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

+ **CRL.REV.P. 131/2024**

SMT NISHI GUPTA AND ANR Petitioners

Through: **Mr Swastik Singh, Advocate.**

versus

SH RAVI GUPTA Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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29.01.2024

CRL.M.A. 2703/2024

1. This is an application seeking condonation of delay of 05 days in re-filing the present petition.
2. For the reasons mentioned in the application, the same is allowed.
3. The application stands disposed of.

CRL.M.A. 2701/2024

4. Allowed, subject to all just exceptions.

CRL.REV.P. 131/2024 & CRL.M.A. 2702/2024

5. The present petition has been filed against the impugned order dated 20.11.2023, whereby the petition filed by the petitioners under Section 125 Cr.P.C. claiming maintenance for payment of tuition fee /education expenses of the petitioner no.2 was dismissed.
6. Learned counsel for the petitioners submits that the learned Judge, Family Court has dismissed the application on two grounds, viz., (i) that the



petitioner's mother had already paid the fee of the petitioner no.2 and the recovery of the same is not permissible and maintainable under Section 125 CrPC and; (ii) that the affidavit of income, assets and liabilities in terms of decision of the Hon'ble Supreme Court in ***Rajnesh vs. Neha & Anr.:(2021) 2 SCC 324*** was not filed by the petitioners.

7. He submits that the application under Section 125 CrPC was filed by the petitioner no.1 prior to the payment of fee but since the payment of fee could not be deferred beyond a particular time, the petitioner no.1 had made the payment of said fee. He further submits that the payment of fee by the petitioner no.1 will not absolve the respondent from his liability to contribute towards the tuition fee/education expenses of the petitioner no.1.

8. Insofar as the ground that the affidavit of income was not filed in terms of the ***Rajnesh vs. Neha (supra)***, he submits that the affidavit was actually filed by the petitioners while filing application seeking maintenance but the same was in terms of decision in ***Kusum Sharma vs. Mahinder Kumar Sharma: FAO 369/1996***, which was holding the field at the relevant time and the decision in ***Rajnesh vs. Neha (supra)*** was pronounced by the Hon'ble Supreme Court in the year 2020, subsequent to filing of the application under Section 125 Cr.P.C.

9. In view of the above, notice be issued to the respondent, through all permissible modes, returnable on 10.04.2024.

VIKAS MAHAJAN, J

JANUARY 29, 2024/MK