

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

Date of decision: 28th FEBRUARY, 2022

IN THE MATTER OF:

+ **CRL.REV.P. 162/2021 & CRL.M.As. 5576/2021, 8691/2021**

JASPREET SINGH

..... Petitioner

Through
versus

Mr. Inder Bir Singh, Advocate

SWANEET KUKREJA

..... Respondent

Through

Mr. Sudarshan Rajan, Mr. Rohit Bhardwaj, Mr. Hitain Bajaj, Mr. Ramesh Rawat and Mr. Mahesh Kumar Advocates.

+ **CRL.REV.P. 194/2021**

SWANEET KUKREJA

..... Petitioner

Through

Mr. Sudarshan Rajan, Mr. Rohit Bhardwaj, Mr. Hitain Bajaj, Mr. Ramesh Rawat and Mr. Mahesh Kumar Advocates.

versus

JASPREET SINGH

..... Respondent

Through

Mr. Inder Bir Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. CRL.REV.P.162/2021 has been filed by the husband challenging the Order dated 06.03.2021 passed by the learned Additional Sessions Judge-5, South East District, Saket Courts, New Delhi, wherein interim maintenance of Rs. 1,25,000/- was awarded to the wife and minor child (Rs. 62,500/-

each) from the date of filing of the petition, i.e. September 2016.

2. CRL.REV.P.194/2021 has been filed by the wife challenging Order dated 06.03.2021 passed by the learned Additional Sessions Judge-5, South East District, Saket Courts, New Delhi, seeking an enhancement of the interim maintenance that was awarded.

3. The facts, in brief, leading up to the filing of both the petitions are as follows:

- a) It is stated that marriage between Jaspreet Singh (*hereinafter*, “the husband”) and Swaneet Kukreja (*hereinafter*, “the wife”) was solemnized on 12.12.2010 as per Sikh rites and customs, and on 17.02.2014, a girl child was born to them. Due to differences that cropped up between the husband and wife, the wife has been residing separately from the husband since July 2016, along with their minor child.
- b) On 20.09.2016, an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter*, “DV Act”) was filed by the wife against the husband. An application seeking interim maintenance had been also been filed by the wife. *Vide* order dated 21.02.2018, the Ld. M.M. granted interim maintenance of Rs. 45,000/- per month, in addition to education expenses of the minor child.
- c) Both the parties filed cross-appeals against this Order dated 21.02.2018 before the Ld. ASJ. *Vide* impugned Order dated 06.03.2021, the Ld. ASJ allowed the appeal of the wife and enhanced the interim maintenance from Rs. 45,000/- per month to a total of Rs. 1,25,000/- per month (with both the wife and

the minor child receiving Rs. 62,500/-).

- d) Aggrieved by the Order dated 06.03.2021, the husband and wife have approached this Court by way of cross-appeals seeking revision of the impugned Order.

4. Mr. Inder Bir Singh, learned Counsel for the husband, at the outset, submits that till date he has paid about Rs. 27 lakhs by way of interim maintenance to the wife and his daughter, despite not having access to the education of the daughter. He states that the fresh income affidavits that had been filed by the husband were not taken into consideration by the Ld. Appellate Court while passing the impugned Order dated 06.03.2021. Mr. Singh further submits that the said Order is bad in law as well as facts

5. Mr. Singh submits that the enhancement of interim maintenance by the Ld. Appellate Court has been done solely on the basis of the husband's "capacity to earn" and not his actual earning. He submits that the Ld. Appellate Court has failed to take into account the fact that the husband had lost his job during the COVID-19 pandemic. Furthermore, not only was the impugned Order erroneous on facts but, as per the learned Counsel, it was also erroneous on law because it disregarded the criteria for deciding the quantum of interim maintenance that had been laid down by the Supreme Court in Rajnish v. Neha, (2021) 2 SCC 324.

6. The learned Counsel for the husband argues that the wife has adopted various delaying tactics before the Ld. Appellate Court and has resorted to filing allegedly false complaints against the husband, and the Ld. Appellate Court has failed to record the same in its impugned Order. Mr. Singh states that the interim maintenance amount of Rs. 1,25,000/- per month is an oppressive amount, especially in view of the fact that the husband has been

unemployed since August 2020 and has been unable to secure a job. He states that the impugned Order has only been rendered so as to cater to the timeline for disposal that had been set by this Court and is biased against the husband. He further submits that Ld. Appellate Court has failed to appreciate the material on record and has arrived at an enlarged figure of income of the husband only on the basis of the wife's pleadings.

7. *Per contra*, Mr. Sudarshan Rajan, learned Counsel appearing for the wife, submits that the impugned Order dated 06.03.2021 is bad in law as well as facts as it fails to take into account the true earning of the husband and has only calculated the interim maintenance of Rs. 1,25,000/- based on the lower level of the income in the ITR documents of the husband. He submits that the assessment is significantly on the lower side and does not consider the fact that, for the year 2020-21, the minimum disposable income of the husband was Rs. 41,38,894/- per annum, with the husband receiving Rs. 3,44,907/- per month in hand. He states that the ITR of the husband for the assessment years 2019-2020 in fact shows that the husband had an income of over Rs. 50 lakhs in the said year.

8. Mr. Rajan argues that the calculation for interim maintenance must take into account the prospective increase of the husband's income as well the yearly inflation. He submits that the impugned Order does not reflect the yearly increase of 10% and thus, renders the wife and minor child with a fixed sum which may not be sufficient considering the future costs of living. Furthermore, he informs this Court that the husband does not have any other liabilities or dependents, and therefore, he has the means to sustain the wife and minor child. He states that the husband is a man of means and lives a lavish lifestyle, and that the income affidavits that have been filed by the

husband are falsified as they do not reflect the same. Mr. Rajan submits that the Ld. Appellate Court has erred in quantifying the husband's salary at Rs. 2.38 lakhs and has also not correctly taken into consideration the criteria that has been laid down by the Supreme Court in Rajnish v. Neha (supra) for calculating the quantum of interim maintenance. In view of this, the learned Counsel for the wife prays for an enhancement of the interim maintenance that has been awarded *vide* impugned Order dated 06.03.2021.

9. Mr. Rajan further brings to the attention of this Court that this Court had previously directed the husband to make payment of a certain amount of interim maintenance to the wife *vide* orders dated 07.04.2021 and 12.10.2021. He submits that, however, the orders have not been complied with and the husband has failed to pay the wife. He states that accordingly, a contempt application has been moved by the wife against the husband.

10. Heard Mr. Inder Bir Singh, learned Counsel for the husband, Mr. Sudarshan Rajan, learned Counsel for the wife, and perused the material on record.

11. At the outset, it is pertinent to note that on 07.04.2021, this Court had directed the husband to pay a sum of Rs.10,00,000/- to the wife within a period of two weeks from the date of the order. The husband was further directed to pay a sum of Rs.45,000/- plus educational expenses to the wife during the pendency of the revision petition. In order dated 12.10.2021, this Court had noted that order dated 07.04.2021 had not been complied with to the extent that out of Rs.10,00,000/-, only a sum of Rs.2,75,000/- had been paid. This Court, therefore, directed the husband to pay a sum of Rs.11,00,000/- to the wife on or before 01.12.2021. Material on record also shows that the since the husband was not paying the amount, an order of

attachment had been passed. Consequently, an application had been filed by the husband to vacate the said order of attachment so that the order of this Court could be complied with. This Court notes that this amount has yet not been paid.

12. Section 20 of the DV Act stipulates that a Magistrate hearing an application under Section 12 of the DV Act may direct the Respondent to pay certain monetary relief to the aggrieved person. It further delineates the contours of the monetary relief that is to be paid to the aggrieved person, including the criteria governing it as well as the manner in which the payment is to be made. For ease of comprehension, Section 20 of the DV Act has been reproduced as under:

"20. Monetary reliefs:

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any,

including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) *The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.*

(3) *The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.*

(4) *xxx*

(5) *xxx*

(6) *xxx....."(emphasis supplied)*

13. Flowing from the criteria laid down in Section 20 of the DV Act, the Supreme Court had observed that while there was no straitjacket formula to determine the quantum of maintenance, it could be presumed that an able-bodied husband was capable of earning sufficient money to maintain his wife and children, and whether the wife was educated, earning money and could support herself was no answer to a claim of maintenance. A careful and just balance is to be drawn between all the relevant factors, and the test for determination of maintenance in matrimonial disputes depends on the financial status of the husband, and the standard of living that the applicant was accustomed to in her matrimonial [See Rajnesh v. Neha (supra)].

14. It is also pertinent to note at this juncture that the enhanced

maintenance that has been awarded *vide* impugned Order dated 06.03.2021 is in the form of interim maintenance. Judicial discipline circumscribes this Court from interfering in an Order rendered by the Courts below and only justifies interference if the Order is egregious in nature and suffers from legal perversity. It is well settled that unless the impugned Order is grossly erroneous, fails to comply with the provisions of law, the finding recorded is based on no evidence, the material evidence has been ignored or judicial discretion exercised is arbitrary or perverse, then the High Court must be slow in interfering with the same. The High Court cannot substitute its own conclusion to the one arrived at by the Courts below who have rendered their decision after considering all the material on record.

15. The scope of a revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been succinctly explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460. The relevant portion of the said judgement has been reproduced as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial

discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. **Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done.** The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)*

16. A perusal of the impugned Order dated 06.03.2021 passed by the Ld. Appellate Court reveals that the Ld. ASJ has patiently weighed the settled law pertaining to the criteria that must be adopted while calculating interim maintenance under the DV Act. Furthermore, the Ld. ASJ has correctly noted that even if it is proved that the wife is capable of earning and is a

working professional, it is still no ground to deny her interim maintenance. The impugned Order also appreciates the income tax returns of the husband for the assessment years 2016-17, 2017-18, 2018-19 and 2019-20 to arrive at the conclusion that the average monthly income of the husband over the last four years is Rs. 2,38,383/- and, thus, notes that the same is sufficient to enhance the interim maintenance being paid to the wife and minor child to Rs. 1,25,000/-.

17. This Court also observes that the Ld. Appellate Court has carefully arrived at the aforesaid conclusion pertaining to the average monthly income of the husband after carefully considering both the Order of the Ld. Trial Court dated 21.02.2018 as well as the material placed before it. The Ld. Appellate Court has further applied the principle of apportionment and observed that the interim maintenance granted to the wife and minor child must be commensurate with the income of the husband. Therefore, the direction of Rs. 1,25,000/- being paid per month as interim maintenance, with the wife and minor child receiving Rs. 62,500/- each, is an appropriate amount, considering the income of the husband.

18. This Court does not deem it appropriate to delve into the contentions raised by both the parties regarding the date when the husband lost his job for the reason that it will prejudice the rights of both the parties at the time of determining the amount for final maintenance. This Court is of the opinion that the observations of the Ld. Appellate Court do not betray any legal or factual infirmity. It complies with the law of the land and has taken into account the material on record before arriving at its decision to enhance the interim maintenance to wife and minor child to Rs. 1,25,000/- per month. This Court finds no merit in the submissions of either the wife or the

husband challenging the said Order and, therefore, does not deem it fit to interfere in the impugned Order dated 06.03.2021.

19. With the above observations, the petitions are dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

FEBRUARY 28, 2022

Rahul

