

**Manish Vs. Indu and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/1101909](http://sooperkanoon.com/1101909)

**Court :** Delhi

**Decided On :** Dec-18-2013

**Judge :** Veena Birbal

**Appellant :** Manish

**Respondent :** indu and anr.

**Advocate for Pet/Ap. :** Mr. Satish K. Sansi

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

18. 12.2013 + CRL.REV.P. 732/2013 MANISH ..... Petitioner Through: Mr. Satish K. Sansi, Adv. versus INDU & ANR. .... Respondents Through: None. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

CRL.M.A. No.19138/2013 (exemption) Exemption as prayed is allowed, subject to just exceptions. Application stands disposed of. CRL.REV.P. No.732/2013 1. By way of this criminal revision, challenge has been made to order dated 23.10.2013 passed by the learned Judge, Family Court, Patiala House, Delhi in case No.M-41/12 whereby interim maintenance @ `10,000/- p.m. has been given to the respondent No.1/wife and her minor daughter.

2. Briefly, the factual background is as under: Respondent No.1/wife has filed a petition before the Family Court, Patiala House Courts, New Delhi under Section

125 Cr.P.C. for the grant of monthly maintenance and expenses of proceedings to her and her minor daughter which is pending disposal before the Family Court. Along with the said petition, she has moved an application for the grant of interim maintenance to her @ `30,000/- p.m. pending final disposal of the main petition. As per allegations of respondent No.1/wife, petitioner/husband is earning `30,000/- p.m. from the wholesale business of kiriyana items in Mangolpuri market and `30,000/- from the business of dying clothes in a factory where it is alleged that he has installed few machines. It is also alleged that petitioner/husband is having bank accounts in various banks in his name as well as in the joint name with his parents. It is alleged that petitioner/husband is having no other liability except to maintain the respondent No.1/wife and her minor child of about 3 years of age who is in her custody.

3. Respondent has filed written statement before the Id.Judge, Family Court denying the allegations of his earnings as are alleged by the respondent No.1/wife. Immediately after filing of the petition, the learned Judge, Family Court awarded `2,000/- p.m. to the respondent No.1/wife and daughter w.e.f. 11.12.2012. During the course of proceedings, affidavit was filed by both the parties to substantiate their respective stands. The learned Judge, Family Court had also recorded respective statements of the parties under Section 165 of Indian Evidence Act. After considering their affidavits and their respective statements under Section 165 of the Indian Evidence Act, the learned Judge, Family Court has disposed of the application of respondent/wife for the grant of interim maintenance by awarding maintenance of `10,000/- p.m. to the respondent No.1/wife and the child i.e. `5,000/- p.m. to the respondent No.1/wife and `5,000/- p.m. to the child from the date of filing of the application i.e. 6.7.2012. It has further been ordered that the amount of `2,000/- as awarded earlier shall be adjusted in the said payment.

4. Aggrieved with the same, the present petition has been filed.

5. Learned counsel appearing for the petitioner has submitted that the interim maintenance has been awarded on a higher side. It is contended that there is no material on record on the basis of which impugned order has been passed. It is submitted that as per the statement of the petitioner/husband under Section 165 of

the Indian Evidence Act he is earning only `3,000/- p.m. from tuitions and in these circumstances, learned Judge, Family Court ought not have awarded interim maintenance @ `10,000/- p.m.

6. The statement of the petitioner recorded by the learned Judge, Family Court under Section 165 of the Indian Evidence Act shows that he is a graduate from Delhi University. He has also done Sanitary Inspector course. As per the said statement he is doing tuitions. The learned Judge has observed in the impugned order that when the statement under section 165 of the Indian Evidence Act was being recorded, the petitioner was taking considerable time in replying to the questions put to him with regard to his current students whom he was imparting tuitions. In the entire statement he has not given the name of a single student to whom he was imparting tuitions. Further, fee being charged from the students is also not stated. Perusal of his statement shows that petitioner has stated his income on lower side. Even the minimum wages for a graduate are much higher. The Ld.Judge, Family Court has rightly observed that there is concealment on his part about his income. Further, in arriving at the finding about the income of petitioner/husband, the Id.Judge, Family Court has also considered the statement of bank account of petitioner in Dena Bank for the period from 15.4.2009 to 7.9.2013 which shows substantial deposits by him in the bank account on different dates. The relevant finding of the learned Judge in this regard is as under:

9. ....  
.....  
..... He placed on record a copy of statement of account of Dena Bank from the period from 15.4.2009 to 7.9.2013 which inter alia shows that on 18.5.2009 there was deposit of Rs.60,400/-, on 17.11.2009 Rs.10,000/-, on 10.12.2009 Rs.40,000/-, on 17.4.2010 Rs.40,000/-, on 15.11.2010 Rs.45,000/-, on 6.1.2011 Rs.10,542/-, on 25.7.2011 Rs.20,000/-, on 8.11.2011 Rs.10,000/-, on 9.2.2012 Rs.9,000/-, on 13.4.2012 Rs.48,500/-, on 13.10.2012 Rs.50,000/-, on 15.12.2012 Rs.50,000/-, on 14.1.2013 Rs.50,000/-.

10. The present case has been filed on 6.7.2012 and for the first time respondent had put in appearance through his counsel Sh. Satish Kumar Sansi on 14.8.2012.

The case was also listed for reconciliation in the intervening period and only on 11.12.2012 the order was passed awarding Rs.2000/- per month as maintenance w.e.f. 11.12.2012 and on 19.1.2013 affidavit in terms of Puneet Kaurs judgement was directed to be furnished and this gives the explanation that after there was no deposit in this account from husband except the periodical interest by the bank. Intention of the husband in not transacting in this bank account is writ large. The source of deposit has not been given by the husband. The bank account also reflects that there is also withdrawal of considerable amount of regular interval.

7. The deposits in the bank account of the petitioner on different dates are on higher side. There is no explanation from where the said deposits are coming. If his earning are `3,000/- per month, as is alleged by him, then how the huge sum has been deposited by him in the bank account. The nonexplanation by the petitioner shows concealment on his part about his alleged earnings.

8. The learned Judge, Family Court has rightly taken his income as `20,000/- p.m., out of which `10,000/- has been awarded to the respondent No.1/wife and the child i.e. `5,000/- to the wife and `5,000/- to the child who is a school going child. The findings of the learned Judge, Family Court in awarding interim maintenance to the wife and the child vide impugned order are based on material on record. There is no illegality in the same. The petition is dismissed. VEENA BIRBAL, J  
DECEMBER18 2013 kks

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