



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

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Reserved on: February 04, 2025

Pronounced on: May 14, 2025

+ **CRL.M.C. 2313/2021 & CRL.M.As. 15376/2021, 172/2022,
25434/2022, 25435/2022, 25441/2022**

ANIQUE ABDULLAH

S/o Sh. Md. Abdus Shafay,

R/o Village Deora, Bandhauhi, PS Jaley,

District Darbhanga, Bihar

.....Petitioner

Through: Mr. Anil Hooda, Advocate
through (vc)

Versus

1. MAHENOOR @ EIRUM W/o Md. Anique Abdullah R/o H.
No.BB-339, Ashoka Basti, Purani Police Chowki, Nabi Karim,
Pahar Ganj, New Delhi-110055

2. Sarvari Bano W/o Md. Abdus Shafay

3. Md. Abdus Shafay S/o Abdul Malik,

4. Md. Samshul Haque S/o Sh. Md. Abdus Shafay

5. Jasmine Begam W/o Md. Abdul Haiy @ Noor

Respondent No.2 to 6 Resident of Village Deora, Bandhauhi, P.S.
Jaley, District Darbhanga, Bihar,Respondents

Through: Mr. Nizam Pasha, Ms. Awstika
Das& Mr. Madhav Deepak,
Advocates for Respondent
No.1

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 482 Cr.P.C. has been filed for quashing of the Order dated 10.03.2021, whereby the learned ASJ has enhanced the interim maintenance to Rs.40,000/ per month from Rs.12,000/- per month granted by the learned Metropolitan Magistrate, vide Order dated 23.08.2019 under Section 12 of Protection of Women from Domestic Violence Act, 2005.
2. Briefly stated, petitioner got married to respondent No.1 on 20.12.2010 as per Muslim customs and rights. From their wedlock, two sons were born on 4.02.2012 and 11.04.2014 respectively, who are Respondents No.2 & 3 in the present petition. Both the children are in the exclusive custody of their mother, Respondent No.1.
3. A petition under Section 12 of the DV Act was filed on 18.12.2017 seeking interim relief including maintenance of Rs.43,000 per month from the Petitioner.
4. ***The Respondent No.1- Complainant asserted before the learned Metropolitan Magistrate*** that she was 12th pass and was dependent upon the mercy of her parents for survival. She had no source of income and had the responsibility of taking care of the two minor sons from her marriage, who are in her custody. She claimed that the petitioner is running his own business of manufacturing Suitcase shelves under the name of M/s A.R. Traders, as the Sole Proprietor and earning Rupees Four Lakhs per month. She submitted that the Petitioner is maintaining 14 Credit Cards and Debit cards, and is wilfully neglecting to maintain her and their two children.



5. *The petitioner to the contrary submitted before the learned Metropolitan Magistrate* that he is not having much income. He claimed that he was doing a private job and earning Rs.9,500 per month only. He submitted that besides Respondents No.1 to 3, he has to support his mother, who is dependent on him.

6. *The learned Metropolitan Magistrate vide impugned Order dated 23.08.2019*, on the basis of affidavits filed by the Petitioner as well as Respondent No.1 and considering the rival contentions of the parties, observed that it cannot be ignored that the Petitioner was maintaining 14 Credit and Debit cards. In matrimonial proceedings, it was common that husband tends to hide his income, whereas the complainant-wife tends to exaggerate income of the husband. The learned Metropolitan Magistrate held that Respondent No.1 and two minor children, who were entitled for maintenance from Petitioner and thus, directed him to pay a sum of Rs.12,000 per month to the Respondent No.1 and two minor children, towards interim maintenance.

7. *Aggrieved by the Order dated 23.08.2019 passed by the learned Metropolitan Magistrate, separate Revision Petitions were preferred before the learned Additional Session Judge, by both the sides.*

8. *The learned Additional Sessions Judge vide impugned Order dated 10.03.2021* considered that the elder son of the parties, Mohd. Ahmed Abdullah was studying in Class-III at Elisabeth Gauba school, Kali Bari Marg, New Delhi and his quarterly fees was Rs.20,220/- including Transportation. The younger son, Master Mohd. Saad Abdualh is studying



in Class UKG in Airforce Nursery School and his quarterly fees was Rs.16,563/-.

9. In regard to Salary Certificate issued from M/s Harnam Enterprises Private Limited showing that the Petitioner was earning Rs.9,500/- per month, it was observed that it cannot be considered as the sole basis for determining interim maintenance. It was also considered that there are invoices of business as well as eleven credit cards in the name of Petitioner-husband which reflect that he had good source of income.

10. Considering the standard of the School and their quarterly fee along with number of credit Cards held by the Petitioner and also the fact that he was having a business of manufacturing of Suit Cases, *the learned Session Court directed payment of Rs.20,000/- per month towards the educational expenses of the children and Rs.20,000/- towards maintenance of food, clothing, medical expenses etc. Therefore, the total maintenance in the sum of Rs.40,000/-per month was directed to be paid by the Petitioner.*

11. ***Aggrieved by the Order dated 10.03.2021, the present Petition has been filed by the Petitioner/Husband.***

12. ***The Petitioner has asserted that*** Respondent No.1 had maintained absolutely non-cooperative, insulting attitude and was constantly pressurizing the Petitioner to shift to Delhi and to reside at his parental home in Delhi. On 25.03.2017, Respondent No.1 along with children left the matrimonial home without sufficient cause and is no longer inclined to return to the matrimonial home.

13. The Petitioner further asserted that he had contacted Respondent No.1 several times to persuade her to return, but she blatantly refused to do so. It



is asserted that her behaviour has not changed and she lodged a Complaint dated 18.07.2016 at Police Station Nabi Karim, against the Petitioner.

14. The ***impugned Order granting interim maintenance is challenged on the ground*** that Respondent No.1 is living in House No. BB 339 Ashoka Basti, Purani Police Chowki, Nabi Karim, Pahar Ganj, New Delhi which on account of persistent demand of Respondent No.1 to transfer the shop and the house in her name, irrevocable GPA was executed in her name by his father. The Petitioner claimed that Respondent No.1 is getting a monthly rental income of Rs.20,000/- from the said property.

15. On the other hand, the Petitioner was doing a small job and was getting salary of ₹9,500/- per month. It was not appreciated by the learned Sessions Court that the Petitioner was working in Dharbanga and he had to frequently travel to Delhi to attend the court hearings in the matrimonial cases. Also, it has not been appreciated that on 02.03.2019, the balance in the Saving Bank account of the Petitioner was only Rs.2491.45 and therefore, there is no question of running any kind of business.

16. The Affidavits filed by the parties indicated that Respondent No.1 is having a better status and more properties than the Petitioner. It has also not been appreciated that HDFC Bank and SBI Bank have initiated recovery proceedings against the Petitioner, as he was not able to make outstanding payment of the Credit Cards. Moreover, the Credit Cards have already been closed by the Petitioner.

17. Furthermore, the two children had not been made a party in the Maintenance petition and there was no averment for payment of maintenance to them, despite which interim maintenance in the sum of



Rs.14,000/- per month has been granted without appreciating the actual income of the Petitioner. A prayer is therefore, made that the impugned Order dated 10.03.2021 passed by the learned Additional Session Judge be set aside.

18. ***Respondent No.1 in her response to the Appeal***, has asserted that since inception, her relationship with her husband and his family was not good and she was mentally and physically abused by the Petitioner and his family. She being a house wife, was financially dependent on the Petitioner but was throughout deprived of any kind of financial and mental support. She had been subjected to extreme physical and verbal abuse on several occasions by the Petitioner and her in-laws.

19. She stated that she was so traumatized that her brother was made to pay a sum of Rs.25 Lakhs to the Petitioner and his family members for buying a house in Paharganj. However, despite buying the said house, the Petitioner and his family continued to misbehave with her and started pressurizing her to transfer the house in their name. Respondent No.1 further asserted before the learned Sessions Court, that the Petitioner has made a dishonest claim that the house was originally purchased in his father's name and was subsequently transferred to Respondent No.1 through GPA.

20. It is further claimed that she even attempted to commit suicide by consuming sleeping pills on 22.08.2016 and made various Complaints at Police Station Nabi Karim, which have been recorded vide different DD entries. She has asserted that the Petitioner and his family members have deprived her of her belongings, including silver, gold and diamond



jewellery, worth approximately Rs.17,05,000/-. Petitioner has failed to take any responsibility of herself and his two children.

21. The Respondent No.1 also asserted that the Petitioner was having an extra marital affair with one Nayla Aarifi and the matter was placed before the local *Panchayat* held on 26.02.2018. According to Respondent No.1, the Petitioner has married Nayla Aarifi on or about 30 June or 1st July, 2020 and is now residing with her in Dharbhanga.

22. It is asserted that the Petitioner has entered into second marriage without divorcing her on one hand and on the other hand, he is claiming to be having meagre resources, though he has sources to enter and maintain second marriage.

23. Respondent No.1 claimed that the Petitioner is having a lavish and indulgent life style and is leading a life of luxury with his second wife, while she and her children continue to suffer. It was therefore, submitted that there is no infirmity in the impugned Order of the learned ASJ and the Petition was liable to be dismissed.

24. The ***Petitioner in his Rejoinder*** reaffirmed the assertions made in the main Petition. He further submitted that he has lost his job as Marketing Representative with M/s Harnam Enterprises due to Covid-19 lockdown and his only source of income is from the agricultural land from which he earns 15,000/- per month. He has also filed an affidavit in this regard.

25. ***Submissions heard and record perused.***

26. From the rival contentions of the parties, it is apparent that Respondent No.1 is a house wife and is maintaining her two School going children. It has also emerged that she owns a house given to her by her



father-in-law or maybe she purchased it from the money given by her brother. The fact remains that she owns a house and a shop therein. There are specific averments that she is having income from the shop which has been given on rent, to which there is no specific denial.

27. The second fact which emerges is that both the children were studying in Public School, where the quarterly fee is about Rs.16,000/- to Rs.20,000/. Clearly, if the Respondent is sending the children to a school and also incurring their expenses, definitely she must be having some regular income, as has been claimed by the Petitioner.

28. The Respondent has claimed that the Petitioner is doing some business of manufacturing of Suit Case and was even maintaining seven to eleven Credit/ Debit Cards, to which there is no denial by the Petitioner. His assertion is that the averment that he was running a business, is not supported by any document and there is no correct information about his income from the business.

29. Interestingly, while the Respondent has denied doing any business but has not explained as to how and why was he having seven to eleven Credit/ Debit Cards. Further, he has defaulted in making payment of the amount outstanding against the cards, which clearly reflects that he was having some business or a status whereby he was incurring expenses through Credit Cards, though he has presently claimed to be unable to pay the outstanding dues.

30. From his own assertions, it is clearly made out that the Petitioner has some definite source of income which he has not disclosed. He was working as a Marketing Representative for M/s Harnam Enterprises Private Limited



and getting salary of Rs.9,500/- per month. Though he claims to have lost his job, but he has also filed an affidavit wherein he has stated that he has agricultural income of Rs.15,000/- per month. This also stands corroborated from his own assertions that he could not shift to Delhi as he had agricultural land to take care of.

31. From the aforesaid narration and considering the overall circumstances, at this stage it can be reasonably expected that the Petitioner must be earning about Rs.40,000/- per month or more. Considering the totality of circumstances and the source of income of both the Parties, the impugned Order dated 10.03.2021 of the learned ASJ, is hereby modified and it is directed that the Petitioner shall pay a sum of Rs.20,000/- per month to Respondent No.1 towards interim maintenance during pendency of DV Act proceedings.

32. The present Petition along with other pending Application(s) is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 14, 2025

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