be awarded, such consideration becomes relevant only when the wife is indeed earning or has income regularly available to her or at her disposal.

13. However, in a situation where the wife is not earning and is simultaneously not receiving maintenance from her husband, any temporary financial assistance she may receive from her family cannot be equated with personal income or treated as a mitigating factor to reduce the husband's legal obligation to maintain her.

14. In the meantime, any financial assistance extended by the petitioner's father and brother was evidently provided out of familial concern and necessity, merely to enable her to survive until she could receive maintenance from her husband. Such temporary support cannot be treated as her independent income or as a substitute for the respondent's legal obligation. Under the law, it is the husband's duty to maintain his wife if she is unable to maintain herself. The assistance offered by her family cannot absolve the husband of this



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statutory responsibility. To hold otherwise would lead to an anomalous and unjust consequence—wherein a husband who refuses to maintain his wife, or fails to comply with the maintenance order of the Court (whether pending adjudication or execution), would effectively escape liability merely because the wife’s relatives have stepped in to prevent her destitution. This would penalize the wife for receiving compassionate support and would confer an unfair advantage upon the defaulting husband.

15. Accepting such reasoning would also imply that if a woman’s parents choose to help their daughter financially during a time when her husband has failed to provide maintenance, the legal duty to support her would effectively shift from the husband to her parental family. This, however, runs contrary to the well-established principles of law governing the grant of maintenance, which place the primary responsibility for spousal support squarely on the shoulders of the husband.

16. If this line of reasoning were to be accepted, it would set a dangerous precedent—wherein even financial assistance provided by a woman’s friends or extended relatives in times of distress could be construed as her income. Such an interpretation would lead to an unjust reduction in the husband’s legal obligations. It would also deter the woman’s family and well-wishers from stepping in to support her, for fear that their help might weaken her legal claim for maintenance.

17. This Court is of the firm opinion that it cannot, and should not,



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lay such a judicial precedent, which would have the effect of undermining the statutory protections available to women under the law.

18. The grant of maintenance is to be assessed primarily on the basis of the income of the husband and, where applicable, any independent source of income of the wife. In the present case, it is not in dispute that the petitioner/wife is unable to maintain herself and does not have any source of income of her own.

19. It is also an admitted fact that the respondent/husband is earning a net monthly salary of ₹66,000/-. As such, the determination of interim maintenance ought to have been based solely on the financial capacity of the respondent and the needs of the petitioner, in accordance with settled legal principles.

20. Any temporary financial support extended by the petitioner's father or brother during her time of distress – when the respondent had failed to maintain her despite being legally bound to do so – could not and should not have been treated as a substitute for the husband's legal obligation. Such assistance was clearly extended out of compassion and necessity, and not as a permanent or legal source of sustenance.

21. Therefore, reliance on such familial support to reduce the quantum of interim maintenance is wholly misplaced and runs contrary to the principles laid down by the Hon'ble Supreme Court in ***Rajnish v. Neha*** (*supra*), wherein it has been clearly held that the



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financial position of the wife's parents is not a relevant factor in determining her entitlement to maintenance.

22. In view of the above facts and circumstances, this Court finds merit in the petitioner's challenge to the impugned order. The order passed by the learned Family Court is hereby set aside. The respondent is directed to pay interim maintenance to the petitioner at the rate of ₹20,000/- per month, starting from the date of filing of the maintenance petition. Additionally, the respondent is directed to clear the arrears of maintenance, at the same rate, within a period of eight weeks from the date of this order.

23. It is however clarified that any amount of interim maintenance paid by the respondent towards the petitioner shall remain adjustable in future amount of maintenance determined by the learned Family Court, which, needless to say, shall be determined on the basis of evidence led by both the parties and on touchstone of cross-examination.

24. In view of the above, the present petition along with pending application stands disposed of.

25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 13, 2025/A