



\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.07.2025

+ CRL.REV.P. 367/2024

SYED DANISH AZEEM

.....Petitioner

Through: Counsel (appearance not
given).

versus

SMT. NAZIA PARVEEN @ NAZIA & ANR.Respondents

Through: Mr. S.N. Khan, Advocate

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the petitioner is seeking setting aside of the judgment dated 19.12.2023 [hereafter '*the impugned judgment*'], passed by the learned Judge, Family Court-01, North East, Karkardooma Courts, Delhi [hereafter '*Family Court*'] in MT No. 702/2018, titled as '*Nazia Parveen @ Nazia & Anr. vs. Syed Danish Azeem*'.

2. Briefly stated, the facts of the present case are that the marriage between the petitioner-husband and respondent no. 1-wife was solemnised on 14.04.2013 in accordance with Muslim rites and customs. Out of the said wedlock, a son, Master Syed Aryan @



Areeb (respondent no. 2), was born on 26.02.2014. According to the petitioner, on 04.08.2014, respondent no. 1, without any just cause or reason, left the matrimonial home along with the minor child and also took away all her gold articles, including those gifted by the petitioner and his family. The petitioner states that he thereafter had also filed a suit for restitution of conjugal rights before the Family Court at Saharanpur, Uttar Pradesh.

3. Conversely, respondent no. 1 has alleged that after the marriage, she was subjected to cruelty by the petitioner for bringing insufficient dowry. She contends that all her jewellery was retained by the petitioner's family under the pretext of safe custody. She further alleges that during her pregnancy she was not provided proper care and was subjected to harassment and beatings by the petitioner and his family members. A demand of ₹15 lakhs was also allegedly made. On 05.08.2014, she was allegedly assaulted and her neck was attempted to be strangled, but she managed to escape and return to her parental home. Since then, she has been residing there along with her minor child. Respondent no. 1 claims that she has no independent source of income and is unable to maintain herself and the child, who are surviving on the support of her parents. The petitioner, on the other hand, is stated to be a man of means, employed as Assistant Vice President at M/s Oval Education Ltd., Connaught Place, New Delhi, earning approximately ₹75,000 per month. On these averments, respondent no. 1 filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], before the



learned Family Court in the year 2016, seeking maintenance for herself and the minor son (respondent no. 2).

4. By way of the impugned judgment dated 19.12.2023, the learned Family Court was pleased to award maintenance of Rs. 10,000/- per month, each to the respondent no. 1 and respondent no. 2, from the date of filing of petition. The relevant part of the impugned judgment is set out below:

“25. Now, in order to decide the quantum of maintenance, the income of the respondent needs to be assessed. It is the case of petitioner no.1 that respondent is working as Assistant Vice President in M/s Oval Education Pvt. Ltd. and is earning around Rs.75,000/- per month. This fact was denied by the respondent. In his detailed affidavit, he claimed himself to be a freelancer Data Entry Operator earning around Rs.7,500/-. No question was asked to the petitioner no.1 regarding the income of the respondent. PW-3 produced the ITR returns for the AY-2011-12 which was exhibited as Ex.PW-3/A. The ITR returns for the AY 2011-12 showed his gross income to be Rs.1,58,400/-. As per computation, the income was a salary income. The respondent did not disclose in his affidavit that at any point of time he was working. PW-4, Sh. Rajiv Jain was the Director of the M/s Oval Education produced the balance sheet and statement and deposed that a sum of Rs.25,000/- was credited in the account of respondent towards salary. He deposed that his salary was around Rs.25,000/- per month. RW-1 when cross-examined stated that his salary was around Rs.9,000/- when he joined the company and he worked there only for 2012-13 whereas PW-4 has categorically stated that he worked from 2008-~0 13. He denied the suggestion that he is still working with Sh Rajiv Jain and earning around Rs.1 lakh. It is his own case that he is working on daily wages associated with small shops and earns around Rs.10,000/- to Rs.11,000/- per month. He denied the suggestion that he is deliberately not maintaining the petitioner or that he has no other liability. He volunteered to say that he is still ready and willing to take the petitioner. The testimony of RW-1 is a complete lie as he himself later on filed an additional affidavit



stating that he had contracted second marriage with one Ms. Shaila on 07.01.2019 and from the said wedlock, three children were born ie. Master Fazal Azeem on 18.04.2020 and twin girls on 12.10.2023. However, unfortunately during the birth of twin girls his second wife expired. The reason for filing this additional affidavit a statement was made by the learned proxy counsel for the respondent on 07.11.2023 that the second wife of the respondent has expired and this is the reason additional affidavit was filed on the next date i.e. 22.11.2023 which was disallowed by this C01.11t as factum of second marriage was never taken up in the WS neither any nikahnama was filed.

26. The respondent is untrustworthy, How then he can be believed, when he has scant regard to the rule of law. He is definitely hiding his true income. A person who was earning around Rs.25,000/- in the year 2012 is not expected to be a daily wager and earning around Rs.10,000/- to Rs.11,000/-. It so appears that respondent is claiming daily wager so as to avoid payment of maintenance. Respondent is educated, was filing ITR, maintaining bank account, according to him he had contracted second marriage and was maintaining a family and also paying maintenance to the petitioners. Even if a conservative view is taken, under no circumstances his income could not be less than Rs.40,000/- per month in the year 2016 when the petition was filed. The untrustworthiness of the respondent is also fortified with the fact that he is residing in Delhi and has filed the suit seeking restitution of conjugal rights in Saharanpur. This is done only to cause trouble to the petitioner no. 1 herein. It is a classic case where the husband has tried all his level best to hide his true income and has adopted all available methods.

27. The income of the respondent is assessed to be Rs.40,000/- per month. In terms of the '*Annurita Vohra vs. Sandeep Vohra*', *reported as*, '2004 (3) AD 252, income of the respondent is to be divided into four units. Out of which two units for the respondent, and one unit each for the petitioners.

28. The petitioners are awarded a consolidated sum of Rs.20,000/- (Rs.10,000/- each) per month w.e.f. the date of filing of the present petition till the petitioner no. 1 get remarried or gainfully employed whichever is earlier and to petitioner no.2 till he attains the age of majority..."

5. Aggrieved by the said judgment, the petitioner has preferred



the present petition seeking to set aside the impugned judgment.

6. The learned counsel appearing for the petitioner submits that the learned Family Court erred in disallowing the additional affidavit filed by the petitioner and further committed a grave error in not taking into consideration a crucial factual development, that the petitioner had contracted a second marriage in the year 2019 and, thereafter, was blessed with three children. It is stated that his second wife unfortunately passed away in the year 2023, at the time of birth of their third child, and the petitioner is now solely responsible for the upbringing and care of these three children. It is argued that even assuming, though not admitting, that the petitioner earns ₹40,000/- per month, the grant of ₹20,000/- per month as maintenance to the respondents is excessive, disproportionate, and unjustified. The petitioner also claims that he does not hold any stable, permanent, or high-income employment and is presently engaged in odd jobs to sustain himself and his dependents. In view of these submissions, it is prayed that the impugned judgment be set aside and the matter be remanded for fresh adjudication.

7. On the other hand, the learned counsel appearing for the respondent argues that the impugned judgment has been passed after due application of mind and is based on a fair and reasoned assessment of the evidence on record. It is submitted that the petitioner had throughout the pendency of the proceedings concealed the fact of his second marriage and existence of three children from the second wedlock, and only at the fag end of the trial sought to



introduce this fact through an additional affidavit. It is argue that the learned Family Court rightly declined to accept the belated affidavit, especially when there was no explanation for the suppression of such a significant fact during the entire trial. It is further argued that the learned Family Court has rightly assessed the income of the petitioner on the basis of material available and made a just and reasonable award of maintenance, considering the needs of the wife and minor child who are entirely dependent on the support of the petitioner. Thus, no interference is warranted with the impugned judgment.

8. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

9. A careful perusal of the record reveals that the learned Family Court has rightly taken note of the fact that the petitioner had deliberately concealed his second marriage and the alleged birth of three children from the said marriage throughout the trial proceedings. The petitioner, as he claims, had contracted another marriage on 07.01.2019, and yet, even while filing his affidavit of assets, income and expenditure shortly thereafter on 14.01.2019, he had made no mention of this second marriage. This omission cannot be regarded as an inadvertent error, but rather a conscious act of suppression of a material fact, especially when such information directly pertained to the question of his financial capacity and obligations, which were under scrutiny in the maintenance proceedings.



10. The petitioner continued to remain silent about this second marriage for several years, throughout the pendency of the proceedings, and even while leading his evidence before the learned Family Court. Notably, even in the affidavit of evidence filed on 21.08.2023, he made no reference to having entered into a second marriage or having fathered children from that relationship. It was only belatedly, after the conclusion of recording of evidence, and upon the unfortunate death of his alleged second wife on 03.11.2023, that he sought to bring this information on record before the learned Family Court by filing an additional affidavit on 22.11.2023.

11. This belated attempt to introduce a new factual narrative, after the closing of evidence and when final arguments were to be heard, rightly invited scepticism from the learned Family Court. It is pertinent to note that the petitioner failed to file any documentary proof in support of his claims. No *Nikahnama* evidencing the alleged second marriage was brought on record. The learned Family Court also noted, in order dated 22.11.2023, that even the birth certificates of the three children were riddled with inconsistencies – specifically, the names of the mother mentioned on the certificates were not the same. The petitioner was unable to offer any satisfactory explanation for these discrepancies, thereby casting further doubt on the veracity of his claim. Thus, the learned Family Court, *vide* order dated 22.11.2023, had rejected the petitioner's plea to place on record the additional affidavit. The said order is extracted hereunder:



Additional documents on behalf of respondent filed. By way of this additional evidence, respondent wants to place on record the birth certificate of the children from the second marriage. The factum of second marriage has not been disclosed nowhere in the WS, moreover, the name of mother in both the birth certificate is different and neither the nikahnama is placed on record. Hence, the additional evidence can not be taken on record. The same is dismissed.

Arguments on behalf of petitioner heard.

Put up for orders, on **11.12.2023**, with liberty to learned counsel for the respondent to argue the matter on the date fixed for orders.

//

12. Notably, the aforesaid order was neither challenged nor appealed against by the petitioner and it had therefore attained finality.

13. In this Court's opinion, this conduct of concealing material facts during the trial and attempting to bring them on record only at a belated stage, without any convincing explanation or supporting documents clearly reflects that the petitioner did not approach the learned Family Court with clean hands. A litigant who suppresses material facts, misleads the Court, and fails to come forward with candour during trial cannot be allowed to benefit from such conduct at a later stage.

14. In the considered view of this Court, the learned Family Court has rightly rejected the petitioner's attempt to file an additional affidavit at the fag end of the proceedings and has also rightly proceeded to decide the case on the basis of the evidence on record. The assessment of the petitioner's income and financial capacity was



done by the Family Court after due application of mind and appreciation of the material before it. The grant of maintenance in the sum of ₹20,000/- per month in favour of the respondents cannot be said to be unjust, arbitrary, or excessive, particularly in the absence of any reliable and consistent evidence placed by the petitioner to the contrary.

15. Accordingly, this Court finds no infirmity in the impugned judgment passed by the learned Family Court which warrants any interference,

16. The present petition, along with pending applications, if any, is accordingly dismissed.

17. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 03, 2025/ns