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

% *Date of decision:13th May, 2025*

+ **CRL.REV.P. 462/2013**

1. **MS. INDU**

D/o Shri N.L. Pasrija
R/o 83-A, Sant Nagar,
East of Kailash,
New Delhi-110065.

2. **RAJAT MALHOTRA**

S/o Sh. Pankaj Malhotra
Through his mother and natural guardian
Ms. Indu
R/o 83-A, Sant Nagar,
East of Kailash,
New Delhi-110065.

.....Petitioners

Through: Mr. Ashish Aggarwal, Advocate.

versus

PANKAJ MALHOTRA

S/o Sh. Kishan Lal Malhotra
R/o 52-B, Vijay Mandal Enclave,
Near Kalu Sarai,
New Delhi.

Also at:

Sh. Pankaj Malhotra
R/o B-1, First Floor
Subhash Nagar Shopping Centre,
Jaipur (Rajasthan).

.....Respondent



Through: Mr. Aditya Dua, Advocate for Mr.
Alok Bhachawat, Advocate

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CRL.REV.P. 624/2013, CRL.M.A. 16749/2013,
CRL.M.A. 16750/2013, CRL.M.A. 16751/2013

PANKAJ MALHOTRA

S/o Sh. Kishan Lal Malhotra

R/o 52-B, Vijay Mandal Enclave,

(Near Kalu Sarai)

New Delhi.

.....Petitioner

Through: Mr. Aditya Dua, Advocate for Mr.
Alok Bhachawat, Advocate.

versus

1. **MS. INDU**

D/o Late Sh. N.L. Pasrija

R/o 83-A, Sant Nagar,

East of Kailash,

New Delhi-110065.

....Respondent No. 1

2. **RAJAT MALHOTRA (MINOR)**

S/o Sh. Pankaj Malhotra

Through his mother

Smt. Indu

R/o 83-A, Sant Nagar,

East of Kailash,

New Delhi-110065.

....Respondent No. 2

Through: Mr. Ashish Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)



1. The aforesaid two Criminal Revision Petitions under Section 19(4) *Family Courts Act, 1984* have been filed by the Petitioner No. 1. Ms. Indu and Petitioner No. 2, Rajat Malhotra to seek enhancement of maintenance, as well as by Respondent-Pankaj Malhotra for reduction of maintenance, as granted by the Judge, Family Court *vide* Judgment dated 13.05.2013 under Section 125 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter)
2. *Briefly stated*, Petitioner No.1 Indu, got married to Respondent on 04.10.1997 and one son Rajat Malhotra/Petitioner No.2, was born from their wedlock on 02.07.1998. The parties resided as husband and wife at Vijay Mandal Enclave, New Delhi till March, 2001 and thereafter shifted to Janta Flats, Saket, where they resided till 31.03.2003.
3. The Petitioner has asserted that the Respondent fraudulently obtained an ex-parte Decree of Dissolution of Marriage with Petitioner No.1- Ms. Indu on 04.04.2002, without her knowledge. Despite the divorce about which she had no knowledge, the Respondent- Pankaj Malhotra continued to have sexual relationship with her.
4. It is alleged that one Pooja had informed Petitioner No.1 on 31.03.2003 that Respondent had married her on 09.12.2002. She lodged an FIR No.363/2003 under Section 376/493 IPC P.S. Malviya Nagar, in which the Respondent has been acquitted, but the Appeal preferred by the Petitioner No.1 has been admitted in this Court.
5. The Petitioners filed Petition under Section 125 Cr.P.C for grant of maintenance @ Rs.15,000/- each per month, in November, 2003. Ad-interim maintenance was granted only to Petitioner No.2, (son) in the sum of



Rs.1500/- per month vide Order dated 29.07.2004. The Petition under Section 125 Cr.P.C was finally decided on 13.05.2013, whereby Petitioner No.2 was granted maintenance @ Rs.1500/- per month from the date of filing of Petition till 31.12.2012 and maintenance of Rs.12,000/- per month from 01.01.2013 till he attains the age of majority.

6. The present Revision Petition has been filed by the Petitioners for seeking enhancement of maintenance to Rs.15,000/- per month from the date of filing of the Petition till 13.12.2012 and Rs.25,000/- per month w.e.f. 01.01.2013 till the Petitioner No.2 is legally entitled to receive the same.

7. ***The grounds on which enhancement*** is sought are that since April, 2003 Petitioners had got no financial support towards maintenance from the Respondent-Pankaj Malhotra who has refused to contribute in any manner. Petitioner No.2-Rajat Malhotra was five years old and was in preparatory school having an expenditure of Rs.8,942/- per month which included his food, clothing as well tuition fee. The Petitioner No.1 was employed as LDC in Industrial Training Institute, NCT of Delhi, Malviya Nagar and was getting a gross salary of Rs.6,732/- and net salary of Rs.5,692/- per month. She asserted that keeping in view the prevailing rent in the market, she was unable to afford an independent one bedroom accommodation in decent locality. She was completely dependent upon her brother for accommodation with whom she was residing. She was also dependent upon him for all the necessities of Petitioner No.2-Rajat Malhotra.

8. Despite having sufficient means, Respondent-Pankaj Malhotra has failed to provide any maintenance. He is an Interior Decorator working as



Director in Noisecon India Pvt. Ltd. Vijay Mandal, New Delhi and is getting a salary of Rs.30,000/- per month aside from perks like car, etc. He was also doing the business of Interior Decoration independently from where he earns about Rs.30,000/- per month. He is also a Director in Group Company KLM Design India Pvt. Ltd., Malviya Nagar, New Delhi and is earning a salary of Rs.35,000/- per month. He also runs a Computer Centre at Jaipur in the name and style of Aptech Computers and earns about Rs.40,000/- per month. He owns seven desktop computers and one laptop.

9. In addition, he owns property at 52-B, Vijay Mandal Enclave, New Delhi, the value of which is approximately Rs.35 lakhs. He also owns another property bearing No.51-B, Vijay Mandal Enclave, New Delhi worth about Rs.35 lakhs. He also owns a Flat at C-79, Malviya Nagar, New Delhi with a market value of Rs.40 lakhs. In addition, he owns a plot in Gurgaon worth Rs.30 lakhs. The Respondent is maintaining a Qualis and Esteem Car and two Maruti Cars. He is having at least three bank accounts. His total income is approximately Rs.1.35 lakhs per month and the value of the goods as detailed above, comes to about Rs.2 Crores. Despite having such earnings, he has neglected to provide any accommodation to the Petitioners. It is, therefore, submitted that the Maintenance be enhanced to Rs.15,000/- from November 2003 and Rs.25,000/- w.e.f. 01.01.2013.

10. The Respondent-Pankaj Malhotra by way of his **Revision Petition No. 624/2013** has challenged the final Order dated 13.05.2013 under Section 125 Cr.P.C on the grounds that he has got remarried and has a wife and daughter aside from his parents to look after and maintain.



11. The Respondent-Pankaj Malhotra has further contended that it has not been considered that the Petitioner No.1 – Ms. Indu is having sufficient income of her own, while the Respondent is merely getting a salary of Rs.8,300/- per month.

12. The respondent has further asserted that his salary has been taken as Rs.1 lakh per month which is not correct. It has been wrongly concluded that Respondent-Pankaj Malhotra is running two Firms doing the business of Interior Decoration, without there being any evidence to this effect. Even if for the sake of argument, it is accepted that he is a Director in a Company, it cannot be said as a matter of law that he is getting remuneration therefrom.

13. It is further asserted that learned Family Judge has erred in concluding that Respondent has failed to prove that he does not own any movable property in Delhi or does not own two cars, ignoring the well settled principle that the negative cannot be proved, but the fact has to be proved by the person who asserts it.

14. The Respondent has explained that the Registration Certificate of the two Cars are in the name of Mr. K.L. Malhotra and Mr. Deepak Garkhal respectively. Furthermore, the Company M/s Noisecon India Pvt. Ltd. has already been closed down. Moreover, the Respondent was never a Director in M/s KLM Designs India Pvt. Ltd. The copy of the Certificate of Incorporation and Notice of the office of Registrar of Companies is placed on record.

15. It is further submitted that the Salary Certificate dated 18.02.2013 filed on record, clearly reflects that he is on a monthly salary of Rs.8,300/-



per month. Furthermore, it has not been considered that Petitioner No.1 has no locus to file the present Application in as much as the parties have got divorced and the Respondent has got married again. The Petitioner No.1 no longer enjoys the status of wife.

16. In the end, it is submitted that the maintenance awarded to the Petitioners is on the higher side, which needs to be reassessed.

17. The Petitioners herein had filed a Reply to the Criminal Revision Petition No.624/2013 filed by the Respondent, wherein the contentions raised in their Revision Petition were reaffirmed. ***The Petitioners also submitted Written submissions essentially on similar grounds.***

18. The ***Respondent-Pankaj Malhotra in the Written submissions contended*** that he has married again and has a wife and a daughter to maintain as well, while he has meagre earning from his salary, which is not sufficient for him to meet his responsibilities and to pay the maintenance as awarded by the Court. It is further contended that learned Trial Court has committed an error in holding the income of the Respondent as Rs.1 lakh per month only on the basis of statement of Petitioner No.1 without there being any corresponding supporting documents.

19. Petitioner No.1 as well as Respondent, are both equally responsible for maintaining Petitioner No.2 and Respondent alone cannot be saddle with entire responsibility. Petitioner No.1 is currently getting a decent salary of more than Rs.30,000/- per month which is sufficient for herself and her minor son. The Respondent submitted that while working as Interior Designer he was given a contract of renovation of Rajasthan Vidhan Sabha



in 2002 and was given a sum of Rs.26 lakhs against the said Contract. This nowhere determines the status of the Respondent as it was a contract job and not a permanent job. The Salary Certificate of the Respondent is showing a monthly salary of Rs.8,300/- per month, but the same has not been taken on record. Likewise, the monthly salary of the Respondent was stated as Rs.18,000/- which cannot be used to determine his present financial status. The observation that the Respondent is earning more than Rs.1 lakh per month, is not tenable. It is, therefore, submitted that there is no merit in the present Petition and that the maintenance granted vide impugned Order, is liable to be set aside.

20. Submission heard and record perused.

21. Admittedly, Petitioner No.-1 Ms. Indu got married to Respondent according to Hindu customs and rites on 04.10.1997 and Petitioner No.2 Rajat Malhotra was born from their wedlock on 02.07.1998. Eventually, the parties got separated in 2002 and an ex-parte Divorce Decree was obtained by Respondent from Family Courts, Jaipur on 04.04.2002. It is also not disputed that the Respondent got remarried on 09.12.2002. In the Written submissions, it has been stated that a child has been born from the second marriage of the Respondent.

22. It is also not under challenge that Petitioner No.1-Ms. Indu is employed as LDC in Industrial Training Institute, NCT of Delhi, Malviya Nagar and was getting a salary of Rs.6,732/- initially at the time of filing of the Complaint, but was getting a salary of approximately Rs.30,000/- per month in the year 2013, which the Petition under Section 125 Cr.P.C was



finally adjudicated.

23. It is further not under contest that the maintenance under Section 125 Cr.P.C has been denied to Petitioner No.1, which has not been challenged. *The only grievance of the Petitioners is that inadequate maintenance has been awarded to the son, Petitioner No.2-Rajat Malhotra who is entitled to a maintenance of Rs.15,000/- and Rs.25,000/- respectively considering his expenses and his requirements.*

24. The Petitioner No.1-Ms. Indu in her testimony as PW1 admitted that she was permanently employed and getting a regular salary. She further admitted that Flat No.83-A, Sant Nagar, Near East of Kailash, New Delhi was the property constructed by her father and was owned by the mother and that she was having an equal share in the said property, since the sons and daughters are entitled to an equal share. She further explained that the said house has two floors and six rooms in all. She further admitted that the ex-parte Divorce Decree had been obtained from the Family Court, Jaipur, with which she has no problem and that she has not filed any Appeal against the said Decree.

25. The Petitioner No.1-Ms. Indu further explained in her cross-examination conducted on 24.09.2008, that the total expenses of herself and the son is about Rs.30,000/- per month and she has been supported by her parents to meet her expenses. She further explained that though the father has died, but mother is getting the pension of her father and has some Deposits and that the mother has been supporting her. She further admitted that her father was having one ancestral property, but volunteered that the



same got disposed of about 9-10 years back.

26. The Petitioner No.1-Ms. Indu further admitted in her cross-examination that the vehicle Qualis car as well as Maruti Esteem, pertain to Respondent, but admitted that she was not aware of the name of person in whom the cars were registered. She further volunteered that Respondent is doing business jointly with his father and the cars had been purchased from the income of the joint business in the name of Noisecon India Pvt. Ltd. and KLM Design India Pvt. Ltd.

27. She further explained that Respondent No.2 who was then studying in class Fifth, was having a school fee of Rs.11,400/- quarterly. Petitioner admitted the suggestion was given to her that Respondent was serving with F-tech Computers. A suggestion was put to her that the properties as claimed by her, do not belong to the Respondent. She, however, stated that the address of the Flat No.C-79, Malviya Nagar was given by the Respondent in the School Form of Petitioner No.2. This address has also been mentioned in the Telephone Directory of the Colony. She denied that the total income of the Respondent was not Rs.1.35 lakhs per month.

28. From the testimony of the Petitioner No.1, it emerges that there were no documents placed on record by her to corroborate that the Respondent was the owner of the various properties. He may have been doing joint business with his father in the two Companies and working in F-Tech Computers, Jaipur, but there is nothing on record to show the income being generated by the Respondent. The two cars were explained to be in the name of third persons and not in the name of the Respondent.



29. The Respondent in his testimony as RW1, Respondent deposed that he was a Graduate and Diploma holder in Polish language, but denied that he had done DMIE in Electronics. He deposed that he started the studies for this course, but could not get enrolled. He had explained that aside from Petitioner No.1 living in the property which was in the name of the father, she is also a legal heir to many houses that were owned by her father. It was deposed that she is a Government Servant and has sufficient means to support herself and Petitioner No.2. He also stated that he has filed a Divorce Petition against Pooja, his second wife and was paying her Rs.3,000/- per hearing for transportation. He was also paying Rs.5,000/- per month to Pooja, as maintenance.

30. The Respondent admitted in his cross-examination, that he was running a business of Interior Decoration and was carrying on business in the name and style of M/s Noisecon India Private Limited, but he clarified that it was incurring continuous losses and was closed in the year 2002-03 and the Letter was sent in ROC, in 2005. He admitted that he was serving in M/s Sarant Palace and was getting a salary of Rs.7,800/- per month as per Salary Slip Ex.RW1/3. The Respondent further admitted in his cross-examination that his parents own two houses, one in Vijay Mandal Enclave and second in Malviya Nagar, which is a basement where his father is doing the business in the name and style of M/s KLM Design India, though he denied that he was the Director in the said business. He denied owning any flat in Vijay Mandal Enclave, but asserted that the flat was in the name of his mother and he was only a Power of Attorney Holder and that the



property already stands sold.

31. From the testimony of the Respondent, it emerges that he was doing joint business with his father in Noisecon India Pvt. Ltd., but according to him the business was incurring losses and the same was closed in the year 2002-03. He denied having any interest in the business of his father in the name of KLM Design India. He also clarified that the two flats were owned by his father and the third flat was in the name of the mother which has already been sold.

32. Considering the testimony of the Petitioner No.1 as well as Respondent, it emerges that Petitioner No.1 is permanent Government employee who was getting a salary of of Rs.5,692/- per month in 2003 when the Petition was filed, which got enhanced to Rs.30,000/- per month in the year 2013 at the time when the Petition was decided. Also, it has emerged from her testimony that her father had ancestral property in which she has an equal share. The house in which she was residing was acquired by her father and was in the name of her mother and that she was staying in the same in her own right.

33. Though, the Petitioner No.1 had claimed that the income of the Respondent was Rs.1.35 lakhs per month having multiple businesses and properties, but there is no documentary proof of the actual income from the businesses as well as from the properties. No documents have been filed by the either party in support of their assertions. However, from the admissions made by the Respondent in the cross-examination, it is evident that his family is having the business and the properties and that he has also been a



part of those family businesses and has a reasonable financial and social status.

34. *In the totality of circumstances*, the learned Judge, Family Court has rightly made an assessment of the income of the Respondent as Rs. 1,00,000/- . It has also been rightly considered that the Petitioner No.1 being the mother, has an equal responsibility to shoulder the expenses of the child. Considering their respective status and income as well as the expenses of the Petitioner No.2, the petitioner No.2 has rightly been granted the maintenance in the sum of Rs.1500/- per month from the date of filing of Petition till 31.12.2012 and maintenance of Rs.12,000/- per month from 01.01.2013 till he attains the age of majority.

35. There is no infirmity in the impugned Judgment dated 13.05.2013 and the Revisions are hereby, dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 13, 2025

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