



CNR No. MHWR030007012025
Cri. M. A. No. 08/2025
Pallavi + 1 Vs. Harjeet

ORDER BELOW EXH. 05

(Passed on 23/12/2025)

This is a proceeding under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('B.N.S.S.' for short). Applicants through present application are seeking relief of interim maintenance against non-applicant. Non-applicant filed say at Exh. 12, denied the contentions of applicant and prayed for rejection of the application.

2. It is not disputed that applicant No. 1 is wife & applicant No. 2 is son of the non-applicant. Hence, considering submissions of both sides, following points arise for my consideration; my findings thereto with reasons thereof are as follows :

Sr. No.	<u>Points For Consideration</u>	<u>Findings</u>
1.	Whether applicants <i>prima facie</i> prove that, applicant No. 1 is unable to maintain herself & applicant No. 2 ?	... Yes.
2.	Whether they <i>prima facie</i> prove that, non-applicant has sufficient means to maintain them ?	... Yes.
3.	Whether they further <i>prima facie</i> prove that, despite of having sufficient means, non-applicant has intentionally avoided & neglected to maintain them ?	... Yes.
4.	Whether non-applicant <i>prima facie</i> proves that, applicant is living in adultery ?	... No.
5.	Whether applicants entitled for the relief of interim maintenance as prayed ?	... Partly Yes.

6.	What order ?	... As per final order, application is partly allowed.
----	--------------	--

REASONS FOR THE FINDINGS

3. Ld. Advocate for applicants submitted that, non-applicant has a habit of betting (gambling) and addiction of liquor. Therefore, non-applicant used to demand amounts from applicant No. 1's father since their marriage. Further, non-applicant also used to abuse & beat applicant No. 1 under the influence of liquor, to compel her to bring money from her parents. Applicant No. 1 was hoping that there will be change in the behaviour of non-applicant, but he continued to harass her. Moreover, due to such harassment, their son i.e. applicant No. 2 developed autism.

4. He further argued that, father of applicant No. 1 had given an amount of more than Rs. 20 Lacs to the non-applicant from time to time and in addition had also gave an amount of Rs. 7,50,000/- to purchase flat at Gaziabad. Despite the same, on 16/01/2024 non-applicant abused applicant No. 1 in presence of her parents and told her to leave the house. He also told her that, he will permit her to live in the house only if she brings money from her parents and threatened that if she doesn't bring any amount, she will be killed. Since then, applicant No. 1 is living with her parents alongwith applicant No. 2.

5. He further argued that, applicant No. 1 tried to convince the non-applicant, but he was not ready to listen anything. He did not make any arrangement for the maintenance of applicants. Therefore,

applicant No. 1 lodged complaint against him with Police and hence, he issued false notice, which she replied on 27/10/2024.

6. He further argued that, non-applicant was working in Genpact Company and earning salary of Rs. 76,000/- till 2022. Thereafter, he joined Landmark Group and earning Rs. 80,000/- per month and at present he gets salary of Rs. 95,000/- per month. Whereas, applicant No. 1 does not have any income source and she is unable to maintain herself & applicant No. 2. Moreover, she has to incur Rs. 30,000/- per month towards the medical expenses of applicant No. 2. Therefore, she is praying for interim maintenance of Rs. 50,000/- per month. Hence, prayed for the reliefs sought. He relied on the judgment of the Hon'ble Supreme Court in Shailja & Anr. Vs. Khobbanna, AIR 2017 SC 1174.

7. *Per contra*, Ld. Advocate for non-applicant during the course of his arguments admitted the relationship between the parties, but denied that applicant No. 2 is suffering from autism. He also denied that, any amount was given by applicant's parents and that non-applicant has any addiction as alleged.

8. He further contended that, applicant used to fight with non-applicant & his parents and did not provide them food. She avoided doing household work and did not want the parents of non-applicant to stay with her. Hence, she used to threaten them to implicate in false cases and also, to commit suicide. Therefore, applicant No. 1 & non-applicant shifted from Delhi to Gaziabad to avoid the family dispute. However, on 15/01/2024 applicant herself left the house alongwith the child, taking all her cloths, belongings & ornaments and started residing at her father's house.

9. He further contended that, applicant No. 1 has a boyfriend and she talks with him on phone. Non-applicant had filed a petition under Section 9 of the Hindu Marriage Act bearing No. 56/2025 pending before the Delhi Family Court. He had also requested applicant to join his company, but of no used. Therefore, he issued her notice and then, filed the petition No. 56/2025. He had also filed a complaint with Police Commissioner, Gaziabad on 15/07/2024, but the Police told him to approach the Court.

10. He further argued that, applicant No. 1 is highly educated and she is working as an Interior Designer. She is also doing work for Mr. Sameer Ansari and earns Rs. 40,000/- per month. Applicant also takes part time coaching classes and earns more than the non-applicant. Whereas, non-applicant had to resign from his job to take care of his parents. However, he has to pay the installments of the flat and maintain his parents. He is currently jobless and thus, he is not able to pay any amount as prayed by the applicant.

11. He further argued that, as applicant herself left company of non-applicant and refused to return despite of his requests, she is not entitled for any reliefs. Moreover, she is highly qualified doing her business of interior designer and therefore, she is capable of maintaining herself. Hence, prayed for rejection of the application. He relied on the judgment of the Hon'ble Delhi High Court in Megha Khetrapal Vs. Rajat Kapoor, 2025 SCC OnLine Del 1688.

AS TO POINT NO. 1 :

12. Applicant No. 1 in the main application supported by affidavit has stated that she does not have any income source and

hence, she is unable to maintain herself & her son. The Hon'ble Supreme Court in Rajathi Vs. C. Ganesan, (1999) 6 SCC 326 held that, statement of wife that she is unable to maintain herself is sufficient.

13. It is pertinent to note that, Ld. Advocate for non-applicant during course of his arguments relied upon the copy of charge-sheet filed against non-applicant in furtherance of the F.I.R. lodged by applicant. He pointed out that, in the said charge-sheet there are allegations that applicant had periodically given amounts to non-applicant and thus, it itself shows that non-applicant does not have any income source, whereas applicant has sufficient source of income to give such amounts. Therefore, she is not entitled for claiming any maintenance from the non-applicant.

14. It is pertinent to note that, the documents relied by the Ld. Advocate for non-applicant are nothing but allegations of demand of dowry. *Needless to mention*, in view of the arguements advanced on behalf of non-applicant, if the same are admitted to be true, will amount to admitting the guilt by the non-applicant. However, the same being not the point for adjudication before this Court, the same are liable to be discarded. Further, no such inference can be drawn from the same at this stage.

15. It is also pertinent to note that, both parties have filed their affidavits of disclosure of Assets & Liabilities at Exhs. 13 & 14 respectively. In the said affidavit (Exh. 13) applicant No. 1 has stated that, she does not have any income or income source. Further, though non-applicant in his say (Exhs. 11 & 12) had mentioned that applicant is working as interior designer and has such income

source. However, no any document is filed on record by him in support of the same. Further, applicant No. 2 is admittedly a minor.

16. Therefore, considering the reasons mentioned above, in my view, non-applicant *prima facie* failed to show that, applicant No. 1 is able to maintain herself & their child. Accordingly, I answer point No. 1 in the affirmative.

AS TO POINT NO. 2 :

17. It is the case of applicants that, the non-applicant is working in Genpact Company and earns Rs. 95,000/- per month. They have filed certain documents with the list at Exh. 22 in support of the same. Whereas, non-applicant in his affidavit (Exh. 14) has mentioned that, currently he does not have any income or income source. However, he did not deny his earlier job as mentioned by the applicants. Moreover, as per his own submission in the reply (Exh. 11) particularly paragraph No. 7 of the said reply and avernments in the affidavit (Exh. 14), he is paying the installments of the flat and maintaining his parents.

18. Therefore, it is difficult to gather as to how would a person having no source of income can continue to pay installments and also, incur expenses for the parents. No explanation is given to that effect by the non-applicant. Thus, adverse inference can be drawn from the same and hence, it *prima facie* shows that, non-applicant has an income source.

19. Moreover, as the non-applicant has not denied his earlier work profile, inference can also be drawn as to his capacity to work & earn the amount. Non-applicant is an able bodied & qualified man

and therefore, he certainly can work and earn the livelihood. Further, he also has a flat i.e. immovable property. Therefore, it shows that, non-applicant has sufficient means to maintain applicants. Accordingly, I answer point No. 2 in the affirmative.

AS TO POINT NO. 3 & 4 :

20. Considering the inter-relativity of facts & arguments, the points are discussed together to avoid repetition.

21. Non-applicant in his reply contended that, applicant No. 1 had herself left the house. Further, he has also levelled allegations of adultery. However, nothing is filed on record by the non-applicant to *prima facie* show that, the applicant has any boyfriend or extra marital affair. Moreover, no such allegations are mentioned in the notice issued by him.

22. It is also pertinent to note that, why would a person who believes that his wife has an extra marital affair, would file a petition for restitution of conjugal rights and want live with her. Hence, the conduct of non-applicant appears contradictory to his own case. On the contrary, for want of any *prima facie* material to support the allegations, the same appears to be baseless and it itself *prima facie* supports the case of applicant.

23. Therefore, in my view, non-applicant *prima facie* failed to show that, applicant No. 1 is living in adultery. Hence, being husband, non-applicant is legally & morally bound to maintain applicant No. 1 & their child i.e. applicant No. 2.

24. As held in Rajathi (supra) it is for the husband to discharge the obligation that he did not refuse or neglect to maintain

applicant. However, there is nothing on record to show that, he had made any arrangement for the maintenance of applicants since they are residing separately. He also failed to *prima facie* show that, he made any efforts to fetch back applicants.

25. A married women having minor son will not choose to live separately from her husband without a reasonable cause. Hence, applicant No. 1 deserting non-applicant or willfully choosing to reside separately does not seem probable. Moreover, as discussed above, there is no *prima facie* material on record to show that applicant No. 1 is living in adultery. Accordingly, I answer point No. 3 in the affirmative and point No. 4 in the negative.

As to Point No. 5 :

26. Applicants prayed for interim maintenance of Rs. 50,000/- per month towards their maintenance. However, they *prima facie* failed to show the exact current income or income source of non-applicant. Hence, it is difficult to gather that, he has capacity to pay the maintenance amount as prayed. Further, applicants failed to give the particulars of their necessary expenses that too, to extent of Rs. 50,000/- per month by filing any documents in support. Hence, for want of details it is difficult to hold that, applicants are in need Rs. 50,000/- per month for their maintenance.

27. Similarly, non-applicant contended that, applicant No. 1 is working as an Interior Designer, doing work for Mr. Sameer Ansari and earns Rs. 40,000/- per month. He also contended that, applicant takes part time coaching classes and earns more than him. However, not a single document in support of any of such

contentions is filed on record by him. Hence, in my view, non-applicant *prima facie* failed to show that applicant No. 1 is working or has any income source.

28. Provision under 144 of B.N.S.S. (earlier Section 125 of Cr.P.C.) is a measure of social justice extended to protect women and children, with the object to prevent vagrancy and destitution. As mentioned above, non-applicant being husband of applicant No. 1 and father of applicant No. 2 is legally & morally legally liable to maintain them. However, he *prima facie* failed to perform his duty.

29. Further, as observed in Megha Khetrapal (supra) even though a highly educated & capable of earning person cannot claim maintenance only on the ground that she is unemployed, the Hon'ble Supreme Court in Shailja (supra) has also observed that whether a person is capable of earning or whether she is actually earning are two different requirements.

30. It is apparent that, applicant No. 2 is suffering from mental health issues and applicant No. 1 is looking after him. In such circumstances, even though it is presumed that she is qualified & capable of earning as alleged, there is no *prima facie* record of her having any income or income source. Similarly, there is also no *prima facie* record of the current income or income source of non-applicant and his capacity to pay the amount as prayed.

31. Therefore, considering the daily basic necessities of food, clothing, health & hygiene requirements of applicants in my view, an interim maintenance amount of Rs. 7,500/- per month towards maintenance of applicant No. 1 and an amount of Rs.

2,500/- per month towards maintenance of applicant No. 2, would be just, proper & sufficient. Accordingly, I answer point No. 5 in partly affirmative.

As to Point No. 6 :

32. In view of reasons mentioned above & findings arrived, applicants are partly entitled for the relief claimed. Hence, the application is liable to be partly allowed. Accordingly, to answer point No. 6, I proceed to pass following order :

ORDER

1. Application is hereby partly allowed.
2. Non-applicant is hereby directed to pay applicant No. 1 an interim amount of Rs. 7,500/- per month towards her maintenance and an interim amount of Rs. 2,500/- per month towards maintenance of applicant No. 2 (i.e. total amount of Rs. 10,000/- per month), from the date of main application till the final disposal of proceedings.
3. Both parties to take note of this order.

Place : Wardha.

Dated : 23/12/2025

(Vickrant P. Khandare)
Judicial Magistrate First Class, Wardha.
(Court No. 1)