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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.09.2025*+ **CRL.REV.P.(MAT.) 73/2024 & CRL.M.A. 32341/2024**

.....Petitioner

Through: Mr. K.S. Negi, Mr. Nikhil Rajput, Mr. Pranav Jagati and Mr. Piyush Negi, Advocates alongwith Petitioner.

versus

.....Respondent

Through: Mr. Shaharyar Ali, Advocate alongwith Respondent

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

1. This revision petition has been preferred by the petitioner, assailing the order dated 03.09.2024 [hereafter '*impugned order*'], passed by the learned Judge, Family Courts, South District, Saket, New Delhi [hereafter '*Family Court*'], by way of which the application (Misc Crl. 9/2018) filed by the petitioner under Section 127 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], seeking enhancement of amount of maintenance, came to be dismissed.

2. The brief facts of the case, as disclosed in the petition, are that



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the marriage between the petitioner-wife and the respondent-husband was solemnized on 28.04.1990. No child was born from the wedlock. The petitioner alleges that she was subjected to physical and mental harassment by the respondent and his family, including on account of dowry demands. It is her case that the respondent deserted her on 07.02.1992 and began residing with his parents. The record reveals that the respondent had filed a petition for restitution of conjugal rights against the petitioner, which was dismissed on 16.05.1997. He thereafter instituted divorce proceedings (HMA 787/2001) and in the said petition, the concerned Court had granted interim maintenance of Rs.3,000/- per month to the petitioner under Section 24 of the Hindu Marriage Act, 1955 [hereafter '*HMA*']. The divorce petition, however, was dismissed on 21.03.2011.

3. Meanwhile, the petitioner-wife had also filed a petition under Section 125 of the Cr.P.C. (CC No. 86/1/4.4.2008; New number: Maintenance Petition 65/2011) before the concerned Family Court. Vide order dated 15.10.2009, she was granted interim maintenance of ₹5,000/- per month, and the respondent's challenge to the said order before the learned Sessions Court was rejected. Subsequently, *vide* judgment dated 07.09.2012, the learned Family Court allowed her petition under Section 125 of the Cr.P.C. and directed the respondent to pay maintenance of ₹10,000/- per month from the date of filing of the petition i.e. 04.04.2008, along with litigation expenses of ₹15,000/-. The respondent's challenge to this judgment by way of Criminal Revision Petition No. 151/2013 was dismissed by this Court



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on 26.07.2013, both on merits and for being barred by limitation.

4. The petitioner was thereafter constrained to file Execution Petitions for recovery of arrears of maintenance, pursuant to which the respondent's bank account was attached for realization of the maintenance amount. It is the petitioner's case that during this period she was largely supported by her father from his limited savings, but after his demise in 2017 she has been left completely dependent for meeting her daily and medical expenses. The respondent retired from service in 2017 but continued in employment on extension for a further period of two years.

5. On 13.09.2018, the petitioner moved an application under Section 127 of the Cr.P.C. before the learned Family Court seeking enhancement of the maintenance awarded *vide* judgment dated 07.09.2012. It was averred in the said application that the respondent had been promoted from post of TGT to PGT and his salary had increased, especially after implementation of 7th Pay Commission. Further, the petitioner's father had also passed away, who earlier used to take care of her to some extent. It was also averred that she was suffering from Arthritis, Thyroid, etc. and was spending a substantial amount of money on her medical check-ups and treatment, and thus, in view of changed circumstances, it was prayed that the amount of ₹10,000/- per month awarded as maintenance in the year 2012 be now enhanced to ₹30,000/- per month.

6. In the meantime, she also filed Execution Petition No.



Ex.79/2019 for realization of arrears of maintenance, along with applications seeking attachment of the respondent's pension and for issuance of her husband's CGHS card to enable her medical treatment. On 03.06.2024, the learned Family Court disposed of the Execution Petition, observing that the petitioner could not indicate any remaining dues, and therefore it was presumed that no arrears were outstanding. However, the applications filed by the petitioner in the said Execution Petition, including the one relating to a CGHS card, were not adjudicated.

7. After evidence was led and arguments were addressed by both parties, the learned Family Court, *vide* the impugned order dated 03.09.2024, dismissed the petitioner's application under Section 127 of the Cr.P.C. The relevant findings of the learned Family Court are as under:

"26. However considering the record, this court is of the considered opinion that there is no substantial change in the earning of the respondent. The gross salary of the respondent at the time of passing of order u/s 125 Cr.P.C. on 07.09.2012 was Rs. 45,455/- per month and now his pension is Rs. 40,068/- per month. The petitioner admitted in her cross-examination that she does not have any proof regarding earning of respondent through private tuitions. Therefore, there is nothing on record to show the enhanced income of the respondent.

27. The petitioner has placed on record the medical bills and prescription papers of her teeth ailment and treatment by Govt. Hospital which is not showing any Substantial expenses having been incurred by her which may require separate amount as maintenance.

28. The petitioner also admitted in cross-examination that she has made one fixed deposit of Rs. 4 lacs and she also admitted that she has Rs. 2,09,724/- in her bank account.



29. It is also stated that the respondent is an old person and his health is deteriorating day by day and requires a person to look after him on salary basis or permanent basis. The respondent is ready to bear all the expenses of the petitioner if she joins him.

30. The change of circumstances referred to in sub section (1) of Section 127 Cr.P.C.. is a comprehensive phrase which also includes change of circumstances of husband. The amount of maintenance once fixed under section 125(1) Cr.P.C. is not something which can be taken to be a blanket liability for all times to come. It is subject to variation, on both sides. It can be increased or decreased as per the altered circumstances. Further, at the time of passing of order, the respondent was employed and his gross salary was Rs. 45,458/- and now he has retired and drawing a pension of Rs. 40,068/-. Therefore this circumstance cannot form the basis for enhancing the amount of maintenance under sub-section (1) of Section 127 Cr.P.C.

31. ...Accordingly, I hold that the petitioner has been unable to prove that due to changed circumstances, she is entitled for enhanced maintenance from Rs. 10,000/- to Rs. 30,000/-."

8. The petitioner, being aggrieved by the aforesaid order, has approached this Court by way of the present petition. The learned counsel appearing for the petitioner contended that the impugned order is incorrect, illegal, and improper as the learned Family Court failed to consider that the maintenance awarded to the petitioner under Section 125 of Cr.P.C. had been fixed on the basis of the respondent's then net salary of approximately ₹28,000/-, whereas at the time of passing the impugned order his monthly income (pension) had risen to more than ₹40,000/-. It was further argued that the learned Family Court overlooked the fact that apart from his salary/pension, the respondent is also enrolled with the Bar Council of Delhi and earns from his practice as an advocate. It was submitted that the petitioner is wholly dependent upon the respondent for her



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sustenance, as her father, who had earlier supported her, passed away in 2017 and she does not share cordial relations with her brothers. The learned counsel further urged that the fixed deposits and bank balance standing in the petitioner's name were arranged by her late father, and after his death, these minimal savings constitute her only financial security for urgent medical and other exigencies. It was also argued that the petitioner suffers from acute arthritis and other ailments requiring constant treatment, yet the respondent has not even provided her with a CGHS/DGHS card to enable her medical care in government hospitals.

9. The learned counsel for the petitioner further submitted that the Family Court failed to appreciate that the respondent had received substantial retiral benefits upon his superannuation from the GNCTD, Department of Education, and that he continues to reside in his own house without any financial liability. It was emphasized that the petitioner, now about 60 years of age, is in deteriorating health, and in view of the changed circumstances and financial conditions of both parties, the prayer for enhancement of maintenance ought to have been allowed. It was lastly contended that the maintenance amount of ₹10,000/- per month was fixed in 2012, and in the past twelve years, both the income of the respondent and the expenses of the petitioner have significantly increased. Accordingly, it was prayed that the present petition be allowed and the impugned order be set aside.

10. On the other hand, the learned counsel appearing for the respondent argued that the respondent is a senior citizen, aged about



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70 years, who is now a retired person living alone and in need of care and support at this stage of life. It was submitted that the respondent had retired on 31.07.2017, and therefore his financial capacity is limited. The learned counsel further contended that the petitioner has not produced any proof of incurring substantial medical expenses, particularly when she has been availing treatment at government hospitals where both consultation and medicines are provided free of cost. It was further urged that the respondent has been continuously paying maintenance to the petitioner since 1994, i.e., for the last 32 years. However, despite receiving maintenance throughout, the petitioner neither agreed to resume cohabitation with the respondent nor sought dissolution of the marriage.

11. It was argued on behalf of the respondent that the learned Family Court rightly observed that the petitioner was maintaining a bank account with a balance of ₹2,09,724/- and had fixed deposits worth ₹4,00,000/-, which clearly indicate that she is not in financial distress. The learned counsel also submitted that the respondent has been regularly complying with the order dated 07.09.2012 and paying maintenance of ₹10,000/- per month without default, and hence the petitioner is not facing any financial hardship in sustaining herself. It was, therefore, contended that there is no infirmity in the impugned order, which has been passed after due consideration of the material on record, and the present petition deserves to be dismissed.

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



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13. Firstly, this Court notes that the petitioner-wife was awarded maintenance of ₹10,000/- per month *vide* order dated 07.09.2012, wherein it was observed as under:

“12. The salary certificate of the respondent is of June, 2012 *vide* which, the gross salary is Rs. 45,455/- and net salary, is Rs. 28,705/- per month. The respondent states that he is having the responsibility of his nephew but no adoption deed has been placed on record.

13. Looking into the facts and circumstances and needs of the petitioner, I am of the opinion that it would be just and appropriate to award a of Rs. 10,000/- per month to petitioner Smt. Krishna as maintenance to be paid by the respondent the date of filing of the petition i.e. 04.04.2008 of the case sum from The respondent is further directed to pay Rs.15,000/- to the petitioner towards litigation expenses.”

14. The said order recorded that the gross salary of the respondent was ₹45,455/-, while his net salary was ₹28,705/-. However, the order does not specify the nature of deductions made from his salary, nor whether such deductions were statutory and mandatory. This aspect assumes importance in light of the settled position of law that only statutory and compulsory deductions can be excluded for determining the income of the husband for the purpose of computing maintenance. Reference in this regard may be made to ***Nitin Sharma v. Sunita***: 2021 SCC OnLine Del 694 and ***Chanchal Verma v. Anurag Verma***: 2022 SCC OnLine Del 2993.

15. However, when the Family Court passed the order in 2012, these guiding principles had not yet been crystallized. Thus, it remains unclear as to what deductions were considered while assessing the respondent's income as ₹28,705/- despite his gross



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salary being ₹45,455/-. Nevertheless, since the said order was never assailed by the petitioner-wife and was in fact upheld by a Coordinate Bench of this Court in Criminal Revision Petition No. 151/2013 filed by the respondent-husband, this Court cannot sit in revision over that determination. The order dated 07.09.2012 has attained finality and must rest as it stands.

16. What, however, falls for determination in the present case is the legality of the impugned order passed in 2024. This order is required to be tested against the prevailing judicial precedents and the well-settled principles governing maintenance and its enhancement under Section 127 of the Cr.P.C. As a starting point, Section 127(1) of the Cr.P.C. is set out below:

“127. Alteration in allowance –

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be...”

17. The scope and object of this provision were considered by this Court in *Sarita Bakshi v. State: 2022 SCC OnLine Del 1707*, where it was observed as under:

“13. The objective is to ensure that fair share according to changed income or changed circumstances is granted to the wife. In case the income of husband has increased or decreased, the amount of maintenance has to be modified accordingly. It is to ensure that if income has decreased, the



husband is not put to any hardship. In case the income has increased, it ensures that wife receives fair share according to increased income of husband. Similarly, income of wife can also be considered if it accrues after grant of maintenance under Section 125 Cr.P.C. The assessment and apportionment of the maintenance has to be done as per the Judgment of *Rajnesh v. Neha*, (2021) 2 SCC 324 while deciding maintenance under Section 125 Cr.P.C.”

18. This Court in *Sarita Bakshi v. State* (*supra*) also expounded upon the expression “change in circumstances” employed in Section 127 of the Cr.P.C., and explained its amplitude in the following terms:

“Change in circumstance in context of Section 127 of Cr.P.C.

16. The term ‘*change in circumstances*’ as referred to in Section 127(1) not only include a change in the financial circumstances of the husband but may also include other circumstantial changes in the husband or wife's life which may have taken place since the time maintenance was first awarded. The quantum of maintenance fixed by a court does not become unalterable in perpetuity. The same may be altered and is subject to increase or reduction by the courts, pursuant to an alteration in the circumstances of either party. Thus, Rise in the income of the husband can, therefore, be a valid change of circumstances falling within the ambit of Section 127 sub-section (1) of Cr.P.C.

17. In furtherance, it is vital to mention that the circumstances contemplated under Section 127 (1) include the financial and other circumstances of not only the husband but also will extend to the change in financial and other circumstances of the wife. It may therefore be concluded that increase in the income of the husband becomes a significant criterion to alter maintenance for the wife.

18. Further change of circumstances may not only be in terms of financial capability but also added financial burden on the petitioner. It may also be in terms of sufficient income accruing to the wife to maintain herself or both of them being relieved of



a financial burden.”

19. The learned Family Court, in the impugned order, also rightly referred to the decision of the Hon’ble Supreme Court in ***Bhagwan Dutt v. Kamala Devi: (1975) 2 SCC 386***, wherein it was held that the word “circumstance” must necessarily include financial circumstances, and therefore, the inquiry under Section 127 of the Cr.P.C. must extend to changes in financial conditions of the parties.

20. However, it is apparent from the impugned order that such an enquiry under Section 127 of the Cr.P.C. was correctly carried out by the learned Family Court.

21. The learned Family Court proceeded on the reasoning that since the gross salary of the respondent at the time when maintenance of ₹10,000/- was fixed in 2012 was ₹45,458/-, and his pension at the time of the present proceedings was only ₹40,068/-, there was no change in his financial circumstances warranting any increase in maintenance. This approach, in the opinion of this Court, is flawed. What has been completely overlooked is that in 2012, the net income of the respondent was taken to be only ₹28,705/- and on the basis of this net income, maintenance of ₹10,000/- was fixed in favour of the petitioner. In contrast, the admitted pension of the respondent today is ₹40,068/- per month, which is a clear increase, and no deductions were to be made from this amount. Therefore, the comparison drawn by the Family Court was erroneous, as it failed to appreciate that the income against which maintenance was assessed in 2012 was lower



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than the present pensionary income of the respondent.

22. This Court had also noted that the petitioner's application for being provided a copy of the CGHS card had not been decided by the Court below while disposing of Execution Petition No. Ex.79/2019, despite the respondent being a Government servant and the petitioner continuing to be his legally wedded wife. Accordingly, this Court, during the course of proceedings and hearing of the present petition had directed the respondent to produce the CGHS card and hand over a copy thereof to the petitioner, so that she could avail the benefit of free medical treatment. Such a direction, in fact, caused no prejudice to the respondent, since the medical facilities and reimbursements under the CGHS/DGHS scheme are extended by the State as per law.

23. It is, however, deeply concerning that despite the petitioner continuing to be legally wedded to the respondent, and having been held entitled to maintenance by the Courts, the respondent had her name deleted from his CGHS card. Accordingly, during the course of proceedings before this Court, the respondent stated that he required certain documents to enable her re-inclusion, which were provided to him in Court itself.

24. The learned Family Court's observation that since the petitioner was getting treatment in government hospitals, she was not incurring substantial expenditure on medicines or treatment, and therefore did not require a CGHS card, is also unsustainable. The entitlement to a CGHS/DGHS card is a valuable right flowing from



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the marital relationship and cannot be denied merely because the wife seeks treatment in a government hospital. The card provides access to several other facilities, including specialized consultations and emergency medical assistance, which become indispensable in old age. It is therefore expected that the respondent will ensure that the petitioner's name is restored on his CGHS card, and that a copy thereof is handed over to her at the earliest, and not beyond a period of two months from the date of this order.

25. Both the petitioner and the respondent are now senior citizens, being above 60 years of age. Though they have been living separately for nearly three decades, and despite the respondent's petition for dissolution of marriage having been dismissed, they continue to remain legally married – if not in companionship, then at least in the eyes of law and on judicial record. The petitioner, throughout, has remained financially dependent upon the respondent. Her application for enhancement of maintenance, therefore, had to be considered in light of the principles governing Section 127 of the Cr.P.C., prevailing judicial precedents, the present financial circumstances of the parties, and the undeniable impact of inflation and the rising cost of living.

26. The maintenance fixed in 2012 at ₹10,000/- per month, which was found sufficient at that time against the respondent's net salary of ₹28,705/-, cannot by any stretch of reasoning be said to remain adequate in the year 2025, when the respondent is drawing a pension of ₹40,068/-. The rise in his income coupled with the significant



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increase in the cost of living constitutes a clear change in circumstances warranting enhancement of the amount of maintenance.

27. This Court is however not unmindful of the fact that the respondent-husband is a senior citizen, surviving on his limited post-retirement resources. At the same time, the petitioner, being the legally wedded wife, is also entitled to a fair amount which would enable her to maintain herself with dignity. Thus, while considering the respondent's advanced age and financial position, a modest enhancement in maintenance would strike a just balance between the competing equities of both parties.

28. Accordingly, this Court holds that the petitioner is entitled to receive maintenance at the enhanced rate of ₹14,000/- per month from the respondent, payable with effect from the date of filing of the present revision petition. The respondent is directed to clear all arrears of maintenance at the enhanced rate within a period of six weeks from today.

29. The present petition alongwith pending application, if any, is accordingly disposed of in above terms.

30. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
SEPTEMBER 01, 2025/A