

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

% **Reserved on : 25<sup>th</sup> February, 2022**  
**Pronounced on: 13<sup>th</sup> April, 2022**

+ **CRL.REV.P. 417/2021, CRL.M.A. 19829/2021 &**  
**CRL. M.A.86/2022**

**SH PRADEEP KUMAR SHARMA** ..... Petitioner

Through: Ms. Annu Narula, Mr. Vishal  
Singh Mr. Ravi Kumar and Mr.  
Shiva Chauhan, Advocates

versus

**SMT DEEPIKA SHARMA** ..... Respondent

Through: Mr. M. Shamikh, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

**CHANDRA DHARI SINGH, J.**

1. The instant criminal revision petition has been preferred by the petitioner under Section 397/ 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") seeking setting aside of order and judgment dated 31<sup>st</sup> July, 2020 passed by the learned Additional Principal Judge, Family Court, Tis Hazari Courts, Delhi in CC No. 6834/2016 (MT No. 800/2014).

### **BRIEF BACKGROUND**

2. The instant petition has been filed in the aftermath of matrimonial discord between the parties and the brief background of the same is discussed hereinunder:-

- a. The marriage between the petitioner and the respondent was solemnized on 9<sup>th</sup> April, 2000 according to Hindu rites and ceremonies and two children were born out of the wedlock.
- b. Due to several disputes amongst the parties, several criminal and civil cases, complaints and FIRs were filed by both the parties against each other. The following table indicates some of the cases filed and the fate during the course of the disposal.

| <b>Sr. No.</b> | <b>Case No.</b>        | <b>Filed By</b> | <b>Purpose for Filing</b>                                | <b>Present status</b>                                                     |
|----------------|------------------------|-----------------|----------------------------------------------------------|---------------------------------------------------------------------------|
| 1.             | C.C. No. 6834/2016.    | Respondent      | For maintenance under Section 125 Cr.P.C.                | Allowed by impugned order dated 31.07.2020.                               |
| 2.             | In C. C. No. 6834/2016 | Respondent      | For interim maintenance.                                 | Rejected vide order 15.05.2012 however, granted Rs. 6,000/- to minor son. |
| 3.             | C.C. No. 60/2010.      | Respondent      | Filed under the Domestic Violence Act, 2005 (hereinafter | Withdrawn on 14.07.2010.                                                  |

|    |                                                  |                         |                                                                            |                                                                         |
|----|--------------------------------------------------|-------------------------|----------------------------------------------------------------------------|-------------------------------------------------------------------------|
|    |                                                  |                         | “DV Act”) alleging that the petitioner is suffering from Venereal Disease. |                                                                         |
| 4. | Matrimonial Case No. 11/2011.                    | Petitioner              | For decree of divorce.                                                     | On 01.03.2017, the marriage stood annulled by decree of divorce.        |
| 5. | N/A                                              | Respondent & her mother | Complaint of theft of jewellery against the petitioner.                    | As per the statement of the mother the jewellery was in her possession. |
| 6. | Complaint before Additional Director General BSF | Respondent              | N/A                                                                        | Resolved by an undertaking of the respondent.                           |
| 7. | F.I.R No. 157/06                                 | Respondent              | Under Section 498A/406/323 of the Indian Penal Code,                       | The Superintendent filed closure report and                             |

|     |                                 |            |                                                                                                                                               |                                                                                             |
|-----|---------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
|     |                                 |            | 1860<br>(hereinafter<br>"IPC")                                                                                                                | recommended<br>for filing case<br>under Section<br>211 of IPC<br>against the<br>respondent. |
| 8.  | Civil Misc. Case<br>No. 04/2007 | Petitioner | For dissolution<br>of marriage by<br>a decree of<br>divorce.                                                                                  | Withdrawn in<br>order to give<br>his marriage a<br>second chance.                           |
| 9.  | C.C. 312/2017                   | Respondent | Filed under<br>Section<br>18/19/22 of the<br>DV Act as a<br>counter for<br>Civil Misc.<br>Case No.<br>04/2007 (filed<br>by the<br>petitioner) | Withdrawn                                                                                   |
| 10. | C.C. No. 60/2010                | Respondent | Filed under<br>Section<br>18/19/20/21 of<br>the DV Act.                                                                                       | Dismissed as<br>withdrawn.<br>Vide order<br>dated<br>14.07.2010.                            |

|     |                                            |            |                                                                                                             |                                                                                                                                                                      |
|-----|--------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11. | FIR 271/2010                               | Petitioner | For theft of his wallet. (Rs. 1,10,000/- were withdrawn by the respondent as shown in the CCTV footage)     | Crl. Trial No.1769/2010 was registered under Section 380, 417 and 419 IPC and the respondent was granted bail vide order dated 16.07.2010. Respondent was acquitted. |
| 12. | Complaint No. PK/PF/Misc./SHQ. AZL/2011/04 | Petitioner | Complaint before Child Welfare Committee, Aizawl filed against the respondent as she thrashed her daughter. | Custody of daughter was granted to the petitioner as the respondent was inflicting emotional mental and physical abuse.                                              |
| 13. | C.C. No. 04/2012                           | Respondent | Against the petitioner. His father and                                                                      | Dismissed by Metropolitan Magistrate on                                                                                                                              |

|     |                               |                                                            |                                                           |                                                                                              |
|-----|-------------------------------|------------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------|
|     |                               |                                                            | brother under<br>Section<br>18/19/20/21 of<br>D.V. Act.   | account of<br>non-<br>appearance and<br>non-<br>prosecution of<br>the case of<br>respondent. |
| 14. | FIR No. 107/2012              | Respondent                                                 | Under Section<br>406/ 498A IPC                            | Vide order<br>dated<br>02.09.2016 the<br>petitioner was<br>discharged.                       |
| 15. | Police Complaint              | filed by<br>Master<br>Puskar<br>against the<br>respondent. | To leave the<br>custody of<br>respondent.                 | Custody was<br>given to<br>grandfather<br>P.C Sharma                                         |
| 16. | Execution Case<br>No. 41/2021 | Respondent                                                 | For execution<br>of impugned<br>order dated<br>31.07.2020 | Maintenance<br>was granted<br>vide impugned<br>order.                                        |

- c. The instant petition has been filed against the Order of the learned Additional Principal Judge passed in CC No. 6834/2016, filed by the respondent under Section 125 of the Cr.P.C., whereby the learned Additional Principal Judge granted the maintenance of Rs.

6000/- per month from 14<sup>th</sup> February, 2012 to 28<sup>th</sup> February, 2013,  
Rs. 6000/- per month from 1<sup>st</sup> April, 2014 to 31<sup>st</sup> December, 2015,  
Rs. 7000/- per month from 1<sup>st</sup> January, 2016 to 31<sup>st</sup> July, 2020 and  
Rs. 15,000/- per month from 1<sup>st</sup> August, 2020 till the life of the  
respondent or her remarriage.

d. The petitioner is impugning the said Order dated 31<sup>st</sup> July, 2020.

### **SUBMISSIONS**

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned Order passed by the learned Additional Principal Judge is patently wrong, perverse and hence, liable to be set aside. Learned Additional Principal Judge failed to appreciate the evidence, other material on record and the provision under Section 125 of the Cr.P.C. while passing the impugned Order. It is submitted that the respondent was abundantly capable of maintaining herself and was earning sufficient income for the purpose, and the fact of her employment during the pendency of the case was also conceded by her in her cross-examination. Since, the respondent herself had sufficient means to maintain herself, the application under Section 125 of the Cr.P.C. was not maintainable at the first instance. It is submitted that the burden of proving the fact that the respondent had sufficient means was discharged when the respondent was cross-examined and it was established that she was employed, working and earning. Moreover, the respondent alleged that she was being maintained by her father and brother, however, during his cross-examination, the brother of the respondent Mr. Rajesh Juneja was not able to prove the case of the respondent that she was living with her parents and was being maintained by them. In fact, the respondent in her

cross-examination on 9<sup>th</sup> September, 2016 admitted that she was disowned by her father and was staying away from him. Hence, it is submitted that the onus of proving that the respondent did not have sufficient means to maintain herself was shifted upon her.

4. It is submitted that the respondent left the company of the petitioner without any reason and started living separately. Learned Additional Principal Judge failed to consider the import of the term “Sufficient Reason” contained in Section 125(4) Cr.P.C. Further, the documents exhibited as PW-1/D-14 and PW-1/D-15 that categorically established that the respondent ran away from the company of the petitioner not on account of any action or conduct of the petitioner but to escape from the prosecution initiated by the petitioner was not appreciated by the learned Additional Principal Judge.

5. Learned counsel for the petitioner submitted that the learned Additional Principal Judge did not consider the misconduct, misdemeanors, abhorrent acts and actions of the respondent while passing the impugned Order. The conduct of parties is a relevant factor to be considered during a criminal proceeding and hence, the criminal conduct of the respondent could not have been excused. It is submitted that not only the petitioner but also the respondent’s ex-husband, neighbours, employees, her son and daughter and her own parents have all been aggrieved by the respondent’s behaviour and cruelty.

6. Learned counsel for the petitioner submitted that complaint dated 13<sup>th</sup> July, 2015, exhibited as RW-1/27, made by Master Pushkar and the Police report dated 15<sup>th</sup> July, 2015 exhibited as RW-1/29 on the said complaint which established that the Master Pushkar was beaten and

inflicted with injuries and that he had to run away from the Respondent and seek Police help to save himself from the atrocities inflicted upon him by his mother was disregarded while passing the impugned judgment and order.

7. It is further submitted that while passing the impugned order and judgment the question of adultery against the respondent was wrongly appreciated. The son of the parties, Master Pushkar, by way of his affidavit of evidence very clearly and categorically stated that he along with his mother started living together with a person, Pankaj Arya, at Panchkula, Haryana since 2014 and that the Respondent and Mr. Pankaj Arya were staying together as husband and wife.

8. It is submitted that in light of the grounds set out above, the impugned order and judgement dated 30<sup>th</sup> July, 2015 is liable to be set aside.

9. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the same is liable to be dismissed for the reason of it being devoid of any merit.

10. It is submitted that the ground of adultery alleged by the petitioner against the respondent was an afterthought. The ground of adultery was taken on the behest of the son of the parties, Master Pushkar, however, it is submitted that the son had been in custody of the petitioner since 2015 and if he had a reason to believe that the respondent was living in adultery, he would have brought the fact in light at the first instance, however, the same was not the case. The respondent was not even cross-examined to the point of adultery. It is submitted that there was no evidence to prove the allegation of adultery against the respondent.

11. It is submitted that the respondent filed proceedings under the DV Act, however, she withdrew the same under the pressure of the petitioner on 14<sup>th</sup> July, 2010 and on 15<sup>th</sup> July, 2010 the petitioner got the respondent arrested in a case of theft, where ultimately the respondent was acquitted on 27<sup>th</sup> May, 2016.

12. Learned counsel appearing on behalf of the respondent submitted that the instant petition challenging the impugned judgment and order dated 30<sup>th</sup> July, 2015 has been filed only after the order for attachment of salary of the petitioner was passed on 26<sup>th</sup> October, 2016 in Execution Case no. 41/2021 by the learned Trial Court.

13. It is submitted that the petitioner is a commandant in BSF and his salary till the month of November 2021 is Rs. 2,41,670/- per month, as per the salary slip of November 2021, and now the salary of the petitioner has increased from the month of January 2022 and he is getting over Rs. 2.5 lakhs per month.

14. It is submitted that there is no error in the impugned order passed by the learned Additional Principal Judge granting maintenance to the respondent and the instant petition has failed to establish any substantial ground for challenging the same. Accordingly, the petition is liable to be dismissed for being devoid of any merit.

### **FINDINGS AND ANALYSIS**

15. The law is abundantly clear on the issue of grant of maintenance under Section 125 of the Cr.P.C. The said provision lays down as follows:-

*“125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means*

*neglects or refuses to maintain—*

*(a) his wife, unable to maintain herself, or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself,*

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:*

*Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:*

*[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct: Provided also that an application for the monthly allowance for the interim maintenance and expenses*

*of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]*

*Explanation.—For the purposes of this Chapter,—*

*(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;*

*(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*

*[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]*

*(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:*

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:*

*Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her,*

*and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.*

*Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.*

*(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*

*(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.”*

16. The grant of maintenance by a husband towards his wife, children and parents is subject to the conditions laid down in the provision. With regard to maintenance to wife, it is evident that a husband must provide maintenance as awarded to wife when she is unable to maintain herself, and only if the exceptions as mentioned above are existing, can the husband escape his duty of paying maintenance.

17. In the instant case, the petitioner is challenging the Order of maintenance on the grounds of cruelty, adultery, desertion without reason as well as the fact that the wife was capable enough of maintaining herself. The learned Additional Principal Judge has gone into deep,

evaluative and comprehensive appreciation of evidence and facts on record while passing the impugned Order.

18. The petitioner has pleaded cruelty as a ground for the wife not being entitled for the maintenance and has elaborately submitted the contentions for alleging cruelty and harassment against the respondent. The law emanating from various precedents of the Hon'ble Supreme Court and various High Courts establishes the position of payment of maintenance holding that the ground of cruelty does not disentitle the wife of her right to maintenance. Even in cases where divorce is granted on the ground of cruelty, Courts have awarded permanent alimony to the wife and there is no bar of cruelty in the right of the wife to claim maintenance.

19. Therefore, in light of the above, the ground of cruelty and harassment do not stand ground for non-payment of the maintenance amount.

20. Secondly, the ground of adultery has been taken by the petitioner. The petitioner made several arguments here, as well as before the Court below, to allege that the respondent committed adultery with one Pankaj Arya. Petitioner relied upon school records of their son, Master Pushkar, and his statement during his examination. It was not the case of the petitioner that the respondent was living in adultery, neither did he add the ground to his pleadings nor was the respondent put to notice about the alleged adultery. Allegations were made by the petitioner, before the learned Additional Principal Judge, that the respondent named Mr. Pankaj Arya to be appointed as a local guardian of her son in his school in Panchkula, Chandigarh. He further alleged that the factum of the adultery

on part of the respondent was brought into light by the son. However, by the statements of the son, during his examination, the petitioner failed to establish that the respondent was living with Mr. Pankaj Arya, in adultery, and he was not even cross-examined to confirm his version. The ground was brought about at a belated stage and the respondent was not cross-examined on the question of adultery. It is also pertinent to consider that the son was not an independent witness and was living with the petitioner at the time of recording of his evidence. Hence, keeping in view the same, learned Additional Principal Judge eliminated the ground taken by the petitioner before it in relation to the allegation of adultery by the respondent.

21. The petitioner relied upon Section 125 (4) of the Cr.P.C. to contend that the respondent is not entitled to maintenance since she was living in adultery with Mr. Pankaj Arya. To give force to this argument the petitioner had to follow the mandate of the law with regard to the requisites under Section 125 (4) of the Cr.P.C. and even the burden of proof for proving adultery against the respondent also lied upon him.

22. The codified law and judgments of various High Courts settle the position with respect to bar of adultery for grant of maintenance in favour of the wife. The law mandates that in order to attract the provision under Section 125(4) of the Cr.P.C. the husband has to establish with definite evidence that the wife has been living in adultery, and one or occasion acts of adultery committed in isolation would not amount to 'living in adultery'. The concept of 'living in adultery' has been defined by the various Courts time and again.

23. The Bombay High Court in ***Pandurang Bakru Nathe vs. Leela Pandurang Nathe & Anr***, 1997 SCC OnLine Bom 264, made the following observations with regard to the provision under Section 125 (4) of the Cr.P.C.:-

*“11. Section 125(4) Cr. P.C. reads thus:*

*“125(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or it, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”*

*12. A perusal of the said provision would show that a wife who is living in adultery would not be entitled for maintenance.*

*13. In my view the expression “living in adultery” in the sense in which it is used in section 125 Cr. P.C. connotes a wife living perpetually or semi perpetually as a wife with a male, other than her husband and having sexual relations with him. Sporadic instances of sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression ‘living in adultery’.*

*14. Laymen invariably and men of law often treat the concept of wife living in adultery as synonymous with a wife occasionally committing adultery. The two are distinct and if the distinction is overlooked as it has been by the trial Court, the result would be gross miscarriage of justice.*

*15. It is only a wife living in adultery who is not entitled for maintenance under section 125(4) Cr.*

*P.C.; a wife who is occasionally guilty of committing adultery would not forfeit her claim for maintenance under the said section.*

*16. I am fortified in my view by the observations of Tekchand, J., in the decision rendered in (Ramsaran v. Soman Wati) 1964 (1) Cri. L.J. 483 (Punj). The said observation which are found at page 486 read thus:*

*‘Living in adultery’ is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expression ‘living in adultery’. It suggests a man and the wife of another living continually as husband and wife. An adulterous intercourse is a condition contemplating repetition of extra marital relationship when opportunity offers itself. It is a condition of cohabitation in contradistinction to occasional acts. The wife forfeits her right to be maintained on proof of repeated adulterous meetings.”*

*17. It would be pertinent to point out that the said observations were approved by Maheswaran, J., in the case of (Kasthuri v. Ramasamy)<sup>2</sup>, reported in 1979 Cr. L.J. 741. Maheswaran, J., observed as under:*

*“The term ‘living in adultery’ has now been consistently held to mean an outright adulterous conduct when the wife lives in a quasi-permanent union with the man with whom she is committing adultery.”*

*18. It is bearing in mind the above connotation*

*expression “living in adultery” that it has to be decided whether the trial Court was justified in holding that since respondent No. 1 was living in adultery she had forfeited her claim for maintenance. My answer is in the negative.*

24. In ***Sandha v. Narayanan***, 1999 SCC OnLine Ker 64, the Kerala High Court observed as under:

*“8. The phrase ‘living in adultery’ used in Sec. 488(4) of the Cr. P.C. 1898 which is akin to Sec. 125(4) of the present Cr. P.C. has been considered by various High Courts in India and have taken the uniform view that living in adultery denotes a continuous course of conduct or living in the state of quasi permanent union with the adulteror. In the decision in Ma Mya Khin v. N.L. Godenho (AIR 1936 Rang. 446) the Rangoon High Court has observed as follows:*

*“Emphasis must be laid upon the words ‘living in adultery’. The words used are not ‘committed adultery’, and there is clearly a great distinction between ‘committing adultery’ and ‘living in adultery’ denotes a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtue would be acts of adultery but would be quite insufficient to show that the woman was ‘living in adultery’, which means, so far as I understand the expression, that she must be living in a state of quasi permanent union with the man with whom she is committing adultery.”*

*9. In the decisions in Lakshmi Ambalam v. Andiammal (AIR 1938 Mad. 66) and Kista Pillai v. Amirthammal (AIR 1938 Mad. 833) the Madras High Court has held that living in*

*adultery is something different from leading an unchaste life and unless the wife is actually living in adultery at or about the time of the application, she is not disentitled to obtain maintenance and continued adulterous conduct and not occasional lapses from virtue constitutes sufficient reason for refusing maintenance.*

*11. In the decision in Nesamma v. Hentri (1961 KLT 964) this court after considering the decisions of several High Courts has held that an occasional lapse from virtue, or immoral conduct long before the time maintenance is applied for does not disentitle a wife for relief under S. 488 of Cr. P.C. 1898 and observed as follows:*

*“The provision that the wife is disentitled to maintenance if she is ‘living in adultery’ means that the husband can withhold his aid only when her adulterous conduct has continued for some length of time suggesting thereby that she has found another albeit less honourable haven from the chill winds of penury.”*

25. In **Ashok v. Anita, 2011 SCC OnLine MP 2249**, the High Court of Madhya Pradesh interpreting the said provision and observed as reproduced:-

*“8. A perusal of the provisions of section 125(4) of Cr. P.C. makes it clear that a stray act of adultery on the part of the wife does not amount to adultery within the meaning of section 125(4) and further does not disentitle the wife to maintenance., The expression “living in adultery” connotes a course of adulterous conduct more or less continuous and not occasional.*

9. In the case of *Alert Jagdeeshwari v. Aleti Bikshaparhy and M.P. Subramaniyam v. T.T. Ponnakshiammaal*, it is observed:—

*“After careful consideration of the law on the point, we are of the opinion that it is not a stray act or two of adultery that dis-entitle a wife from claiming maintenance from her husband; but it is a course of continuous conduct on her part by which it can be called that she is living an adulterious life that takes away her right to claim the said maintenance. It is significant to note that the wording in section 488(4) of the Cr. P.C. is not ‘if she commits adultery’ but ‘if she is living in adultery’. To our mind there is a certain amount of emphasis on the term ‘living’. A mere lapse, whether it is one or two, and a return back to normal life cannot be said to be ‘living in adultery’. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be ‘living in adultery’.”*

26. The High Court of Madhya Pradesh in ***Sukhdev Pakharwal v. Rekha Okhle***, 2018 SCC OnLine MP 1687, has reiterated the position and stated as under:-

*“17. It is settled law that phrase “living in adultery” applies to a continuous adulterous conduct and not a single or occasional lapse from virtue. Solitary Act of adultery or isolated lapse of wife will not disentitle her from claiming maintenance. Unless it is found that at the relevant time, the wife was actually living in adultery, she is not disentitled to claim maintenance. The burden of proof of such adulterous conduct on the part of the wife, is upon the husband.”*

27. Hence, it is found that the law, as interpreted by the High Courts of the Country, evinces that only continuous and repeated acts of adultery and/or cohabitation in adultery would attract the rigours of the provision under Section 125 (4) of the Cr.P.C. In the instant matter, the petitioner before the learned Additional Principal Judge sought the non-payment of maintenance on the ground of adultery under Section 125(4) of the Cr.P.C., however, the grounds taken by him did not establish even prima facie that the respondent was living in adultery. Even the statement by the son of the parties was made by after considerable amount of time of the trial had passed and the respondent had already been cross-examined. Therefore, the second ground of the petitioner also could not be established to contend that the respondent was not entitled to any maintenance.

28. The petitioner has also stated that the respondent had deserted him and had left his company without any reason. It is also a fact that the petitioner filed for divorce on the ground of cruelty, therefore, the learned Additional Principal Judge has rightly observed that since the petitioner had sought divorce on the ground of cruelty, he could not have simultaneously urged that he was aggrieved by the alleged desertion of the respondent.

29. Further, the petitioner, though has taken the ground before the learned Additional Principal Judge that the respondent is capable enough to maintain herself and was employed with Mr. Pankaj Arya, however, he was not able to show that she continues to be employed and has sufficient means to maintain herself.

## **CONCLUSION**

30. The law of maintenance of the country, including Section 125 of the Cr.P.C. are welfare laws that exist to ensure that the wife, children and parents of an able and capable man are not left to become destitute in cases when they themselves are not capable of maintaining themselves. However, the recent practice has become to abuse the process of law and escape the liability that is imposed upon the husband on contentions that hold no ground. The instant matter is also one such case, where the parties have indulged in several complaint and criminal cases with no consequence. The order of maintenance has been challenged despite there being clear mandate of law regarding all the questions led by the petitioner. In light of the mandate of law under Section 125 of the Cr.P.C., the observations of the High Courts, and facts and circumstances of the present matter, this Court is not inclined to allow the instant petition, since the petitioner has failed to show any ground for challenging the order under the revisional jurisdiction of this Court.

31. The learned Additional Principal Judge, while passing the impugned Order has taken into account all facts, circumstances, arguments, material on record as well as the law laid down under the Cr.P.C. and the judgements of various High Courts. All the above made contentions taken before the Court below were well appreciated, consequent to which the reasonable judgment and order was passed.

32. Keeping in view the above observations, this Court does not find any cogent reason to interfere with the impugned order and judgment dated 30<sup>th</sup> July, 2020 passed by learned Additional Principal Judge, Family Court, Tis Hazari Courts, Delhi in CC No. 6834/2016 (MT No.

800/2014) since there is no illegality, impropriety or error apparent on record in the same.

33. Accordingly, the instant Criminal Revision Petition is dismissed for the reasons stated above.

34. Pending application, if any, also stands disposed of.

35. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**APRIL 13, 2022**

*Aj/ms*

