

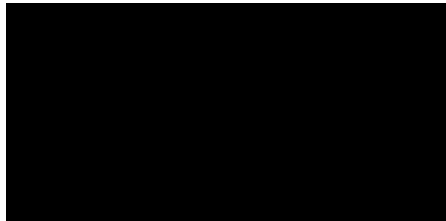


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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 23rd September, 2025*

+ **CRL.M.C. 6841/2025, CRL.M.A. 28771/2025 & 28772/2025**



.....Petitioner

Through: Mr. M. Sufian Siddiqui, Mr. Rakesh Bhugra, Ms. Alya Veronica and Mr. Mohammad Mazhar Ahmed, Advocates

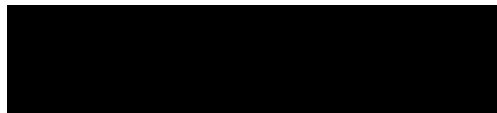
versus

1. [Redacted]
[Redacted]

.....Respondent No. 1

2. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

.....Respondent No. 2



Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)



1. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) has been filed on behalf of the Petitioner, for quashing of Order dated Maintenance Petition bearing No.441/2023 pending before the Ld. Judge, Family Court, New Delhi.
2. It is submitted in the Petition that the parties got married on 05.01.2018 according to Islamic rites and ceremonies. One son was born on 07.10.2019 from their wedlock. However, irreconcilable temperamental difference and persistent discord which deteriorated with passage of time, ultimately led to snapping of the matrimonial relationship and the Respondent along with the minor son left the matrimonial home and went to reside in her parental home on 09.05.2021. She then lodged a Criminal Complaint dated 23.08.2021 against the Petitioner and his family members in the CAW Cell. Several conciliatory sessions were held with the intervention of close relatives and well-wishers and eventually the parties decided to mutually sever their matrimonial ties. On 25.11.2021 the marriage between them was dissolved by way of *Talaq-e-Khula*, a legally recognized form of divorce in the *Muslim Shariat Law*. The Khula Nama dated 25.11.2021 was duly signed by both the parties in the presence of her the brother-in-law and father of Respondent No.1, who were the attesting witnesses.
3. The parties also entered into a comprehensive Settlement on the same day, i.e. 25.11.2021 in which the Respondent not only affirmed that she had voluntarily consented to dissolution of marriage through *Talaq-e-Khula*, but also relinquished her present and future claims of maintenance, including during *the iddat period*. Further, a consolidated sum of Rs.33 lakhs was given *vide* Cheque/DD No.034915 drawn on HDFC Bank, Kashmere Gate,



Delhi to Respondent No.1 towards full and final settlement of all past, present and future claims of alimony and maintenance of herself as well as that of the minor son. The Demand draft was duly encashed by the Respondent No.1. She also took back all her jewellery and ornaments, as has been recorded in the Settlement Deed dated 25.11.2021. The Settlement Deed thus, contained a complete arrangement for extinguishment of all past, present and future claims and ensured certainty and provided a clear framework for post-divorce obligations. It is further submitted that the Settlement Agreement dated 25.11.2021 was never disputed by any of the party and was duly acted by both of them.

4. It is further asserted that in the Settlement Deed dated 25.11.2021, the permanent custody of the child was given to Respondent No.1, but the Petitioner was entitled to *reasonable visitation rights*. It was stipulated that Petitioner shall not initiate any legal proceedings to seek the custody of the child at any point of time, thereby giving finality to the custody arrangement. However, despite the clear stipulation about the visitation rights, the Respondent No.1 persistently dissuaded and obstructed him there by depriving meaningful access and interaction with the child/RespondentNo.2, in flagrant breach of the mutually agreed terms. The situation eventually became confrontational, whereupon the Petitioner conveyed unequivocally to Respondent No.1 that any further deprivation of visitation rights, would inevitably invite legal consequences.

5. Staggeringly, as the things stood thus, the Respondent No.1 instituted a *Maintenance Petition bearing No.441/2023 on 19.09.2023* before the Ld. Family Court, New Delhi seeking a monthly maintenance of Rs.1,20,000/- for herself and for the upbringing of the child/Respondent No.2. It is



asserted that the Petition is conspicuously bereft of even an iota of pleading or proof of any material change in her financial circumstances, post the Settlement dated 25.11.2021, which is a *sine qua non* under settled maintenance jurisprudence, to justify the reopening of claims. What is sought through the impugned Petition is not relief for sustenance, but the weaponization of judicial machinery to harass the Petitioner, frustrate his lawful parental rights and subvert the sanctity of solemn Settlements, thereby reducing them to empty parchment and rendering law as an instrument of futility. The Petition is not borne of necessity or survival, but with design and malice to vilify the Petitioner, dissuade and deprive him from his access to the son/Respondent No.2 and to reduce the sanctity of judicial process to a mere weapon of attrition.

6. The filing of the Maintenance Petition after almost two years of Settlement, sans any change in circumstances, was a calculated afterthought aimed at subverting a solemn covenant and perpetuating harassment under the garb of Maintenance. The Respondent further submits that Respondent No.1 for the first time averred in her Maintenance Petition that she was coerced to enter into a *Khula* with the Petitioner herein.

7. The Notice was issued on the Maintenance Petition on 04.10.2023. The matter is now listed on 09.10.2025 for arguments on grant of Interim Maintenance before the Ld. Family Judge

8. It is submitted that it is a classic case of parental alienation. He was deprived of meeting his minor son and was constrained to send Legal Notice dated 29.09.2023 and the second Notice on 01.11.2023. The Notices were duly received by Respondent No.1, despite which she chose not to reply or comply with the same. Constrained by these circumstances, Petitioner filed a



Guardianship Petition No.115/2023 inter alia seeking custody of the minor child herein. The matter is pending trial before the Ld. Judge, Family Court.

9. It is claimed that despite the Court Order *qua* visitation rights to the Petitioner herein, the Respondent No.1 has left no stone unturned to frustrate the scheduled visitations. When the visitation did occur, the Respondent No.1's physical presence next to the Petitioner and child creates a constrained and uncomfortable environment. Respondent No.1 has flagrantly continued her obstructive conduct with scant regard for judicial directions, routinely cancelled the meetings on frivolous grounds and outrightly refuses the future meetings on false allegation that Petitioner is polluting the mind of the child against her parents. On rare occasions when visitation did materialize, the Respondent No.1 persistently denied the Petitioner and the child a healthy neutral space to interact. The child in fact, is being tutored and does not even recognize the Petitioner as his father.

10. The quashing of the Maintenance Petition is sought by the Petitioner on the **ground** that the Respondent No.1 has approached the Court to misuse the process of Court of law for her own benefit. The Maintenance Petition is replete with blatant lies and embellishments, to suit the fancies of Respondent No.1. She has averred that she has no source of income and she and her son are completely dependent on her father for her expenses and upkeep. This is in sharp contradiction to the fact that an amount of Rs.33,00,000/- was received by Respondent No.1 under the Settlement Agreement dated 25.11.2021. This amount has been used by Respondent No.1 to buy a *residential Flat bearing No.46, SF, Zakir Nagar West, Jamia Nagar, Okhla, New Delhi* as per her Income cum Expenditure Affidavit filed before the Ld. Judge, Family Court. This property has been rented out by



her and is being used as a source of additional income for herself and the child's upkeep and maintenance.

11. However, after a hiatus of two years, the Respondent No.1 has approached the Court with unclean hands, in defiance of the Settlement Agreement dated 25.11.2021. It has been manipulated to seek monthly maintenance despite having received a Consolidated Maintenance of Rs.33,00,000/-. It is asserted that a cursory glance at the Impugned Petition itself exposes that Respondent No.1 is far from being left to fend for herself. Rather, this is a contrived effort, cloaked under the guise of maintenance claim to unjustly enrich herself at the expense of the Petitioner.

12. Furthermore, it is trite law that a divorced wife may claim further maintenance only upon demonstrating a *material change in circumstances* subsequent to a full and final Settlement. She has neither pleaded nor established the existence of any such change; her Petition is barren of even the faintest averment on this indispensable requirement. In the absence of any foundational plea, the Maintenance Petition is nothing but a brazen abuse of the process of law and a calculated attempt to reopen settled issues and harass the Petitioner under the cloak of judicial proceedings. Such vexatious litigation deserves to be nipped in the bud and quashed in limine.

13. It is entirely devoid of any *genuine cause of action*. The further maintenance could have been claimed only if there existed a *change in circumstance or Respondent No.1*, but no such instance has been pleaded. The Respondent is financially afloat and well qualified, in addition to her financial liquidity which is sufficient to support her. She had funds that she had gotten from the Petitioner, in one time full and final Settlement. The objective of maintenance is to prevent vagrancy and destitution of the



dependent spouse, but the Respondent No.1 already received a substantial amount cannot claim any vagrancy.

14. Astonishingly, when confronted with the Settlement Deed dated 25.11.2021 by the Family Court, the Respondent No.1 concocted a plea of coercion alleging that the document was executed under duress which plea collapses under its own way, given the conscience encashment of the Draft of Rs.33,00,000/- and prolonged silence of two years.

15. Reliance is place on the judgment of this Court in Santosh vs. Durga Prasad 2009 SCC OnLine Del 3148 wherein it was observed that the compromise has to be honored by both the parties in true letter and spirit. The Petitioner has asserted that there is no change in the circumstances or other supervening eventualities making her incapable to sustain her livelihood.

16. Reliance is also placed on E Sheela George and Another vs. V.M. Alexander 2025 SCC OnLine Ker 3501, wherein it was held that to file a fresh proceeding for maintenance after arriving into a final Settlement, makes it incumbent upon the wife to establish that owing to change in circumstances it has become insufficient for her to sustain her livelihood.

17. The Petitioner has further submitted that the claim of the Respondent is barred by *the doctrine of estoppel*. Section 115 of the Indian Evidence Act bars a party from withdrawing from a representation made to another party who has acted upon it to his detriment.

18. Reliance is placed on Rajasthan State Industrial Development and Investment Corpn. Vs. Diamond and Gem Development Corpn. Ltd. (2013) 5 SCC 470, wherein it was observed that a party cannot be permitted to blow “hot and cold”, “fast and loose” or “approbate and reprobate”. When one



knowingly accepts the benefits of a Contract or conveyance, he is estopped from denying its validity or the binding effect of such Contract. This Rule applies to ensure equity, but it must not be applied in such a manner so as to violate the principles of what is *right and of goods conscience*. The Maintenance Petition is thus, barred on the *principles of estoppel*.

19. In the end, it has been claimed that the Petitioner has been discharging his duties diligently as a father and providing for the minor child. The Ld. Family Judge *vide* Order dated 04.12.2024 directed the Petitioner to pay an interim amount towards the tuition fee of the child, which he has been diligently discharging and providing for the fee of the child.

20. It is further asserted that the Maintenance Petition does not disclose any cause of action and is a *blatant abuse of process* after two years of full and final Settlement dated 25.11.2021 and acceptance of Rs.33,00,000/- towards the maintenance claim.

21. It is submitted that the present Petition is liable to be quashed in terms of the observations of Apex Court in the case of State of Haryana vs. Bhajan Lal 1992 Supp (1) SCC 335 and B.S. Joshi vs. State of Haryana (2003) 4 SCC 675. Reliance is also placed on Rajnish vs. Neha (2021) 2 SCC 324, wherein the Supreme Court emphasized the necessity of disclosure and proof of changed financial status in maintenance matters.

22. It is submitted that the Ld. Family Court has fallen into grave error by not deciding the maintainability of the impugned Maintenance Petition at the threshold and instead posted the matter for arguments on interim maintenance. Reliance is placed on the judgment of this Court in Omar Abdullah vs. Payal Abdullah & Ors. CrI. M.C4717/2017, wherein it was held that the question of grant of interim maintenance can be determined



only after determination of maintainability of the Petition under Section 125 Cr.P.C.

23. The Family Court has failed to first address the fundamental issue of maintainability and a decision to proceed directly to grant interim relief, is legally unsustainable. The allegations of coercion and pressure in obtaining the *Khula* and executing the Settlement Deed dated 25.11.2021 are false, baseless and an afterthought. *Arguendo* that the *Khula Nama* and Settlement Deed dated 25.11.2021 were executed by Respondent No.1 under coercion or duress, even then she is statutorily disentitled from claiming maintenance under Section 125(4) Cr.P.C which bars a wife from claiming maintenance if she is living separately by mutual consent. She as per her own volition and conscious choice, decided to dissolve the marriage and live separately which is evidenced not only by *Khula Nama*, but also by comprehensive Settlement Deed dated 25.11.2021. Once, the separation is consensual, the statutory bar is absolute and admits of no exception.

24. Reference is made to *State of Karnataka vs. L. Muniswamy and Ors.* 1977 SCC (CRI) 404, wherein it was observed that in a criminal case the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests, would justify the High Court to quash the proceedings in the interest of justice.

25. Reliance is also placed on *Dalip Singh vs. State of Uttar Pradesh And Others* (2010) 2SCC 114, wherein the Apex Court explicitly stated a party which approaches the Courts of law with unclean hands is not entitled to any relief.

26. Reliance is also placed on *Ramjas Foundation and Another vs. Union of India and Others* (2010) 14 SCC 38, wherein it was observed that every



judicial forum is not only entitled, but duty bound to safeguard the very sanctity of the legal system. Similar observations have been made in S.P. Chengalvaraya Naidu (Dead) by Lrs vs. Jagannath (Dead) by Lrs. And Others (1994) 1 SCC 1, wherein the Apex Court had stated that a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in Order to gain by another's loss.

27. Reliance is also placed on Double Dot Finance Limited vs. Goyal MG Gases Ltd. 2005 (2) AD Del 534. It is submitted that it is a fit case for the Court to exercise its inherent jurisdiction under Section 528 of the BNSS to prevent the abuse of process of law and to coerce the Maintenance Petition.

28. *A prayer is, therefore, made that this Maintenance Petition pending before the Court of Family Judge, be quashed.*

Submissions heard and record perused.

29. The material facts are that the parties had got married on 05.01.2018 according to Muslim customs and rites and one son was born from their wedlock on 07.10.2019. However, over a period of time the parties fell apart and they separated due to marital discord, on 09.05.2021. The Respondent No.1 filed Criminal Complaint dated 23.08.2021 in CAW Cell, however, with the intervention of the family members the parties entered into a Settlement Deed/*Khula Nama* dated 25.11.2021. The parties took divorce through *Talaq-e-Khula* and the sum of Rs.33,00,000/- was paid by Petitioner to Respondent No.1 in full and final settlement towards all past, present and future claims of the alimony and maintenance both for herself and for the minor son. Two years hence, the Maintenance Petition No.441/2023 has been filed by Respondent No.1 on 04.10.2023 claiming



maintenance for herself and for the minor son.

30. *The legal question which thus, arises is whether the Maintenance Petition is maintainable in the light of Settlement Agreement dated 25.11.2021.*

31. The Petitioner himself has asserted that such a Petition for maintenance may be filed in case of *change of circumstances*. It is his claim that there are no changed circumstances and, in view of the Settlement Deed dated 25.11.2021, the Maintenance Petition is devoid of any cause of action.

32. In this context, it is pertinent to observe that the Maintenance Petition was filed on 19.09.2023 and is pending till date. The Order for Interim Maintenance for the education of the child was made, which has been duly complied by the Petitioner. In all these two years, he did not make any grievance of the Maintenance Petition and has even complied with the Interim Maintenance for the son.

33. Furthermore, it is pertinent to observe that while there may have been a Settlement for the maintenance past, present and future between the Petitioner and Respondent No.1, but it has been held in catena of judgments that while entering into such matrimonial Settlement, the right of the child cannot be compromised and these Settlements do not impact the independent rights of the child.

34. In Ganesh v. Sudhirkumar Shrivastava, (2020) 20 SCC 787, the Apex Court has succinctly observed that *it was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan is concerned, but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned.*

35. The Co-ordinate Bench of this Court in Vashno Jaishwal v. State



(NCT of Delhi), 2020 SCC OnLine Del 1504, while relying upon Ganesh (supra), has observed as under:

10. It is essential to observe that thereby the respondent No. 2 has given up all rights of the minor child Vaishnavi qua the petitioners. The same apparently could not have been so done and cannot be accepted in terms of the verdict of the Hon'ble Supreme Court in Ganesh v. Sudhir Kumar Shrivastava; Civil Appeal Nos. 4031-4032/2019 arising out of SLP(C) Nos. 32868-32869/2018, a verdict dated 22.4.2019 adhered to by this Court in Rakesh Jain v. State in Crl.M.C. No. 2935/2019. In view thereof the minor child born of the wedlock between the petitioner No. 1 and the respondent No. 2 would be entitled to seek her claims against the petitioners and the respondent No. 2 qua maintenance or otherwise in accordance with law.

36. It is therefore, necessary to observe that the Maintenance petition has been filed not only to claim Maintenance by Respondent No.1, but also for and on behalf of the child. It is a matter for consideration before the Ld. Judge, Family Court whether the circumstances justify grant of any Maintenance to the Respondents. The Settlement Agreement dated 25.11.2021 between the petitioner and Respondent No.2, cannot be a basis to outrightly say that the Maintenance Petition is not maintainable, especially when it includes the maintenance of the child.

37. The Petitioner has asserted that the Respondent No.1 having voluntarily taken a divorce by *Talaq-e-Khula*, is not entitled to any maintenance under Section 125(4) Cr.P.C. However, it is pertinent to observe that once a wife is divorced, she is per se entitled to maintenance under Section 125 Cr.P.C irrespective of the ground or the manner in which the divorce is taken. This contention of the Petitioner is, therefore not tenable.



38. The Petitioner has further contended that having entered into the Settlement Agreement dated 25.11.2021 voluntarily; the Respondent No.1 is now *estopped* from filing the Petition. This contention also involves mixed question of fact and law, as has been submitted by the Petitioner himself that if the Respondent No.1 is able to prove *changed circumstances*, she may get entitled to maintenance. Moreover, the rights of the child to claim maintenance from the father, cannot be rejected at the outset.

39. The Petitioner has next contended that as per the terms of the Settlement dated 25.11.2021, he was entitled to visitation rights which were being denied to him and that he was permitted to meet the child only occasionally.

40. Pertinently, the Maintenance Petition got filed on 15.09.2023 and immediately thereafter, the Petitioner gave two legal Notices dated 29.09.2023 and then on 01.11.2023 claiming his custody rights. Not only this, he thereafter, filed the *Guardianship Petition No.115/2023* on 21.12.2023. These Notices and the Guardianship Petition have been filed after the Maintenance Petition was filed and by Respondent No.1, which leaves much to be said. In case the Petitioner is not being allowed effective meeting rights or the child is being tutored, it is an absolutely different aspect pertaining to the Guardianship and is of a little significance and relevance while considering the Maintenance Petition.

41. Ld. Counsel for the Petitioner has vehemently argued that without determining the question of maintainability of the Maintenance Petition, the matter could not have been listed for Interim Maintenance. However, as referred by the Ld. Counsel for Petitioner, in the case of Omar Abdullah (supra) it had been observed that the maintainability of the Petition under



Section 125 Cr.P.C and question of award of Interim Maintenance are inseparable. In order to award Interim Maintenance, the Court concerned shall first arrive at a finding as to whether the husband has neglected or refused to give maintenance to the wife and whether the wife was unable to maintain herself. Therefore, the question of grant of maintenance can be determined only after the determination of maintainability of the Petition under Section 125 Cr.P.C.

42. From these observations itself, it is evident that the learned Family Judge before granting any *Interim Maintenance*, would have to answer the pertinent question of whether the husband has neglected or refused to give maintenance to the wife and whether she is unable to maintain herself. As has been submitted, the matter is listed for Interim Maintenance and these questions would naturally be answered by the Ld. Judge before granting or declining the Interim Maintenance.

43. Significantly, the Petition has been pending for the last two years and the Affidavits of Income have also been filed by the parties, but this Petition for quashing of Maintenance has been filed only when the matter got listed for arguments on Interim Maintenance.

44. It can be seen that the issues have been raised essentially on whether the Respondent in the given circumstances is entitled to any maintenance essentially has to be determined on the facts of the case and involves mixed question of fact and law. It cannot be overlooked that the maintenance has also been claimed for the child, which again needs to be adjudicated on the facts and circumstances of this case. Therefore, it is concluded that this is not a fit case for quashing of the Maintenance Petition. However, the Petitioner is at liberty to raise all these contentions before the Ld. Judge,



Family Court while addressing arguments on the Interim Maintenance Application.

45. The Petition is accordingly, disposed of with the observation that the discussion made herein, is without prejudice to the merits of the case.

46. The Petition along with the pending Applications, are accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 23, 2025

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