

(2025) 12 DEL CK 0019

Delhi HC

Case No: Criminal Revision Petition No. 259 Of 2024 & CRL.M.A. 5823 Of 2024

Mohd. Shoaib

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Protection of Women from Domestic Violence Act, 2005- Section 12, 23

Hon'ble Judges: Dr. Swarana Kanta Sharma, J

Bench: Single Bench

Advocate: Arpit Sharma, Naresh Kumar Chahar, Amisha Dahiya, Mutiur Rehman, Shaheen, Khalid Aziz, Mohd Danish, Mehwish Khanam

Final Decision: Dismissed

Judgement

Dr. Swarana Kanta Sharma, J

1. The petitioner-husband impugns the judgment dated 19.12.2023 [hereafter 'impugned judgment'], passed by the learned Additional Sessions Judge-05, East District, Karkardooma Courts, Delhi [hereafter 'Sessions Court'] in Criminal Appeal No. 91/2023, titled as '*Mohd. Shoib v. State & Anr.*', vide which the learned Sessions Court upheld the order dated 08.05.2023 passed by the learned MM-01 (Mahila Court), East, Karkardooma Court [hereafter 'Trial Court'] in Case No. 1331/2021, filed by the respondent no.2-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter 'PWDV Act'], wherein the learned Trial Court had awarded interim maintenance in the sum of Rs. 11,000/- per month (Rs. 5500/- each for the wife and the minor daughter).

2. Brief facts of the case are that the parties were married on 19.12.2020 as per Muslim customs. According to the petitioner, respondent no. 2 is highly qualified, having completed MSc in Bioinformatics and NTT B.Ed., and was working as a school teacher in a reputed English medium school in Sambhal, Uttar Pradesh, at the time of marriage. He asserts that he had disclosed to her family that he held master's degrees and worked as a freelance tutor. The petitioner alleges that respondent no. 2 had left the matrimonial home on the pretext of visiting her parents and thereafter refused to return. A compromise was entered into, and the parties began residing in rented accommodation on 19.05.2021. After the demise of her mother, respondent no. 2 allegedly refused to rejoin the petitioner. The petitioner states that, being compelled, he had pronounced talaq through three letters dated 10.08.2021, 09.09.2021, and 08.10.2021, duly communicated via speed post and WhatsApp, as well as to relatives as per customary practice. He alleges that, thereafter, respondent no. 2 had initiated criminal proceedings against him

and his family in Uttar Pradesh. Their daughter was born on 09.12.2021.

3. Respondent no. 2 thereafter filed a complaint under Section 12 of the PWDV Act, asserting that she was married to the petitioner on 19.12.2020 and that he had abandoned her without reasonable cause and had refused to maintain her. She alleged that at the time of engagement, the petitioner's family had represented that he was a doctor earning Rs. 1,50,000/- per month and living a lavish lifestyle, and that soon after marriage, her jewellery and valuable articles were taken away by her mother-in-law. She levelled multiple allegations of domestic violence.

4. The learned Trial Court, after considering the income-affidavits of both parties, assessed the petitioner's income on the basis of minimum wages, noting discrepancies in his stated earnings and expenses, and granted interim maintenance of Rs. 11,000/- per month. The operative portion of order dated 08.05.2023, passed by the learned Trial Court, is set out below:

"..7. It cannot be denied that in a matrimonial dispute, the parties are inclined to hide their true income and exaggerate their expenses before the court. In the present matter, both the parties have been unable to furnish any proof pertaining to their allegation regarding the occupation and monthly income of the opposite party. In the absence of any proof to the contrary and without commenting upon the merits of the case, it is held that no view can be taken regarding the allegations pertaining to the employment status of the parties at this stage of the proceedings. It is the moral duty of the respondent no 1 to maintain his wife and children. The submission of the respondent no. 1 that out of his income of Rs.16,677/-, he is currently making payment of Rs. 6,500/- per month to his brother and father, Rs. 3,500/- per month towards petrol, Rs. 3,500/- per month towards rent and Rs. 5,000/- per month towards maintenance charges. Upon calculation of the above stated expenses of the respondent no. 1, the same adds upto Rs. 18,500/per month, which is more than the admitted monthly income of the respondent no. 1. No explanation in this regard has been provided by the Ld. counsel for the respondents. Therefore, the declaration made by the respondent no. 1 in his affidavit of income and assets reeks of disingenuity. However, the true facts cannot come to the fore except by way of leading evidence. Therefore, without commenting upon the merits of the case, the notional income of respondent no. 1 shall have to be calculated upon application of judicial mind and in accordance with Minimum Wages Act, 1948, in terms of circular number 12(142)/02/MW/VII/Partfile/2618-2641, dt. 23.05.2022 for 'graduate and above applicable from 01.04.2022, based on which, the income of the respondent no. 1 is assessed to be Rs. 21,756/- per month, out of which, I deem it fit to grant a maintenance of Rs. 11,000/- per month (Rs. 5,500/- each for petitioner and minor daughter, duly apportioned) to be paid by the respondent no. 1 to the petitioner for the maintenance of petitioner and the minor daughter. Said maintenance shall be payable from the date of filing of the present petition till the disposal of the present case. The said amount is directed to be deposited in the bank account of the petitioner before 15th day of every month. Arrears of maintenance, as accrued, are directed to be cleared by respondent no. 1 within 06 months of the present order.

8. Any default in payment of interim maintenance on a monthly basis shall be viewed strictly in terms of the judgment of Hon'ble High Court of Delhi in "*Gaurav Sondhi vs. Divya Sondhi*", 120 DLT (2005) 426.

9. At this stage, I would also like to state that anything received by the petitioner in any other proceedings of maintenance or proceedings of like nature or towards ad interim maintenance shall be adjusted in the amount awarded by this order.

10. Nothing stated herein shall tantamount to an expression of opinion on the final merits of the case.

11. With the above said observations, the present application

U/s 23 of DV Act is disposed of..."

5. The aforesaid order was upheld by the learned Sessions Court by way of the impugned judgment dated 19.12.2023. Its relevant portion is set out below:

"...15. Although, the appellant has placed some photographs and previous records indicating that respondent no. 2 was gainfully employed, however, there is no record which indicates that as of today the respondent no. 2 is gainfully employed.

16. No doubt that it is observed in "*Damanreet Kaur Vis Indenneet Juneja & Another*" & "*Mamta Jaiswal Vs. Rajesh Jaiswal*" that well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress but in present case facts are different.

17. It is not disputed that respondent no. 2 is taking care of her minor 2 years old daughter and as a mother it is quite difficult for her to do the job as well as to take care of her minor daughter. Respondent no. 2 despite being educated lady cannot be asked to work for gain and neglect the interest of minor child. In these facts, non-employment of respondent no. 2 cannot be termed as willful to pressurize the appellant to pay the maintenance.

18. Appellant submits that he has no fixed income, however, the his affidavit of assets and liabilities shows that he is M. Tech. Appellant has specifically mentioned that he is giving Rs. 6500/- per month to his father and is spending Rs. 3500/- on petrol and another Rs. 3500/- towards rent. A person who is spending Rs. 3500/- on petrol must have sufficient income at his disposal and the fact that he is paying Rs. 6500/- per month to his father also indicates towards his well-being.

19. Appellant has shown his monthly expenses to be Rs 13,500/- besides his expenses on monthly grocery, mobile expenses and other incidental expenses whereas he claims that he is earning only Rs. 16,677/- per month by giving home tuition. It is hard to believe that a person who is earning Rs 16,677 /- would have monthly expenses much more than that.

20. Appellant has not given any details of children he is imparting tuition and what amount he is charging from the students. Be that as it may, it is legal and moral duty of a husband to provide maintenance to his wife and the appellant cannot shirk his responsibility.

21. While deciding quantum of maintenance, it is also to be kept in mind that respondent has also to take care of a minor child. Respondent no. 2 also requires substantial amount for her residential purposes and the other routine expenses.

22. Ld. Trial Court in absence of any specific details given by the appellant has assessed the income of appellant to be Rs. 21,756/- out of which Rs. 11,000/- per month has been granted as maintenance to respondent no. 2 and her minor daughter. Amount of Rs. 11,000/- is just and reasonable, and commensurate with the status of the parties and standard of living in which the respondent no.2 was ordinarily living. Such an amount cannot be considered as highly exaggerated or oppressive and unbearable for the appellant.

Conclusion

23. Thus, it has to be concluded that impugned order is based upon correct appreciation of facts and does not suffer from any illegality. Impugned order does not warrant any interference.

Consequently, appeal stands dismissed..."

6. The learned counsel appearing for the petitioner argues that the learned Trial Court erred by not considering that the petitioner is merely a freelance tutor earning approximately Rs. 16,667/- per month. He submits that respondent no. 2 is more qualified than the petitioner and has concealed her employment as a PGT teacher at HM Global School, where, according to CBSE norms, a PGT earns about Rs. 1,50,000/- per month. It is contended that she has extensive work experience as a teacher and later as a principal in reputed English medium schools, earning around Rs. 65,000/- per month during her tenure as principal of Angels Public School, Sambhal, and that she also served as principal of Faith Academy School, Sambhal. It is argued that since 2022, she has been employed as a PGT at HM Global School and is listed on the school's publicly accessible website. The learned counsel submits that respondent no. 2 is financially independent, gainfully employed, and living a comfortable lifestyle, whereas the petitioner struggles to meet his basic expenses. It is contended that she is capable of maintaining herself and that her attempt to remain idle should not be encouraged. It is further argued that the parties are no longer married due to pronouncement of talaq, and thus respondent no. 2 is not entitled to maintenance. The petitioner also alleges that respondent no. 2 has filed false documents. He contends that the learned Trial Court wrongly invoked the Minimum Wages Act to assess his income and exceeded the legislative intent of the statute. He argues that the Minimum Wages Act does not apply to him, and that the income or properties of his family members cannot be used to infer his earning capacity or standard of living. Therefore, he prays that the order of the learned Trial Court and the Sessions Court be set aside.

7. Conversely, learned counsel appearing for respondent no. 2-wife argues that although she possesses qualifications enabling her to earn, she has been compelled to discontinue employment since the birth of the minor daughter, as she has sole responsibility of caring for the child. She therefore presently has no income and is dependent on the petitioner for maintenance. It is therefore prayed that the impugned orders suffer from no infirmity and the present petition deserves to be dismissed.

8. This Court has heard arguments addressed on behalf of the petitioner as well as the respondent no. 2, and gone through the orders passed by the learned Trial Court as well as the learned Sessions Court.

9. In the present case, this Court is of the opinion that the learned Trial Court as well as the learned Sessions Court have rightly observed that respondent no. 2 is the sole caregiver of her 2 year old daughter, who now would be about 4 years of age. In such

circumstances, it would be unrealistic to expect her to simultaneously engage in full-time employment when there is no proof that she has a family to look after the minor child. As the learned Sessions Court has noted, non-employment in such a situation cannot be treated as a deliberate attempt on her part to remain idle or to unjustifiably claim maintenance.

10. This Court also finds no infirmity in the concurrent findings of the learned Trial Court and the learned Sessions Court regarding the petitioner's income and financial capacity. The petitioner, in his own affidavit of assets and liabilities, has stated that he is paying Rs. 6,500/- per month to his brother and father, spending Rs. 3,500/- per month on petrol, Rs. 3,500/- per month towards rent, and Rs. 5,000/- per month towards maintenance charges, apart from his other monthly expenses. Upon a simple calculation, these admitted expenses amount to about Rs. 18,500/-, which itself exceeds the income of Rs. 16,667/- per month that he claims to be earning. Both Courts below have, therefore, rightly drawn the inference that the petitioner must be earning more than what he has disclosed, and that the declarations in his income affidavit are not reliable.

11. It has also been correctly observed by the learned Courts below that the petitioner has not produced any material or particulars to substantiate his claim that he is a freelance tutor earning Rs. 16,667/- per month. No details of students, classes conducted, or fees charged have been provided. In the absence of any credible evidence regarding his actual earnings, the learned Trial Court was justified in assessing the petitioner's notional income on the basis of minimum wages applicable to a person who is a postgraduate, as the petitioner himself admits to being one. The notional income assessed at Rs. 21,756/- per month is, therefore, neither arbitrary nor contrary to law.

12. This Court further notes that while the petitioner has placed on record certain photographs and documents to show that respondent no. 2 was gainfully employed prior to marriage and at earlier stages, there is no material to establish that she is presently working. On the contrary, the record reflects that during 2023-2024, when the petitioner failed to clear arrears of interim maintenance, respondent no. 2 had made an attempt to take up employment at HM Global School. This is one of the major grounds raised before this Court by the petitioner to contend that the respondent no. 2 has been working at HM Global School. However, the respondent no. 2-wife has informed this Court that she was compelled to leave the job within 10-12 days as there was no one to look after her infant daughter. Therefore, in this Court's view, her present unemployment is neither voluntary nor motivated, but a result of her responsibility as the sole caregiver of a minor child. Nonetheless, this aspect remains a matter to be determined during the course of trial. In the event it is established, upon evidence being led, that respondent no. 2 was gainfully employed during the relevant period, any income earned by her shall be duly taken into account and the future maintenance payable to her shall stand adjusted in accordance with law.

13. This Court also finds no merit in the petitioner's contention that since he has pronounced talaq, respondent no. 2 is not entitled to maintenance. Even a divorced wife is legally entitled to claim maintenance under the appropriate provisions of law, and such a plea cannot be used to defeat her lawful rights, particularly when she is maintaining a minor child. Similarly, the argument that the learned Trial Court could not have relied on the Minimum Wages Act to assess his income is misconceived. In the absence of proof of actual income or any evidence in this regard, the assessment of notional income on the basis of minimum wages is fully in line with the principles laid down in several judicial precedents. This Court also, in case of *Tasmeer Qureshi v. Asfia Muzaffar*, 2025 SCC OnLine Del 7272, had observed as under:

“(iv) Caution in Applying Minimum Wages Criteria While Assessing Notional Income of the Husband

45. Another issue which is relevant to highlight is the practice in which the learned Family Courts, faced with non-disclosure or evasive disclosure of income by the husband or where a husband pleads that he earns nothing, proceed to assess earning capacity by resorting to the schedule of minimum wages. The underlying rationale is sound - an able-bodied man cannot be permitted to defeat a claim for maintenance by his wife by withholding basic financial particulars [Ref : *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 2 SCC (Cri) 785 : (2015) 3 SCC (Civ) 274; *Rajnish v. Neha* (supra)], and the Family Court is entitled to draw an adverse inference and impute at least a baseline earning capacity. Minimum wages provide a statutory and reasonable basis to assess a person's earning capacity when there is no direct or reliable proof of actual income available on record.

46. However, the method must be applied with accuracy and care. Minimum wages are not uniform across India; they vary by State/Union Territory, by scheduled employment, and by skill category (unskilled,

semi-skilled, skilled, or highly skilled), and they are periodically revised. The learned Family Courts must therefore:

- (i) identify the correct State,
- (ii) determine the appropriate skill category on a prima facie view of the husband's qualifications, experience and past vocation, and
- (iii) note the effective date of the minimum wage schedule relied upon.

47. Orders that simply assume "minimum wages in Delhi" without examining whether the husband resides or is ordinarily employed in another State result in a higher or lower income assessment. For instance, if the husband resides in the State of Haryana and there is no proof that he is employed in Delhi, the minimum wage schedule applicable in Haryana has to be applied. The inadvertent practice of applying Delhi's minimum wages merely because the proceedings are before a court in Delhi or because the wife resides in Delhi ought to be avoided."

14. In view of the above, this Court finds no illegality, perversity, or infirmity in the orders passed by the learned Trial Court and the learned Sessions Court in assessing the petitioner's income at Rs. 21,756/- per month and awarding interim maintenance of Rs. 11,000/- per month (Rs. 5,500/- each to respondent no. 2 and the minor child). The amount awarded is just, reasonable, and commensurate with the status of the parties and their needs.

15. The present petition is therefore dismissed, alongwith pending application.

16. It is clarified that all observations made herein are only for the purpose of adjudicating the issue of interim maintenance. These observations are prima facie in nature and shall not be treated as an expression of opinion on the merits of the case. The learned Trial Court shall decide the matter independently on the basis of evidence led by the parties, without being influenced by any findings recorded in this order.

17. The judgment be uploaded on the website forthwith.