



2025:DHC:6270



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

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**Reserved on: 02.05.2025****Pronounced on: 31.07.2025**

+ CRL.M.C. 5004/2024 & CRL.M.A. 19130/2024 STAY

NIDHI JAIN

.....Petitioner

Through: Petitioner in person.

versus

ANKIT JAIN

.....Respondent

Through: Mr. Arush Bhandari and  
Ms. Shimran Shah, Adv.**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India has been preferred on behalf of the petitioner challenging the order dated 07.06.2024 passed by learned Judge, Family Court, Dwarka Courts, Delhi, whereby applications preferred by the petitioner for summoning of witnesses were dismissed.

2. Briefly, the facts as stated in the petition are that Petitioner and Respondent got married on 16.02.2012. Since after marriage, she was subjected to domestic violence by the Respondent and his family to



fulfill dowry demands. On 18.11.2012, the Respondent and his family locked the matrimonial home, leaving the Petitioner deserted without resources, after transferring her stridhan, jewellery and cash to their family accounts. Respondent falsely implicated the Petitioner and her family in multiple frivolous litigations, all of which were later dismissed or withdrawn. Despite the Respondent's concealment of his assets and income, including his appointment as Chief Financial Officer ["CFO"] in "Punj Lloyd Solar Power Limited", the Petitioner filed a series of applications under Section 311 Cr.P.C. to prove these concealments and establish his true financial status, which were initially allowed by the court. However, the Family Court, on 07.06.2024, dismissed the Petitioner's application to summon witnesses, and the case is now fixed for final arguments on 29.07.2024, despite the Petitioner's repeated requests to address these crucial issues before proceeding to final arguments.

3. The Petitioner submits that the Family Court's dismissal of her application dated 13.03.2024, which sought to summon witnesses, including bank authorities, to substantiate her statement in the Evidence Affidavit, is unjustified and contrary to the directions in the order dated 11.03.2025. The Petitioner specifically sought to authenticate the 'Shakti Nagar property' document, a critical piece of evidence that would shed light on the Respondent's concealed financial status and substantial income. The Petitioner's statement in her Evidence Affidavit reveals that the Respondent deliberately



transferred the sale proceeds of his sole Noida property to his mother's name, attempting to disguise his assets and financial capacity. Despite the Family Court's earlier permission under Section 311 Cr.P.C. to prove the authenticity of this document, the refusal to summon the bank witnesses renders the Petitioner's statement incomplete and undermines her attempt to substantiate her case.

4. It is further submitted that the Respondent, throughout the trial, has misrepresented his financial situation, falsely portraying himself as having no significant income or assets. The Petitioner argues that Respondent has deliberately concealed his assets, including his appointment as CFO in 2014 and ownership of multiple properties, in an attempt to avoid disclosing his true financial capacity. The application seeking to uncover these concealments, filed on 13.09.2017, was allowed by the Court, leading to the Petitioner's examination and the subsequent cross-examination of the Respondent. During the pendency of the proceedings, the Petitioner discovered that the Respondent had transferred assets to his family members, including his mother and brother, in an effort to mislead the Court and avoid paying legitimate maintenance dues.

5. Reliance is placed on settled legal precedents, including the Supreme Court's judgment in **Rajnesh v. Neha** Criminal Appeal 730/2020 and the case of **Sandeep Walia v. Monika Uppal** CRL.REV.P. 179/2019, which recognize that when a husband conceals his income or assets, the court must take into account his true



financial status for the determination of maintenance under Section 125 Cr.P.C. Furthermore, the Petitioner cites the case of **Vikas Ahluwalia v. Simran Ahluwalia** FAO143/2013 and **Pasupuleti Venkateswarlu v. The Motor & General Traders** Civil Appeal Nos. 2120 to 2122 of 1972, where courts have acknowledged that assets are often transferred in matrimonial disputes to avoid paying rightful dues. The Petitioner further asserts that the Respondent's actions, including domestic violence, illegal retention of stridhan, and filing of frivolous litigations, are part of a larger scheme to deprive her of her legal entitlements.

6. *Per contra*, Learned Counsel for the Respondent submits that the Petitioner has come to the Court with unclean hands, citing several instances of delay tactics employed by the Petitioner in the proceedings. It is contended that the Petitioner filed numerous applications with the intent to derail the maintenance petition, and such actions have caused undue delays in the proceedings. The Respondent highlights that the issues in this matter were framed on 18.09.2013, and the Petitioner's evidence was closed on 19.08.2014. Furthermore, the Respondent's cross-examination was concluded on 17.02.2016, and the Petitioner filed an application under Section 311 Cr.P.C. shortly, thereafter, leading to further adjournments and delays, despite specific directions from the coordinate bench to expedite the matter.



7. The learned counsel appearing for Respondent while relying on the impugned order, submits that the witnesses sought to be summoned are not relevant to the Petitioner's case. The Respondent asserts that the Petitioner has no substantial evidence to support her claims and that her actions are part of a deliberate attempt to prolong the litigation. The Respondent further refers to orders dated 18.11.2021 and 24.04.2023, where the trial court specifically noted the Petitioner's delay tactics. It is submitted that the Petitioner's conduct, including the filing of repetitive applications and non-cooperation, is an attempt to create litigation fatigue and further delay the proceedings in a case that involves a short-term marriage of approximately 6-8 months.

8. In the light of rival submissions made and material placed on record, this Court is of the view that learned Family Court erred in dismissing the petitioner's application under Section 311 Cr.P.C, which reads as under:-

***“311. Power to summon material witness, or examine person present.***

*- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*

*[311-A. Power of Magistrate to order person to give specimen signatures or handwriting. [Inserted by Act of 2005, Section 27 (w.e.f. 23-6-2006).]*

*- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen*



*signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting: Provided that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding.]"*

9. Section 311 Cr.P.C grants wide discretion to the Court to summon, recall or re-examine witnesses at any stage of the proceedings. The objective is to ensure that the truth emerges and justice is served. However, at the same time, such power must be exercised with caution, fairness and judicial prudence so that it does not become an instrument of delay or abuse.

10. It is apparent from the language that the Section consists of two parts. The first part is discretionary inasmuch as it allows the Court to summon or recall witnesses, if it thinks fit, while the second part is mandatory-if the evidence is essential to the just decision of the case, the Court must summon or recall the witnesses. Section 311 overrides the procedural technicalities in the interest of justice.

11. In the case of **Zahira Habibullah Sheikh & Anr. vs. State of Gujarat & Ors** 2004 4 SCC 158, the Supreme Court held that the Court has wide discretionary power to recall and re-examine the witnesses to arrive at the truth.

12. In **Natasha v. CBI (State)** CrI. Appeal no. 709/2013, the Apex Court *inter alia* held that Section 311 Cr.P.C. grants wide discretionary power to summon or recall witnesses at any stage to



ensure a just decision. This discretion must be exercised judiciously, not arbitrarily.

13. In paragraph 8 of the impugned order, the learned trial Court crystallized the cumulative purpose of the three pending applications filed by the petitioner to summon the following documents:-

*“A. Concerned official from Axis Bank, with a copy of the bank statement (rubber stamped &/or signed) of following a/cs only for date 05.08.2013 (both debit and credit):  
(i) a/c bearing no. 054010100085612 in name of Anju Jain  
(ii) a/c bearing no. 054010100200851 in name of Vibha  
(iii) a/c bearing no. 911010040103051 in name of Rajender Kumar Jain.*

*Address: 23/ 10, Indra Chand, Shastri Marg, Block 23, Shakti Nagar, New Delhi 110007, IFSC UTIB0000054.*

*B. Concerned official from Bank of Baroda, with copy of the bank statement of a/c bearing no. 00920100007863 in the name of Rani Jain, for the period 01.03.2019 till 30.09.2019 (rubber stamped &/or signed).*

*Address: 114-A, Ground floor, Kamla Nagar Chowk, Shakti- Nagar, Delhi 110007. IFSC BARBOSHAKTI*

*C. Concerned official from ICICI Bank, with copy of the bank statement (rubber stamped &/or signed) of following a/cs:  
i. A/C bearing. no. 038701000834 in the name of Rishabh Jain only for date 05.08.2013 (both debit and credit).*

*ii. a/c bearing no.004601562371 in name of Rishabh Jain, for period 01.03.2019 till 30.09.2019.*

*iii. a/c bearing no. 039901552365 in name of Ankit Jain, for the period 01.11.2016 till 31.03.2017.*

*Address: 33, Community Centre, New Friends Colony, New Delhi 110025.*



OR any other branch of ICICI Bank Ltd.  
(Address: Ua/31, Jawahar Nagar, Kam/a  
Nagar, New Delhi- 10007).

D. Concerned official from Federal Bank, with the following:

- i) Copy of the bank statement of a/c bearing no.13825600012509 ID:130436262), OD-FF-Home Extra Gain, in the joint name of Rishabh Jain and Rani Jain, for the period 01.03.2019 till 30.09.2019
- (ii) Office record of the Loan Agreement (to purchase the property no. 21/6, Ground Floor, Shakti Nagar, Delhi-110007), Sanction Order and List of Documents (LOD) alongwith their photocopy (rubber stamped &/or signed).

Address: 1001, Faiz Road, Arya Samaj Road Crossing, Karol Bagh, New Delhi 110005.IFSCFDRL0001382.

E. Concerned official from Dy. Assessor and collector, North Delhi Municipal Corporation, Karol Bagh Zone, with complete records available in your office of shop bearing no.2632117, Shadikhampur, Main Patel Road, New Delhi-110008, near metro pillar no. 213, including the following:

- Office record of the Sale deed dated 22.07.1970 executed in favour of Sh.Ghasi Ram Jain, duly registered with Sub-Registrar- I, Kashmere Gate vide registration no.5690, Addl.Book no. I, Volume no. 2418, Page 96-97 on 24.07.1970 alongwith the photocopy.

-Office record of the Mutation Document no. TAX/KBZ/95/1239 by which the said shop is mutated in the name of Sh. Narender Kumar and Sh. Virender Kumar from the name of Sh. Ghasi Ram on 11.09.1995, issued by Asst. Assessor & Collector alongwith with the photocopy. Address: Desh Bandhu Gupta Road, Block Christian Colony, 17 B, Dev Nagar, Anand Parbat, New Delhi - 110005, near bus terminal of route No.212"

14. It is the contention of the petitioner that respondent deliberately sold his property in Noida and diverted the sale proceeds to the



accounts of his family members and such money was utilized for the purchase of a property in Shakti Nagar in the name of one of the family members of the respondent. This, according to her, has been done by the respondent deliberately to show himself as a man of no means with limited financial capacity, to avoid payment of legitimate dues/equi-status maintenance to the petitioner.

15. According to the petitioner, on 05.08.2013, from the sale proceeds of the Noida flat, respondent diverted an amount of Rs. 5.25 lakhs to the Axis bank account of his mother. On the same date, huge cash was also deposited in the bank accounts of the family members of the respondent in their various bank accounts. Petitioner wants to demonstrate through such records that respondent deliberately diverted the sale proceeds of Noida flat in the name of family members, to escape his liability of payment of due maintenance.

16. It is not uncommon that when there are matrimonial differences between the husband and wife, many times husbands tend to suppress their real income and resort to transferring their assets to avoid payment of legitimate dues to their wives. The financial status, including income, assets and means of the respondent are of relevant consideration in determining the quantum of maintenance in a petition under Section 125 Cr.P.C. By seeking to summon the statements of accounts of family members of the respondent, petitioner intends to bring on record the chain of diversion of funds from the sale of Noida property to establish that the said funds were used for the purchase of



Shakti Nagar property by the respondent. Denying the petitioner an opportunity to prove the same would frustrate the objective of maintenance proceedings and undermine the principles laid down in **Rajnish v. Neha** (supra), wherein the Supreme Court issued directions to conduct a realistic assessment of financial status, including instances of concealment. The Family Court's reliance on procedural history to justify its refusal, such as alleged delays and multiple applications, does not outweigh the petitioner's right to a fair opportunity to substantiate her claim, especially when prior orders had already allowed her to lead the evidence. The dismissal order fails to engage with the relevance and necessity of the evidence sought, and instead treats the petitioner's applications as mere delaying tactics without properly appreciating their substance.

17. No doubt, the petition was filed way back in the year 2013 and has not been disposed of till date and applications under Section 311 Cr. PC have been preferred at the stage of final arguments. However, power under Section 311 Cr.P.C can be exercised at any stage of enquiry, trial and other proceedings. Such power can be invoked even at the stage of final arguments.

18. Matrimonial litigation, particularly where financial dependency and concealment are alleged, demands a sensitive and pragmatic approach. The documents and witnesses sought to be introduced by the petitioner are not collateral or immaterial but rather, they directly affect the determination of maintenance which is a matter of



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subsistence. The Family Court ought to have adopted a more purposive interpretation of its enabling powers under Section 311 Cr.P.C., instead of taking a hyper-technical view.

19. Accordingly, the impugned order dated 07.06.2024 is set aside. The petition is allowed. The learned Family Court is directed to permit the petitioner to summon the concerned witnesses with the relevant record. However, it is directed that the remaining proceedings be conducted expeditiously and all out efforts be made to dispose of the case as early as possible and preferably within a period of next three months. Both sides are directed to cooperate with the trial Court in an effort to expeditiously dispose of the petition.

**RAVINDER DUDEJA, J.**

**31<sup>st</sup> July, 2025**

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