



2026:DHC:6515



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: July 29, 2026

Pronounced on: August 11, 2026

+ CRL.REV.P.(MAT.) 122/2024, CRL.M.A. 35886/2024

ASHUTOSH RAI ASTHANA

.....Petitioner

Through: Mr. Piyush Gupta, Ms. Isha Kapoor,
Mr. Jai Saini, Adv Sudhanshu
Sharma, Advocates (through VC)

versus

YAMITA RAI ASTHANA

.....Respondent

Through: Ms. Shruti Gupta, Adv. (through
VC)

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present petition under *Sections 438 and 442* of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, (erstwhile *Sections 397/ 401* of the Code of Criminal Procedure, 1973²) read with *Section 19(4)* of the Family Court Act, 1984³, the petitioner seeks setting aside of the impugned order dated 05.06.2024 passed by the learned Family Court (East) Karkardooma Courts, Delhi⁴ in M.T. Case 323/2021 titled as ‘*Yamita Rai Asthana vs. Ashutosh Rai Asthana*’.

2. *Succinctly put*, it is the case of the petitioner that the marriage between him and the respondent got solemnised on 02.11.1995 and out of

¹ Hereinafter as “*BNSS*”

² Hereinafter as “*Cr.P.C.*”

³ Hereinafter as “*FC Act*”

⁴ Hereinafter as “*learned Family Court*”



the said wedlock, two children were born therefrom. Thereafter, due to differences/ marital spat between the parties herein, on 09.04.2021, the respondent sought maintenance from the petitioner by way of an application under *Section 125(3)* of the Cr.P.C. Pursuant thereto, an *ad-interim maintenance* amounting to Rs.25,000/- was awarded to the respondent by the learned Family Court *vide* order dated 15.01.2022 and thence, the impugned order dated 05.06.2024 was passed, whereby the respondent was granted an interim maintenance amounting to Rs.30,000/- payable from the date of filing of the said application.

3. Aggrieved thereby, the petitioner has filed the present revision petition impugning the order dated 05.06.2024 passed by the learned Family Court.

4. At the outset, Mr. Piyush Gupta, learned counsel for petitioner submitted that the learned Trial Court has failed to appreciate the facts and circumstances and status of the parties, particularly since **(i)** the petitioner herein is responsible for taking care of financial needs of both the children born out of the wedlock, particularly the elder daughter, who is pursuing MBBS, which is *admittedly* an expensive course; **(ii)** the respondent herein is an extremely qualified and educated women, (being an MBA Finance graduate) who is more than capable of earing for herself; **(iii)** the respondent has rental as well as interest income accruing from FDs; **(iv)** the respondent is residing at the house bought by the petitioner herein; and lastly that; **(v)** there are multiple loans taken by the petitioner which have to be repaid. As such, as per learned counsel for the petitioner, the impugned order passed is liable to be set aside.



5. In support of the aforesaid contentions, reliance was placed on the judgment passed by the Hon'ble Apex Court in **Bhagwan Dutt v. Kamla Devi**⁵ as also on a judgment rendered by a Co-ordinate Bench of this Court entitled **Bharat Hedge v. Shrimati Saroj**⁶ to argue that the object/ intent of *Section 125* of the Cr.P.C. is to prevent vagrancy and destitution for which various factors, i.e., status of the parties; reasonable wants of the claimant; independent income and property of the claimant; the number of persons and non-applicant has to maintain; the amount which is required to live in a similar lifestyle as he/ she enjoyed in matrimonial home; non-applicant's liabilities and payment capacity of the non-applicant, has to be seen by the Courts to ascertain the quantum of maintenance. Thus, it was prayed that the present petition ought to be allowed.

6. Controverting the aforesaid submissions, Ms. Shruti Gupta, learned counsel for the respondent submitted that the learned Family Court has considered the income affidavit of the petitioner, especially the Income Tax Return of the Assessment Year 2022-2023⁷ reflecting his income to be more than Rs.63,00,000/- as also that he is having a cargo business. She further submitted that, the impugned order has been passed after appreciating all the facts, circumstances, submissions and documents placed on record and there is no infirmity or ambiguity in the impugned order. As such, as per the learned counsel, the interim maintenance has correctly been awarded to the respondent. She, thus, prays that the present petition, being sheer misuse and gross abuse of process of law, is liable to be dismissed.

⁵ (1975) 2 SCC 386

⁶ (2007) SCC OnLine Del 622

⁷ ITR



7. This Court has heard the learned counsel for the parties and perused the document(s) on record along with the judgment(s) cited.

8. Before advertng to the merits involved, it is relevant for this Court to take note of the principles enunciated for consideration by the Hon'ble Supreme Court in **Rajnesh v. Neha**⁸ while granting interim maintenance, which are as under:-

“84. The Delhi High Court in Bharat Hedge v. Smt. Saroj Hegde laid down the following factors to be considered for determining maintenance: (SCC OnLine Del para 8)

- 1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the Applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-Applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded Under Section 125 Code of Criminal Procedure is adjustable*

⁸ (2021) 2 SCC 324



against the amount awarded Under Section 24 of the Act.”

9. Firstly, interim maintenance is to be granted to “prevent vagrancy” of those who are unable to support themselves. Secondly, determination of the quantum of such interim maintenance is squarely dependent/ directly proportional to the existing facts and circumstances involved in a given scenario, as per the available material placed on record. Thirdly, the position of the wife also plays a vital role. In fact, the Hon’ble Supreme Court in **Chaturbhuj v. Sita Bai**⁹ has held as under:-

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai

⁹ (2008) 2 SCC 316



Bhatiya v. State of Gujarat and Ors. (2005 (2) Supreme 503).”

[Emphasis Supplied]

10. Based on the material(s), and uncontroverted facts with it, the following factors emerge therefrom before this Court: **(i)** that both the children born out of the wedlock between the parties are residing with the petitioner, of which the daughter is enrolled in a MBBS course; **(ii)** that the petitioner is solely taking care of their education and financial needs on his own with no support from the respondent; **(iii)** that the respondent is singularly residing in the residential accommodation exclusively purchased by/ belonging to the petitioner herein since long, which is totally at her disposal; **(iv)** that the said residential accommodation is a huge flat comprising of three bed rooms; **(v)** that since the respondent is having a MBA (*finance*) degree as also having various degree(s) and diploma(s) in Astrology, she is a well-qualified lady possessing a worthy qualification sufficient for fending/ truly capable of earning for herself; **(vi)** that in addition, the respondent is also having rental income of Rs.10,450/- per month and she is also getting interest from her FDs to the tune of Rs.4,400/- per month; and **(vii)** that despite the aforesaid, the petitioner was voluntary paying maintenance of Rs.20,000/- per month before the grant of *ad interim maintenance*.

11. Although, learned Family Court has duly noted the (aforesaid) factors involved, however, has not given due weightage to them while passing the impugned order, and has tilted solely towards the income of the petitioner. *Resultantly*, the learned Family Court has directed the petitioner herein to pay an interim maintenance of Rs.30,000/- per month



to the respondent w.e.f. from the date of filing of the interim maintenance application being M.T. Case 323/2021 before the learned Family Court.

12. Although this Court is mindful that the petitioner is a man of means, however, the Court granting interim maintenance, cannot be oblivious of the cumulative variables which ought to be considered, especially since a balance has to be struck between the rights and liabilities of the applicant and non-applicant as also the primary intent of *Section 125* of the Cr.P.C. cannot be circumvented and/ or not given effect to.

13. In view thereof, as also taking note of the factors for consideration as per ***Rajneesh (supra)***, interference *qua* the impugned order is required by this Court in this revision petition.

14. As such, the interim maintenance of Rs.30,000/- awarded *vide* impugned order dated 05.06.2024 in M.T. Case 323/2021 titled as ‘*Yamita Rai Asthana vs. Ashutosh Rai Asthana*’ passed by learned Family Court (East) Karkardooma Courts, Delhi, is hereby reduced to Rs.25,000/- (*Rupees Twenty-Five Thousand Only*) per month w.e.f. 12.04.2021, i.e., from the date of filing of the application being M.T. Case 323/2021 which shall be paid by the petitioner to the respondent in terms of the impugned order dated 05.06.2024.

15. *Ergo*, the present petition, along with the pending application is disposed of in the aforesaid terms.

SAURABH BANERJEE, J.

AUGUST 11, 2026/So