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

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\+ **CRL.REV.P. 363/2021 & CRL.M.A. 17986/2021, CRL.M.A. 5429/2023, CRL.M.A. 20458/2023**

DHIRENDRA KUMAR .....Petitioner

Through: Mr. Ajit Kumar and Mr. Shivam Singh, Advs.

versus

SWATI SAISTA .....Respondent

Through: Ms. Isha Khanna, Amicus Curiae with Ms. Ruchika Malik and Mr. Shivam Parashar, Advs.
Petitioner in person (*Through VC*)

AND

\+ **CRL.REV.P. 43/2022 & CRL.M.A. 4464/2023, 28877/2023, 35406/2024, 12188/2025, 15729/2025, 13907/2026, 13908/2026, 16911/2026 & 16912/2026**

SWATI SAISTA .....Petitioner

Through: Ms. Isha Khanna, Amicus Curiae with Ms. Ruchika Malik and Mr. Shivam Parashar, Advs.
Petitioner in person (*Through VC*)

versus

DHIRENDRA KUMAR .....Respondent

Through: Mr. Ajit Kumar and Mr. Shivam Singh, Advs.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present judgment disposes of two cross-revision petitions arising from the common order dated 01.10.2021 passed by the learned Principal District and Sessions Judge, South-West District, Dwarka Courts, New Delhi, in ***Criminal Appeal Nos. 169/2020*** and ***188/2020***. The said appeals arose from the order dated 07.09.2020 passed by the learned Metropolitan Magistrate, Mahila Court-02, South-West District, Dwarka Courts, New Delhi, in ***CC No. 1582/2019***, directing the husband to pay interim maintenance of Rs. 1,00,000/- per month to the wife from the date of institution of the complaint.

2. ***CRL. REV. P. 363/2021*** has been preferred by the husband, Mr. Dhirendra Kumar, seeking setting aside or reduction of the interim maintenance. ***CRL. REV. P. 43/2022*** has been preferred by the wife, Ms. Swati Saista, seeking enhancement thereof from Rs. 1,00,000/- to Rs. 3,38,500/- per month. The wife also challenges the direction contained in the common order dated 01.10.2021 requiring her to obtain employment within one year and directing the learned Metropolitan Magistrate (hereinafter referred to as the "*MM*") to reconsider the maintenance upon expiry of the said period.

3. During the pendency of these revision petitions, the husband's services with Air India were terminated and, on an application filed by him under Section 25(2) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "*DV Act*" or "*the Act*"), the

maintenance was reduced to Rs. 15,000/- per month with effect from 20.05.2022. The order of reduction has subsequently been affirmed by the learned Sessions Court and by this Court. The controversy before this Court, therefore, concerns the correctness of the original award of Rs. 1,00,000/- per month, the wife's prayer for enhancement, the legality of the direction requiring her to obtain employment and the effect of the subsequent order passed under Section 25(2) of the Act.

FACTUAL MATRIX

4. The parties were married on 08.07.2010 according to Hindu rites and ceremonies. A son was born from the wedlock, who is presently residing with and being maintained by the husband. The parties have been living separately since January 2019. On 11.01.2019, the wife instituted a complaint under Section 12 of the DV Act. Along with the complaint, she filed an application under Section 23 of the Act seeking, *inter alia*, interim maintenance of Rs. 3,38,500/- per month for herself and the minor son. By an ad-interim order dated 25.05. 2019, the learned MM directed the husband to pay Rs. 35,000/- per month to the wife.

5. The husband challenged the said order in ***Criminal Appeal No. 38/2019***. By order dated 27.02.2020, the learned Sessions Court set aside the ad-interim order and remanded the matter to the learned MM for passing a reasoned order after considering the financial documents filed by the parties. Pursuant thereto, both sides placed their income affidavits, salary documents, bank statements and written submissions before the learned MM.

6. By order dated 07.09.2020, the learned MM awarded interim maintenance of Rs. 1,00,000/- per month to the wife from the date of

institution of the complaint. The learned MM noticed that although the wife possessed a B.Tech. degree in Telecommunications, she was not employed and the occasional deposits reflected in her bank account did not establish any regular source of income. The husband disclosed his monthly income as approximately Rs. 1,50,000/-, apart from rent of Rs. 26,000/- and monthly expenditure of approximately Rs. 1,45,000/-. He also disclosed that the minor son was residing with and being maintained by him. The learned MM, however, found that the income disclosed by the husband was inconsistent with the salary documents, Form-16 and the substantial recurring credits reflected in his ICICI Bank and Axis Bank accounts. On an overall assessment of the said material, his monthly income was estimated in the range of ₹4–5 lakh. Since the minor son was residing with the husband, the award was confined to the wife. The relevant portion of the order dated 07.09.2020 is reproduced hereinbelow:

> **"***There is no evidence on record that the complainant has any regular source of income. The deposits reflected in her bank account are irregular and insufficient to show that she is in a position to maintain herself. It is the responsibility of her husband to fulfill her daily requirements.* ***The respondent is directed to pay an amount of Rs. 1,00,000/- per month to the complainant towards her maintenance, from the date of filing of petition till further orders.***
>
> *The application of the complainant for interim relief and the application filed by the respondent on 21.08.2020 for filing fresh response due to change of circumstance are accordingly disposed off.*
>
> *Respondent is directed to clear the arrears within 6 months from today in equal installments and to furnish the monthly amount towards her maintenance, after the date of this order by way of money order or deposit in the bank account of the petitioner on furnishing of*

> *account number of the same, by or before 15th day of each month of the English Calendar…"*

7. The husband challenged the said order in ***Criminal Appeal No. 169/2020***, whereas the wife preferred ***Criminal Appeal No. 188/2020*** seeking enhancement. The husband contended that the financial documents had been incorrectly appreciated and that the second component reflected in his salary account represented variable flying allowance. The wife, on the other hand, relied upon the salary account and the Form-16 to contend that the husband had understated his income. The learned Appellate Court independently examined the husband's ICICI Bank salary account and found that two components of remuneration were being credited each month. The relevant portion of the common order is reproduced hereinbelow:

> *"6.1. A study of the salary account statement of the husband maintained in ICICI Bank reveals that he has two components of salary, which are credited each month. For example, in the month of April-2019, the credits are Rs.1,52,333/- on 05.04.2019 and Rs.4,02,919/- on 09.04.2019 respectively. For the month of March-2019, the credits are Rs.1,48,318/- on 07.03.2019 and Rs.3,19,202/- on 13.03.2019. For the month of February-2019, the credits are Rs.1,44,359/- on 07.02.2019 and Rs.2,85,326/- on 14.02.2019. There are similar credit entries almost each month."*

8. On the basis of the aforesaid entries, the learned Appellate Court upheld the assessment of the husband's monthly income in the range of ₹4–5 lakh and found no ground to interfere with the award of ₹1,00,000/- per month. It, however, held that since the wife was technically qualified and had previously been employed, her entitlement ought to be subject to her seeking employment. The relevant portion is reproduced hereinbelow:

> *"6.3. However, the argument raised by husband's counsel that the wife being technically qualified and employed in the past and is not entitled to maintenance, has not been addressed by the Trial Court. This Court is, therefore, of the opinion that the entitlement of wife for claiming maintenance for self ought to be circumscribed by time limit of her seeking employment for self. She cannot be encouraged and rewarded for not seeking employment, despite being technically qualified and continue claiming maintenance from the husband.*
>
> *7. Nonetheless,* ***this Court is of the opinion that the order of interim maintenance should have a limit of one year within which the wife should look for a job and get re-employed. Genuine efforts made by her in seeking employment be placed on record before the Trial Court at the conclusion of one year, from the passing of this order. Trial Court shall have a re-look at the interim maintenance at the end of one year, unless the main case is itself disposed of by the said date.****"*

9. Both appeals were accordingly disposed of by upholding the order dated 07.09.2020, subject to the aforesaid observations. Aggrieved thereby, the husband and the wife have preferred the present cross-revision petitions.

SUBSEQUENT PROCEEDINGS UNDER SECTION 25(2) OF THE DV ACT

10. During the pendency of the present revision petitions, the husband filed an application under Section 25(2) of the DV Act seeking modification of the interim maintenance on the ground of a material change in his financial circumstances. He asserted that he had ceased to receive salary after November 2020 and that his services with Air India had been terminated by notice dated 29.04.2022. The application under Section 25(2) was filed on 20.05.2022.

11. By order dated 18.11.2023, the learned MM partly allowed the application. Upon considering the termination notice, the husband's fresh income affidavit, his statement and the bank statements placed on record, the learned MM found that no salary had been credited since December 2020 and that no material had been produced to establish that the husband continued to remain employed with Air India or had secured any other regular source of income.

12. The learned MM, however, did not treat the husband's earning capacity as 'Nil'. Having regard to his qualifications, specialised training, previous employment and his own disclosure of monthly expenditure of approximately ₹55,000/-, including the expenditure incurred towards the minor son, his notional income was assessed at ₹60,000/- per month. Since the minor son was residing with and being maintained by the husband, the maintenance payable to the wife was reduced to ₹15,000/- per month with effect from 20.05.2022. The operative portion is reproduced hereinbelow:

> *"Keeping three portions of assessed income for respondent, taking into consideration that the minor son is maintained by respondent himself, he is directed to pay Rs.15,000/- per month in favour of complainant from the date of filing of application w.e.f. 20.05.2022 till final disposal of the petition or till she is legally entitled to receive the same, whichever is earlier."*

13. The wife challenged the order dated 18.11.2023 before the learned Additional Sessions Judge. Her appeal was dismissed by judgment dated 13.05.2025. She thereafter preferred ***CRL.REV.P. (MAT.) 308/2025*** before this Court, which was dismissed by judgment dated 04.08.2025. Accordingly, for the period commencing 20.05.2022, the parties continue to be governed by the maintenance of ₹15,000/- per month fixed under Section

25(2) of the DV Act.

SUBMISSIONS ON BEHALF OF THE HUSBAND

14. Learned counsel for the husband submits that the order dated 07.09.2020 awarding interim maintenance of Rs.1,00,000/- per month proceeds on an incorrect appreciation of his salary records. It is submitted that the husband had been taken off flying duties with effect from 20.09.2019 and had not received any salary for July 2020. The amount of approximately Rs.4.63 lakh reflected in the salary record was, therefore, incorrectly treated as his regular monthly salary. According to the husband, the amounts credited thereafter till November 2020 represented arrears and leave encashment and did not constitute his recurring monthly income.

15. Learned counsel further submits that the husband has not received any salary since December 2020 and that his services with Air India were terminated on 29.04.2022. The termination has been challenged by him before the competent industrial forum and the proceedings are stated to be pending. On account of the cessation of his salary and the subsequent termination of his employment, the husband moved an application under Section 25(2) of the DV Act seeking stoppage of interim maintenance with effect from December 2020.

16. Learned counsel further submits that the minor son has been residing with the husband, who has been bearing his expenses. The husband claims to be residing with the minor son in rented accommodation and meeting their expenses by borrowing from friends and relatives. It is also submitted that the wife holds a B.Tech. degree in Telecommunications and is residing with her family members in the residential flat owned by the husband.

17. Learned counsel submits that, despite his unemployment and financial difficulties, the husband has been paying Rs.15,000/- per month to the wife. It is further contended that the income figures relied upon by the wife relate to earlier Assessment Years and do not reflect the husband's disposable income, as they do not account for the taxes paid and the expenditure and liabilities claimed to have been incurred by him. On these grounds, learned counsel prays that the husband's revision petition be allowed.

SUBMISSIONS ON BEHALF OF THE WIFE

18. The wife, appearing in person, submits that the husband has failed to comply with the directions issued by this Court towards payment of interim maintenance and has suppressed his true income. Reliance is placed upon the orders recording his failure to deposit the amount directed by this Court, the striking off of his defence and the initiation of contempt proceedings against him. According to the wife, the husband cannot seek reduction of maintenance while continuing to remain in default of the subsisting directions.

19. The wife further submits that the husband has consistently understated his income. It is contended that his claim of earning approximately Rs.1.50 lakh per month is contradicted by his Form-16 for the Assessment Year 2019–2020, which reflects a gross salary of approximately Rs.92.45 lakh. She also alleges that the husband failed to make complete disclosure of his Form-16s, income-tax returns and other financial records in the Affidavits filed before this Court. On this basis, the wife submits that the assessment of the husband's income in the range of Rs.4–5 lakh per month does not reflect his actual earnings.

20. The wife further submits that, although the Courts below did not accept the husband's claim that his monthly income was approximately Rs.1.50 lakh and awarded interim maintenance of Rs.1,00,000/- per month, the amount so awarded is inadequate having regard to the income reflected in his Form-16 and the standard of living enjoyed by him. She accordingly seeks enhancement of the interim maintenance from Rs.1,00,000/- to Rs.3,38,500/- per month.

21. The wife also assails the observations contained in paragraphs 6.3 and 7 of the order dated 01.10.2021, directing her to seek re-employment within one year, place the efforts made by her before the learned Trial Court and requiring the learned Trial Court to reconsider the interim maintenance thereafter. It is submitted that her educational qualifications or mere capacity to earn cannot be equated with actual employment or an independent source of income.

SUBMISSIONS OF THE AMICUS CURIAE

22. Ms. Isha Khanna, learned Amicus Curiae, submits that the controversy in the present cross-revision petitions is confined to the correctness of the interim maintenance of Rs.1,00,000/- per month awarded by the learned Trial Court and upheld by the learned Appellate Court. The question arising in the present proceedings is whether the said amount is liable to be reduced, enhanced or maintained.

23. Learned Amicus submits that the subsequent order reducing the maintenance to Rs.15,000/- per month was passed under Section 25(2) of the DV Act on the basis of a subsequent change in circumstances. The said determination is distinct from the issue arising in the present revision

petitions and does not govern the correctness of the original award of Rs.1,00,000/- per month for the earlier period.

ANALYSIS AND FINDINGS

24. This Court has heard learned counsel for the husband, the wife appearing in person and learned Amicus Curiae, and has perused the written submissions and the material placed on record.

25. Having regard to the rival submissions and the material placed on record, the following questions arise for consideration: -

i. Whether the assessment of the husband's income and the award of interim maintenance of Rs.1,00,000/- per month suffer from any illegality, perversity or material irregularity warranting interference in Revision;

ii. Whether the wife has made out a case for enhancement of the interim maintenance to Rs.3,38,500/- per month;

iii. Whether the observations and directions contained in paragraphs 6.3 and 7 of the common order dated 01.10.2021, requiring the wife to obtain employment within one year and directing reconsideration of maintenance thereafter, are sustainable; and

iv. What is the effect of the cessation of the husband's salary and the subsequent proceedings under Section 25(2) of the DV Act upon the liability arising under the original order.

26. At the outset, it may be noted that a Full Bench of the Allahabad High Court in ***Dinesh Kumar Yadav v. State of U.P. and Others, AIR 2017 All 29***, has held that an order passed by the Court of Sessions in an Appeal

under Section 29 of the DV Act is amenable to the revisional jurisdiction of the High Court under Sections 397 and 401 CrPC. The DV Act does not expressly exclude the ordinary revisional jurisdiction of the High Court. This Court finds the reasoning adopted by the Full Bench applicable to the present proceedings as well. The present revision petitions are, therefore, maintainable.

27. However, the scope of interference in Revision is limited. In ***Neelesh Srivastava v. Sukriti Srivastava, MANU/DE/9660/2025***, this Court observed:

> *"15. The scope of revisional jurisdiction under Sections 397 and 401 Cr.P.C. is narrow and circumscribed. Interference is warranted only where the impugned order suffers from patent illegality, perversity, gross impropriety, or results in miscarriage of justice.*
>
> *16. It is equally well-settled that orders granting interim maintenance are interlocutory in nature, based on a prima facie assessment of material placed before the Court, and ordinarily ought not to be interfered with unless the finding is wholly arbitrary or untenable."*

28. An order fixing interim maintenance is founded upon a *prima facie* assessment of the financial material then available. The Revisional Court is not expected to conduct a final adjudication of disputed financial entries or substitute its own view merely because another estimation is possible. Interference would nevertheless be justified where a material component has been incorrectly read, a relevant change in the financial position has been overlooked or the quantum bears no reasonable relationship with the income and liabilities disclosed on record.

29. The requirement of a reasoned, though provisional, assessment was explained by this Court in ***Tasmeer Qureshi v. Asfia Muzaffar, 2025:DHC:9479***, in the following terms:

> *"35. While determining interim maintenance, the learned Family Courts are expected to make at least a provisional assessment of the income earned by a spouse, who is being directed to pay interim maintenance, based on the affidavits, documents, and submissions before it. Even if such assessment is tentative and subject to final determination, the order must record: (i) what material has been considered; (ii) what income or earning capacity has been assumed; and (iii) how that assumption has translated into the figure of interim maintenance fixed."*

30. Thus, although some estimation may be inevitable at the interim stage, such estimation must have a rational foundation in the Affidavits, financial documents and other material placed before the Court.

STATUTORY FRAMEWORK GOVERNING INTERIM MAINTENANCE

31. Section 20(1) of the DV Act empowers the Magistrate to grant monetary relief, including maintenance, to meet the expenses incurred and losses suffered by the aggrieved person and her children. Section 20(2) requires such monetary relief to be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person was accustomed.

32. Section 23 empowers the Magistrate to pass such interim order as is just and proper. Section 25(2), on the other hand, enables alteration, modification or revocation of an order where a subsequent change in the circumstances of either party so requires.

33. The original award must, therefore, be tested on the basis of the financial position and the material relevant to the period for which it was made. A subsequent alteration in employment, income or liabilities does not render the original order illegal from its inception. It may, however, require a prospective adjustment of the subsisting liability.

34. In the leading decision of ***Rajnesh v. Neha, (2021) 2 SCC 324***, the Supreme Court held that there is no inflexible formula for determining maintenance. The status of the parties, the reasonable needs of the claimant, her independent income, the standard of living enjoyed during the marriage, the income and liabilities of the respondent and the responsibility of maintaining dependent children are all relevant considerations. The principles governing determination of quantum were explained in in the following terms:

> *"…On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications."*
>
> *(ii) A careful and just balance must be drawn between all relevant factors.*
>
> *The test for determination of maintenance in matrimonial disputes depends on the financial status of the Respondent, and the standard of living that the Applicant was accustomed to in her matrimonial home.*

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the Respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

35. The exercise is, therefore, not confined to the salary figure asserted by either party. Salary slips, Form-16, income-tax information, bank statements, recurring employer-related credits, statutory deductions, reasonable personal liabilities and expenditure incurred towards dependent children must be considered together. The assessment at the interim stage may be approximate, but it cannot be arbitrary.

36. The principal grievance of the husband is that the learned MM incorrectly read the salary slip for July 2020 and treated the figure of approximately Rs.4,63,040/- as the salary actually received by him for that month. The record supports the husband's contention to the limited extent that the said figure could not have been treated, by itself, as his net salary for July 2020. A cumulative figure or a Form-16 summary cannot be equated with the amount actually received for a particular month.

37. The said error, however, does not by itself invalidate the entire assessment made by the learned MM. The order dated 07.09.2020 did not rest solely upon the figure of Rs.4,63,040/-. The learned MM also considered the husband's Income Affidavit, Form-16, ICICI Bank account, Axis Bank account and the substantial recurring credits reflected therein.

38. The ICICI Bank statement reflected, *inter alia*, credits of

Rs.1,52,333/- and Rs.4,02,919/- in April 2019; Rs.1,48,318/- and Rs.3,19,202/- in March 2019; and Rs.1,44,359/- and Rs.2,85,326/- in February 2019. Similar employer-related credits were noticed for several other months. These entries were materially inconsistent with the husband's disclosure that his monthly income was confined to approximately Rs.1,50,000/-.

39. The learned Appellate Court did not mechanically affirm the finding of the learned MM. It independently examined the salary account and noticed that two components of remuneration were being credited to the husband in successive months. It was on that basis that the assessment of the husband's monthly income in the range of Rs. 4 - 5 lakh was upheld.

40. The husband contends that the second component constituted flying allowance and was variable in nature. The entire gross flying allowance could not necessarily have been treated as disposable income without examining its nature, the expenditure attached to flying assignments and the applicable deductions. At the same time, the recurring employer-related credits could not be excluded altogether while assessing the financial resources available to the husband.

41. The record relating to the period preceding the order dated 07.09.2020 thus established that the husband was receiving remuneration substantially exceeding the amount disclosed by him. The assessment in the range of Rs. 4-5 lakh per month, though necessarily approximate, had an identifiable foundation in the salary account, Form-16 and recurring credits. It cannot be characterised as conjectural or wholly unsupported.

42. The wife had not demonstrated any regular source of income. The occasional deposits reflected in her bank account did not establish that she was employed or possessed income sufficient to maintain herself in a manner commensurate with the standard of living enjoyed during the marriage.

43. The minor son was residing with and being maintained by the husband. The learned MM, therefore, confined the award of Rs.1,00,000/- per month to the wife. The husband's responsibility towards the minor son and his own reasonable needs were, nevertheless, material liabilities and were required to be accounted for while examining the proportionality of the amount awarded.

44. Maintenance cannot be determined by applying an inflexible mathematical fraction to gross remuneration. Nevertheless, considering the husband's financial position during the relevant period, the recurring salary credits, the absence of any regular income of the wife and the responsibility of the husband towards the minor son, the award of Rs.1,00,000/- per month was not manifestly excessive when made.

45. Accordingly, no interference is warranted with the original quantum for the period from 11.01.2019, being the date of institution of the complaint, until 07.11.2021. The incorrect reading of the July 2020 salary entry does not vitiate the award for that period, as the conclusion was supported by the remaining financial material and was independently examined by the learned Appellate Court.

46. The wife seeks enhancement of interim maintenance from

Rs.1,00,000/- to Rs.3,38,500/- per month. She relies substantially upon the husband's Form-16 and the income information reflecting gross total income of Rs.93,34,331/- for Assessment Year 2019 - 2020 and Rs.74,29,540/- for Assessment Year 2020 - 2021. The aforesaid figures undoubtedly establish that the husband had substantial gross income during the corresponding periods. They do not, however, establish that the entirety of the gross annual income was available as monthly disposable income. Income tax, statutory deductions, the variable nature of flying allowance and reasonable employment - related expenditure could not be disregarded.

47. The original claim of Rs.3,38,500/- was also made for the wife and the minor son. The minor son has, however, been residing with and maintained by the husband. The expenditure incurred towards him cannot be included in the wife's individual requirement while determining the maintenance payable exclusively to her.

48. The wife's asserted monthly expenditure was required to be tested against the material on record. The quantum claimed could not be accepted merely by applying a percentage to the husband's gross annual remuneration. The record does not establish that Rs.3,38,500/- per month was required to meet the wife's reasonable needs or to maintain the standard of living to which she was accustomed.

49. Applying the balance mandated in ***Rajnesh v. Neha (supra)***, this Court finds that enhancement to Rs. 3,38,500/- per month would consume a substantial portion of the income assessed during the relevant period without adequately accounting for the husband's reasonable needs and his responsibility towards the minor son. Conversely, the amount of

Rs.1,00,000/- per month cannot be regarded as so meagre as to deprive the wife of reasonable sustenance.

50. This Court, therefore, finds no ground to enhance the interim maintenance beyond Rs. 1,00,000/- per month for the period during which the husband continued to receive substantial salaried remuneration. The wife's prayer for enhancement is accordingly rejected.

51. The directions contained in paragraphs 6.3 and 7 of the common order dated 01.10.2021 require separate consideration. The learned Appellate Court noticed that the wife holds a B.Tech. degree in Telecommunications. It accordingly directed her to seek suitable employment within one year, place on record the genuine efforts made by her and required the learned MM to reconsider the interim maintenance thereafter.

52. Interim maintenance is provisional in nature. The Court may grant it for a specified period or direct its reconsideration after a reasonable interval. While doing so, the Court may take into account the age, qualifications, previous employment, health, family responsibilities and present employability of the spouse claiming maintenance. A professionally qualified spouse may, therefore, be required to make *bona fide* efforts towards securing suitable employment. Such a direction is neither beyond the jurisdiction nor outside the discretion of the Court. However, the capacity to earn cannot be equated with actual earnings.

53. In ***Shailja and Another v. Khobbanna, (2018) 12 SCC 199***, the Supreme Court expressly distinguished between the capacity to earn and actual earning and observed:

> *"**4.** We are not satisfied with the order passed by the High Court considering the income of the respondent husband, which we have been told, is more than Rs 80,000 per month since the respondent husband is a Senior Lecturer in a college. It is stated by the learned counsel for the appellants that the respondent husband is also the owner of 26 acres of irrigated land.*
>
> ***5.** That apart, we find that the High Court has proceeded on the basis that Appellant 1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court.* ***Whether Appellant 1 is capable of earning or whether she is actually earning are two different requirements. Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court."***

54. In the present case, the learned Appellate Court did not direct automatic cessation of maintenance upon the expiry of one year. It required the wife to make genuine efforts to obtain employment and directed the learned MM to reconsider the matter thereafter. The direction is within the jurisdiction of the learned Appellate Court and does not call for interference. It is, however, clarified that the wife cannot be compelled to secure employment within the stipulated period. Her obligation is confined to making bona fide and reasonable efforts. Any reconsideration of maintenance shall depend upon her actual employment and income, the efforts made by her, her reasonable needs, the financial capacity and liabilities of the husband and the circumstances prevailing at the relevant time. Mere expiry of one year shall not result in automatic cessation of maintenance.

<u>CESSATION OF SALARY AND THE PERIOD AFTER FILING OF THE HUSBAND'S REVISION</u>

55. The position materially altered after the period considered by the learned MM while passing the order dated 07.09.2020. The husband's case is that he had been taken off flying duties, that no regular salary was received after November 2020 and that his services were ultimately terminated on 29.04.2022.

56. The common order dated 01.10.2021 noticed the submission that the husband's income had reduced owing to the pandemic and the consequent absence of flying duties. It nevertheless assessed his continuing financial capacity principally on the basis of salary credits pertaining to 2019. The effect of the subsequent cessation of regular salary was not separately examined.

57. The husband instituted ***CRL.REV.P. 363/2021*** on 08.11.2021 and sought interference with the continuation of maintenance of Rs.1,00,000/- per month. He specifically relied upon the cessation of regular flying duties and the absence of regular salary. Thus, the reduction in his salaried income was not a development arising for the first time after the institution of the present revision petition.

58. The subsequent proceedings under Section 25(2) of the DV Act have since provided judicial confirmation of the said financial position. Upon examining the husband's bank statements, termination notice, fresh income affidavit and statement, the learned MM recorded that no salary was credited after December 2020 and that no regular alternative source of income had been demonstrated.

59. The learned MM did not, however, accept that the husband's earning

capacity was 'Nil'. Having regard to his specialised qualifications, professional background and his own disclosure of monthly expenditure of approximately Rs.55,000/-, his notional income was assessed at Rs.60,000/- per month. Since the minor son was being maintained by him, a sum of Rs.15,000/- per month was awarded to the wife.

60. The said determination was affirmed by the learned Additional Sessions Judge on 13.05.2025. The wife's further challenge in ***CRL.REV.P.(MAT.) 308/2025*** was rejected by this Court on 04.08.2025. While affirming the subsequent determination, this Court observed:

> *"……Applying the well-established ratio in Annurita Vohra v. Sandeep Vohra, the Court carved out a one-fourth share for the Petitioner and fixed interim maintenance at INR 15,000 per month. Crucially, the appellate reasoning reiterates that the standard at this stage is not one of proof beyond doubt, but of forming a reasonable view pending final determination.* ***The court was satisfied that there had been a demonstrable reduction in the Respondent's financial capacity, warranting a downward revision of interim maintenance. It also took into account the fact that the minor child was in the care of the Respondent, thereby increasing his financial expenditure.****"*

61. This Court thus found no arbitrariness or perversity in the conclusion that the husband's financial circumstances had materially changed or in the assessment of Rs.15,000/- per month as interim maintenance.

62. The subsequent adjudication cannot be ignored while deciding the present revisions. It does not retrospectively create the cessation of salary, it confirms, on the basis of the bank statements and other material, that regular salary had ceased after December 2020. At the same time, the later determination cannot be employed to reopen the entire liability arising

before the husband sought Revisional relief.

63. In ***S. Vijikumari v. Mowneshwarachari C., 2024 INSC 732***, the Supreme Court explained the operation of an order under Section 25(2) of the DV Act in the following terms:

> *"14. However, for the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act. Alexander Sambath Abner vs. Miron Lede, 2009 SCC OnLine Mad 2851 is also to the same effect. Thus, an order for alteration, modification or revocation operates prospectively and not retrospectively. Though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction – to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case."*

64. The application under Section 25(2) in the present case was filed on 20.05.2022. Accordingly, the order dated 18.11.2023 operates from that date, and its effective date is not being altered in the present proceedings.

65. The present revisions, however, arise from the original appellate order dated 01.10.2021. The husband had already invoked the revisional jurisdiction of this Court on 08.11.2021 and challenged the continued application of the original quantum after cessation of his regular salary. The relief granted for the period commencing 08.11.2021 is, therefore, not a retrospective application of the order under Section 25(2). It is the consequence of the independent adjudication of the husband's challenge to

the common appellate order.

66. This Court does not consider it appropriate to reduce the maintenance with effect from December 2020. Until the husband approached this Court, the original order continued to bind him. The liability accrued prior to 08.11.2021 cannot, therefore, be reopened on the basis of the subsequent determination under Section 25(2) of the DV Act. At the same time, continuation of maintenance at Rs.1,00,000/- per month after 08.11.2021 would overlook the cessation of the husband's regular salary, which was specifically pleaded in the revision petition and subsequently verified in the proceedings under Section 25(2) of the DV Act. The husband is also pursuing proceedings arising from the termination of his employment and has disclosed expenditure towards litigation. This constitutes an additional, though secondary, financial liability. Considering his notional income of Rs.60,000/- per month, his responsibility towards the minor son and his existing liabilities, maintenance of Rs.15,000/- per month provides a fair and reasonable basis for the period commencing from the filing of the present revision petition.

CONCLUSION

67. The original award of Rs.1,00,000/- per month was supported by the salary credits, Form-16 and bank statements relating to the period during which the husband was receiving substantial remuneration. Although the figure reflected in the salary slip for July 2020 was not correctly appreciated, the assessment did not rest upon that entry alone. The award of Rs. 1,00,000/- per month is, therefore, upheld from 11.01.2019 to 07.11.2021. The wife has not made out any ground for enhancement thereof to

Rs.3,38,500/- per month.

68. ***CRL.REV.P. 363/2021*** is partly allowed. The common order dated 01.10.2021 and the order dated 07.09.2020 are modified to the extent that the husband shall be liable to pay interim maintenance of Rs.1,00,000/- per month from 11.01.2019 to 07.11.2021 and Rs.15,000/- per month from 08.11.2021 to 19.05.2022.

69. With effect from 20.05.2022, the parties shall continue to be governed by the order dated 18.11.2023, whereby maintenance of Rs.15,000/- per month was awarded under Section 25(2) of the DV Act. The said amount shall continue until the final disposal of ***CC No.1582/2019*** or until the wife ceases to be legally entitled to receive the same, whichever is earlier.

70. With effect from 20.05.2022, the parties shall continue to be governed by the order dated 18.11.2023, whereby maintenance of Rs.15,000/- per month was awarded from the date of the application under Section 25(2) of the DV Act. The said amount shall continue until the final disposal of ***CC No.1582/2019*** or until the wife ceases to be legally entitled to receive the same, whichever is earlier.

71. ***CRL.REV.P. 43/2022*** is dismissed. The wife's prayer for enhancement of interim maintenance is rejected. The observations and directions contained in paragraphs 6.3 and 7 of the common order dated 01.10.2021 are upheld, subject to the clarification that the maintenance shall not cease automatically upon expiry of one year. Any reconsideration thereof shall be undertaken by the learned MM on the basis of the material and circumstances prevailing at the relevant time.

72. The observations made herein are confined to the determination of interim maintenance and shall not influence the learned MM while finally adjudicating the complaint on the basis of the evidence led by the parties.

73. The cross-revision petitions are disposed of in the aforesaid terms. Pending application(s), if any, also stand disposed of.

MADHU JAIN
(JUDGE)

JULY 30, 2026/b/m