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

Date of decision: 14th JUNE, 2021

IN THE MATTER OF:

\+ **CRL.REV.P. 549/2018 & CRL.M.A. 11791/2018 (Stay)**

URVASHI AGGARWAL & ORS. ..... Petitioners

Through Mr. Praveen Suri and Ms. Komal Chibber, Advocates

versus

INDERPAUL AGGARWAL ..... Respondent

Through Mr. Digvijay Rai and Mr. Aman Yadav, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present revision petition is directed against the order dated 21.04.2018, passed by the Additional Principal Judge, Family court, Tis Hazari, Delhi, declining maintenance to the petitioner No.1/wife and granting maintenance only to the petitioner Nos.2 and 3 herein.

2. The facts leading to the present petition are as under:

a) The petitioner No.1 got married to the respondent herein on 11.11.1997. Out of the wed-lock two children i.e. the petitioner Nos. 2 and 3 were born on 14.8.2000 and 14.8.2002 respectively.

b) Disputes arose between petitioner No.1 and the respondent herein. Petitioner No.1/wife filed a petition under Section 125 Cr.P.C for grant of maintenance.

c) The respondent/husband instituted a suit for divorce.

d) During the pendency of the divorce petition, the petitioner No.1 filed a petition under Section 24 of the Hindu Marriage Act, 1955 seeking maintenance. The Family Court declined maintenance to the petitioner No.1 and granted maintenance of Rs.7,000/- per month to the two children which was later enhanced to Rs.13,000/- per month.

e) A decree of divorce was granted on 28.11.2011.

f) The petitioner No.1 filed MAT. APP. No.6/2012 challenging the decree of divorce, which is pending before this Court. This Court vide order dated 25.03.2015 directed the respondent to pay maintenance of Rs. 15,000/- each to the respondent Nos.2 and 3.

g) The respondent has married again and has got a child from the second marriage.

h) A perusal of the material on record shows that the petitioner No.1 and the respondent are both Government employees. The petitioner No.1, at the time when the impugned order was passed, was working as an Upper Divisional Clerk in Delhi Municipal Corporation and the respondent is working as a Joint General Manager (HR) with the Airports Authority of India. The monthly income of the petitioner No.1, in the affidavit filed by her in the year 2016, is shown as Rs.43,792/- per month and she has stated that her monthly expenditure is Rs.75,000/-. She also stated that her net income is Rs.37,762/- per month. On the other hand, according to the affidavit dated 06.02.2016, filed by the respondent, he was earning a gross salary of Rs.96,089/- per month.

i) The petitioner No.1 moved an application for grant of interim maintenance claiming a sum of Rs.40,000/- per month. The learned Family Court after considering various factors came to the conclusion that since the petitioner No.1 is earning sufficiently for herself, she is not entitled to any maintenance. As far as petitioner Nos. 2 and 3 are concerned, the learned Family Court apportioned the income of the respondent into 4 shares, out of which two shares have been given to the respondent and one share each i.e. 25% has been given to the two children. Out of 25% for each children, as directed by the Family Court, the respondent had to pay 12.5% to each of the child out of his gross income less minimum statutory deductions which were to be computed by the employer of the respondent. The learned Family Court has said that the petitioner No.2 i.e. the son of the parties would be entitled for maintenance till he attains the age of majority and the petitioner No.3 i.e. the daughter would be entitled for the maintenance till she gets employment or gets married whichever is earlier. The learned Family Court further said that since the respondent has to maintain his son, born from his second marriage, it was directed that from the date of birth of his son from the second marriage, the share of the respondent shall be 10% each for 2 kids, from the wedlock with the petitioner No.1, as his entire salary was apportioned to five shares (two for the respondent, one each for the three kids). It has been held that since the second wife of the respondent herein is also working, she has the liability to bear 50% of the cost of her son, thereby making the share of the respondent herein as 10% towards the child

from the second marriage. The order dated 21.04.2018, reads as under:

> *"**8**. Interim maintenance to petitioner no. 1 is declined at this stage as she is able bodied and earning sufficiently for herself and as regards the standard of living behoving with the status of the respondent, the same are questions of fact and triable issues and would be looked into when it would be decided finally after trial whether petitioner no. 1 is entitled for maintenance or not.*
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> ***9**. As regards petitioner no. 2&3 are concerned, the income of the respondent has to be apportioned in four shares @25% i.e. two for himself and one each for the children and from that 25% share for each kid 50% thereof has to be contributed by the respondent for each kid. So the respondent is liable to pay 12.5% each to both the children as his share out of his gross income minus minimum statutory deductions which would be computed by the employer of the respondent However, amount of reimbursement obtained by the respondent for which he has spent from his own pocket will not be calculated for the purposes of apportionment of the share in favour of the children. The petitioner no. 2 and 3 would be entitled to 12.5 % each per month as share of the respondent in the aforesaid manner from the date of application till the pendency of the case. The son of the parties shall be entitled for the maintenance till he attains the age of majority and the daughter till she gets employment or gets married whichever is earlier. The respondent has no liability to maintain his mother-in-law and sister-in- law being under no such legal obligation. The mother of the respondent being pensioner as father of the respondent was a government employee, the respondent has no obligation to maintain her financially.*
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> ***10**. Since the respondent in this case has the liability to*

> *maintain his son born from his present wedlock it is ordered that from the date of birth of his son from second wedlock the share of the respondent shall be 10% each for 2 kids from the wedlock with the petitioner as his entire salary in the above terms needs to be apportioned to five shares (two for the respondent, one each for the three kids). Each shares comes to 20%. The second wife of the respondent being also working has the liability to bear 50% for son thereby making the share of the respondent as 10% for the son from second wedlock.*"

j) It is this order which is under challenge in the instant revision petition.

k) It is pertinent to mention here that a number of petitions have been filed by the parties against each other. This Court is not dwelling into the details of those petitions since they are not relevant for the present proceedings.

3. The learned counsel for the respondent has taken the primary objection stating that the present application is not maintainable and is barred under Section 397(2) Cr.P.C inasmuch as the order granting interim maintenance is an interlocutory order. The said argument has been rebutted by the learned counsel for the petitioners.

4. The learned counsel for the petitioners places reliance on the judgment of this Court in Manish Aggarwal v. Seema Aggarwal, **2012 SCC OnLine Del 4816,** which reads as under:

> ***"17.*** *Interim maintenance had been granted under Section 125 Cr. P.C. and the issue arose whether a revision petition could be preferred against that order, as it was alleged to be interlocutory in nature. It was held that the order of interim maintenance was an*

intermediate or quasi final order. Analogy was drawn from Section 397(2) of the Cr. P.C. and the pronouncement of the Supreme Court in Amarnath v. State of Haryana, (1977) 4 SCC 137 : AIR 1977 SC 2185 qua the said provision was relied upon. Thus, an order which substantially affects the rights of an accused and decides certain rights of the parties was held not to be an interlocutory order so as to bar revision. However, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in the aid of pending proceedings would amount to interlocutory orders against which no revision would be maintainable under Section 397(2) of the Cr. P.C. On the contrary, those orders which decide matters of moment and which affect or adjudicate the rights of the accused, or a particular aspect of trial could not be labeled as interlocutory orders. The Madhya Pradesh High Court held that an application for interim maintenance is a separate proceeding, to be disposed of much earlier than the final order in the main case. Qua the said issue the matter is finally decided by the order passed by reference to the second proviso to Section 125(1) of the Cr. P.C. Such orders were, thus, intermediate or quasi final orders. Thus, if an order does not put an end to the main dispute, but conclusively decides the point in issue it can certainly not be said to be an interlocutory order. The judgement drew strength also from the observations of the Supreme Court in Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : AIR 1978 SC 47, where the Supreme Court held that ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term final order. But the interpretation, and the universal application of the principle that what is not a "final order" must be an "interlocutory order" is neither warranted nor justified. In V.C. Shukla v. State, 1980 (2) SCR 380

the Supreme Court held that the term "interlocutory order" used in the Cr. P.C. has to be given very liberal construction in favour of the accused in order to ensure complete fairness of trial, and revisional power could be attracted if the order was not purely interlocutory but intermediate or quasi final.

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***26**. We, thus, conclude as under:*

(i) *In respect of orders passed under Sections 24 to 27 of the HM Act appeals would lie under Section 19(1) of the said Act to the Division Bench of this Court in view of the provisions of sub-section (6) of Section 19 of the said Act, such orders being in the nature of intermediate orders. It must be noted that sub-section (6) of Section 19 of the said Act is applicable only in respect of sub-section (1) and not sub-section (4) of Section 19 of the said Act.*

(ii). *No appeal would lie under Section 19(1) of the said Act qua proceedings under Chapter 9 of the Cr. P.C. (Sections 125 to 128) in view of the mandate of sub-section (2) of Section 19 of the said Act.*

(iii). The remedy of criminal revision would be available qua both the interim and final order under Sections 125 to 128 of the Cr. P.C. under sub-section (4) of Section 19 of the said Act.

(iv). *As a measure of abundant caution we clarify that all orders as may be passed by the Family Court in exercise of its jurisdiction under Section 7 of the said Act, which have a character of an intermediate order, and are not merely interlocutory orders, would be amenable to the appellate jurisdiction under sub-*

section (1) of Section 19 of the said Act."

(emphasis supplied)

In view of the above, this issue is no longer *Res Integra* and stands covered fully in favour of the petitioners and the revision petition is maintainable.

5. It is contended by the learned counsel for the petitioners that after holding that each of the child is entitled to 25% of the amount of the income of the respondent, the learned Family Court ought not to have further apportioned the amount and limited the liability of the respondent only to 12.5% of the amount of the salary earned by the respondent. It is contended by the learned counsel for the petitioners that each of the child is entitled to full 25% of the amount of the salary earned by the respondent. It is further contended by the learned counsel for the petitioners that the learned Family Court has also erred in limiting the maintenance to be given to the petitioner No.2/son till he attains the age of the majority. It is contended by the learned counsel for the petitioners that Section 125 Cr.P.C has to be interpreted in such a manner that the object of Section 125 Cr.P.C is achieved. It is further contended by the learned counsel for the petitioners that the responsibility of a father to take care of his child does not cease after the child attains majority if the child is not able to sustain himself.

6. *Per contra*, the learned counsel for the respondent contends that there is no infirmity in the order of the learned Family Court and that it is a well reasoned order. It is contended by the learned counsel for the respondent that the total amount paid by the respondent to the petitioner Nos.2 and 3 till date is about Rs. 29,25,825/- which is much more than the amount which has been directed by the learned Family Court. It is also submitted by the

learned counsel for the respondent that apart from the salary, the petitioner No.1 has got several properties and has got income from other sources and is not only confined to her salary.

7. Heard Mr. Praveen Suri, learned counsel for the petitioners and Mr. Digvijay Rai, learned counsel for the respondent and perused the material on record.

8. The purpose of Section 125 Cr.P.C has been laid down by the Supreme Court in several judgments. The object of Section 125 Cr.P.C is to prevent vagrancy and destitution of a deserted wife by providing her for the food, clothing and shelter by a speedy remedy. The object of Section 125 Cr.P.C is to bring down the agony and financial suffering of a women who left her matrimonial home so that some arrangements could be made to enable her to sustain herself and her child (refer: Chaturbhuj v. Sita Bai, **(2008) 2 SCC 316,** and Bhuwan Mohan Singh v. Meena, **(2015) 6 SCC 353).**

9. Since the purpose of granting interim maintenance is to ensure that the wife and the children are not put to starvation, the Courts while fixing interim maintenance are not expected to dwell into minute and excruciating details and facts which have to be proved by the parties.

10. The contention of the learned counsel for the petitioners that after recording that both the children are entitled to 25% each of the amount of the salary earned by the respondent, the learned Family Court ought not to have further apportioned the amount and limited the liability of the respondent only to 12.5% of the amount of the salary earned by the respondent, cannot be accepted. The balance has to be taken care of by the

wife i.e. the petitioner No.1 herein, who is also earning and is equally responsible for the child. The respondent has married again and has a child from the second marriage. This Court cannot shut its eyes to the fact that the respondent has equal responsibility towards the child from the second marriage. The further reduction of the amount after the birth of the child from the second marriage of the respondent also cannot be found fault with and the reasoning given by the Family Court does not warrant any interference at this juncture.

11. The learned Family Court refused to grant maintenance to the petitioner No.1 herein on the ground that the petitioner No.1 is working as an Upper Division Clerk in Delhi Municipal Corporation and is earning sufficiently for herself. The learned Family Court further held that as regards the standard of living which was being enjoyed by the petitioners when the marriage subsided is a question of fact and would be looked into when the case is decided finally after both the parties lead evidence.

12. The petitioner No.1 is working as an Upper Division Clerk in Delhi Municipal Corporation, earning about Rs.60,000/- per month. The records indicate that the respondent has filed his salary certificate which shows that his gross monthly income, as on November, 2020, is Rs.1,67,920/-. The two children are living with the mother. After attaining the age of majority, the entire expenditure of the petitioner No.2 is now being borne by the petitioner No.1. The petitioner No.1 has to take care of the entire expenditure of the Petitioner No.2 who has now attained majority but is not earning because he is still studying. The learned Family Court, therefore, failed to appreciate the fact that since no contribution is being made by the respondent herein

towards the petitioner No.2, the salary earned by the petitioner No.1 would not be sufficient for the petitioner No.1 to maintain herself. This Court cannot shut its eyes to the fact that at the age of 18 the education of petitioner No.2 is not yet over and the petitioner No.2 cannot sustain himself. The petitioner No.2 would have barely passed his 12th Standard on completing 18 years of age and therefore the petitioner No.1 has to look after the petitioner No.2 and bear his entire expenses. It cannot be said that the obligation of a father would come to an end when his son reaches 18 years of age and the entire burden of his education and other expenses would fall only on the mother. The amount earned by the mother has to be spent on her and on her children without any contribution by the father because the son has attained majority. The Court cannot shut its eyes to the rising cost of living. It is not reasonable to expect that the mother alone would bear the entire burden for herself and for the son with the small amount of maintenance given by the respondent herein towards the maintenance of his daughter. The amount earned by the petitioner No.1 will not be sufficient for the family of three, i.e. the mother and two children to sustain themselves. The amount spent on the petitioner No.2 will not be available for the petitioner No.1. This Court is therefore inclined to grant a sum of Rs.15,000/- per month as interim maintenance to the petitioner No.1 from the date of petitioner No.2 attaining the age of majority till he completes his graduation or starts earning whichever is earlier. The instant petition was filed in the year 2008. The learned Family is directed to dispose of the petition as expeditiously as possible, preferably within 12 months of the receipt of a copy of this order.

13. Accordingly, the revision petition is allowed in part and disposed of along with the pending application.

SUBRAMONIUM PRASAD, J.

JUNE 14, 2021
Rahul