

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

Date of decision: 26th APRIL, 2022

IN THE MATTER OF:

+ **CRL.REV.P. 126/2022**

JITENDRA KUMAR GARG

..... Petitioner

Through Mr. Rajinder Mathur and Akshat
Singhal, Advocates

versus

MANJU GARG

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Sections 397/401 Cr.P.C. challenging Order dated 09.11.2021 in case bearing M.T. 1358/2018 wherein the Ld. Judge, Family Courts, North-East, Karkardooma, Delhi, directed the Petitioner/Husband to pay an interim maintenance of Rs. 20,000/- per month to the Respondent/Wife with effect from the date of filing the petition, i.e. 17.12.2018.

2. The facts, in brief, leading up to the filing of the petition are as follows:

- a) It is stated that the parties were married on 10.07.1989 and two sons were born to them. Matrimonial disputes arose between the parties in 2013 and it has been alleged that the Respondent/Wife treated the Petitioner/Husband with cruelty. Thereafter, the

Petitioner/Husband and the Respondent/Wife started residing separately with the Petitioner living with his elder son and the Respondent living with the younger son.

- b) In December 2015, the Respondent/Wife allegedly forcibly entered the property of the Petitioner/Husband and started living in a portion of the house. In 2018, *vide* Settlement dated 16.08.2018 (notarized on 21.08.2018), the Petitioner/Husband agreed to pay the Respondent/Wife a sum of Rs. 5,000/- per month.
- c) On 17.12.2018, the Respondent/Wife filed a petition under Section 125 Cr.P.C., along with an application for interim maintenance, wherein she alleged that she had been treated with cruelty and that the Petitioner/Husband was earning Rs. 3,00,000/- per month. This was contested by the Petitioner/Husband who stated that the Respondent/Wife was earning Rs. 40,000/- per month and that he himself was an auto driver.
- d) *Vide* Mediation Settlement on 13.01.2020, it was agreed that the Petitioner/Husband would continue giving an amount of Rs. 5,000/- to the Respondent/Wife. However, *vide* impugned Order dated 09.11.2021, the Ld. Family Court directed the Petitioner/Husband to pay a sum of Rs. 20,000/- to the Respondent/Wife per month as an interim maintenance.
- e) Aggrieved by the same, the Petitioner/Husband has now approached this Court challenging the same by way of the instant revision petition.

3. Mr. Rajinder Mathur, learned Counsel appearing for the Petitioner/Husband, submits that a settlement dated 16.08.2018 between the Petitioner and the Respondent had already been arrived at wherein the Petitioner had agreed to pay a sum of Rs. 5,000 per month towards the maintenance of the Respondent. He states that the petition filed by the Respondent/Wife under Section 125 Cr.P.C. is replete with falsities as she alleges that the Petitioner/Husband is earning more than Rs. 3 lakhs in her main petition, but states that he is earning Rs. 50,000/- in her interim maintenance application.

4. Mr. Mathur submits that in reality, the Respondent/Wife is a money lender and is earning about Rs. 40,000/-, and that the Petitioner/Husband is merely an auto driver earning about Rs. 12,000/- per month and not a businessman as has been alleged by the Respondent/Wife. He states that the impugned Order dated 09.11.2021 is erroneous and is liable to set aside on the ground that it states that no payments have been made till date which is contrary to the fact that the Petitioner herein has been paying Rs. 5,000/- per month to the Respondent in compliance of the settlement deed dated 16.08.2018. He further states that the Ld. Family Court also erred in not considering the Mediation Settlement dated 13.01.2020 wherein the Respondent/Wife had agreed to accept a payment of Rs. 5,000/- per month.

5. The learned Counsel appearing for the Petitioner/Husband, therefore, states that the Ld. Family Court has erred in not taking into account either the payments that were being made regularly by the Petitioner/Husband to the Respondent/Wife in compliance of both the settlements between the parties. He further submits that the impugned Order dated 09.11.2021 should be set aside on account of the fact that the Petitioner/Husband is an auto

driver earning only Rs. 12,000/- per month and, therefore, cannot pay the monthly maintenance of Rs. 20,000/- as has been directed *vide* Order dated 09.11.2021.

6. Heard Mr. Rajinder Mathur, learned Counsel appearing for the Petitioner, and perused the material on record.

7. Section 125 Cr.P.C. is a provision that has been enacted to ensure that women and children are provided maintenance by the husband so as to protect them from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities.

8. The Supreme Court examined the underlying purpose as well as the social context of Section 125 Cr.P.C. in Bhuvan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353. The relevant paragraph reads as under:

"2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That

is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

9. Therefore, while adjudicating upon a matter of maintenance, it is important for the Courts to bear in mind that the same was enumerated to further the cause of social justice and that the interpretation of this Section should be done in a manner to prevent a situation wherein the wife or children are inadvertently nudged into vagrancy and destitution. It is meant to provide a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

10. Furthermore, the scope of interference in a revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow and can only be done if a situation arises wherein the impugned Order is replete with legal infirmities and is unconscionable to the rule of law. The Supreme Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, has observed 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.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the

CrPC.

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)*

11. Similarly, in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Supreme Court observed as under:

"14. *In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of*

records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

12. It is pertinent to note at this juncture that the maintenance which has been awarded *vide* the impugned Order dated 09.11.2021 is in the form of interim maintenance. Judicial discipline, therefore, circumspects 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 said Orders are perverse and have been passed on nil evidence, the High Court must be slow in interfering in the decisions of the Courts below.

13. A perusal of the impugned Order dated 09.11.2021 indicates that the Ld. Family Court has astutely considered the affidavits of income, assets and liabilities as well as other documents filed by both the parties before arriving at the decision to direct the Petitioner/Husband to pay a sum of Rs. 20,000/- per month as interim maintenance. The Ld. Family Court has taken cognizance of the said settlement deed and noted that no material was placed

on record to substantiate the submission of the Petitioner/Husband that a regular interim maintenance of Rs. 5,000/- was being paid to the Respondent/Wife. Furthermore, the Ld. Family Court has also gone through the Petitioner/Husband's bank statements and copy of Income Tax Returns as on 31.03.2020, and has found that the Petitioner/Husband earned Rs. 5,17,395/- in the financial year 2019-2020.

14. Moreover, it was also found by the Ld. Family Court that in the assessment year 2020-2021, the Petitioner/Husband had sales of Rs. 85,93,417/- and also had a miscellaneous income of Rs. 48,910/-. Accordingly, the Ld. Family Court came to the conclusion that the Petitioner/Husband had a monthly income of Rs. 60,000/- and, therefore, had the wherewithal to pay maintenance to the Respondent/Wife. In consequence of the same, it was directed that the Respondent/Wife was entitled to an interim maintenance of Rs. 20,000/- per month from the date of filing of the petition, i.e. 17.12.2018.

15. In view of the above, this Court is of the opinion that the impugned Order dated 09.11.2021 passed by the Ld. Family Court is well-reasoned and does not betray any legal infirmity. This Court, therefore, does not find any reason that would warrant interference in the Order passed by the Ld. Family Court.

16. Accordingly, the petition is dismissed, along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

APRIL 26, 2022

Rahul