

AJ+ vs MJ+ on 21 February, 2014

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Bench: Manmohan Singh

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: February 21, 2014

+ CM(M) No.910/2010, CrI. M.A. No.4595/2012 &
CrI. M.A. No.17724/2012

AJ+ Petitioner
Through Ms.Anu Narula, Adv.

versus

MJ+ Respondent
Through Mr.Rahul Mehra, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner AJ+ against the impugned order dated 15th March, 2010 passed by ADJ-2 (West), Tis Hazari, Delhi in favour of her husband MJ+/respondent herein whereby her application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") was dismissed, inter-alia, mainly on the ground of concealment of facts.

Admitted facts between the parties

2. Both petitioner and respondent got married on 16 th February, 2005 and started living at V-38 Green Park, New Delhi. The couple shifted to an accommodation at 303 SFS Apartment, Hauz Khas, New Delhi on 15th April, 2007. Disputes arose between the parties in July, 2007. In September, 2007 the respondent-husband filed a petition under the Act seeking divorce from his wife-petitioner on the grounds of cruelty. In November, 2007 the petitioner filed a petition under the Protection of Woman and Domestic Violence Act, 2005 along with interim relief i.e. maintenance etc. She also filed a complaint on 23rd November, 2007 under Section 498-A/406 IPC with CAW Cell, Amar Colony/Nanakpura, New Delhi against the respondent and his family members which was later on converted into an FIR bearing No.190/08, Police Station Friends Colony, New Delhi registered on 4th March, 2008. In December, 2007, she also filed another complaint case No.381/2008 under

Section 125 Cr.P.C. before the Mahila Court, Patiala House, New Delhi. Her interim application seeking maintenance amongst other relief under Section 23(2) of the Domestic Violence Act was dismissed by the Metropolitan Magistrate, Patiala House, New Delhi by order dated 23rd April, 2008. However, in appeal being Criminal Appeal No.65/2008, the learned Addl. Sessions Judge, New Delhi granted the maintenance @ Rs.10,000/- per month. Now, the matter is fixed for evidence. In an Anticipatory Bail Application No.832/2008, the respondent in May, 2008 had returned the car along with jewellery items to the petitioner and the order was also passed in the application whereby the respondent was directed to deposit Rs.12 lac in the form of an FDR in the Trial Court towards the alleged return of disputed dowry articles.

3. The petitioner made the averment in the application filed by her under Section 24 of the Act in the month of April, 2008 that at the time of marriage she was housewife and was pursuing her course of Fashion Designing from J.D. Institute, Hauz Khas Village, New Delhi. She was having no independent source of income to maintain herself and she is dependent upon the mercy of others for her day-to-day needs and requirements. It was stated that as far as the respondent-husband is concerned, he is a man of means and is doing flourishing business of garments exports under the name and style of M/s Master Apparels Pvt. Ltd. and M/s A.M. Expo from D-15, Sector-3, Noida, UP and he is earning Rs.8-10 lacs per month. Apart from the above, he is also having various properties in Mumbai and Delhi and having many bank accounts, investments in shares, FDRs, LIC policies, debentures, mutual funds etc. worth crores of rupees. He is leading a luxurious life and maintaining mobile phone, motor-car etc. He is having all the luxuries and amenities in his house. The prayer in the application was made to issue a direction by this Court to the respondent to pay a sum of Rs.4 lacs per month to the petitioner-wife as maintenance pendente lite from the date of filing of the application till the pendency of the petition and also a sum of Rs.80,000/- to meet the litigation expenses.

4. In reply to the said application, it was stated by the respondent that the petitioner is an educated lady, admittedly qualified as a Fashion Designer and is fully capable of maintaining herself. The application under Section 24 of the Act was filed by the petitioner in order to harass the respondent and intend to blackmail and extort money from the respondent. It was also stated in the reply that the petitioner had completed her one year course of Fashion Designing from J.D. Institute, Hauz Khas Village, New Delhi. She would earn a salary of anywhere close to Rs.50,000/- per month. However, she is intentionally not picking up a job or concealing her income in order to further harass the respondent. It was denied that the respondent is a man of means and is doing flourishing business of garments exports or he is earning Rs.8-10 lacs per month. The respondent has denied the other details given by the petitioner in the application. He stated that the respondent had three partnership firms, namely, AM Expo, Masters India and Miracle Fashions which were started sometime in the years 2000, 2005 and 2006 respectively dealing initially in the export of readymade garments and subsequently in trading of fabric. However, the said three concerns are not anymore in business of garments exports or fabric trading. As of today, the said firms are being operated for settlement of outstanding liabilities only. For the financial years 2004-2005, 2005-2006 and 2006-2007, he has earned as per the Income Tax Returns a sum of Rs.34,043/-, Rs.1,57,281 and Rs.3,36,670/- respectively. Thus, his average income in the last three years comes to approximately Rs.1,76,000/- per annum (in other words, Rs.15,000/- per month). Even if one takes

the respondent's income to be the one reflected in the latest income tax return for the financial year 2006-2007, i.e. Rs.3,36,670/- annually, it comes to approximately Rs.28,000/- per month. The respondent is the employee of the company Master Apparels Pvt. Ltd. and is drawing a monthly salary of Rs.15,000/-.

5. As per the order passed by the learned trial Court on 22nd April, 2008, the petitioner filed her affidavit dated 20th October, 2008 in which she almost reiterating the facts stated in the application under Section 24 of the Act. In addition to that, she has stated that she did her B.A. (Hons.) in English from Jesus and Mary College, Chanakyapuri, New Delhi and has done diploma in Fashion Designing from J.D. Institute, Hauz Khas Village, New Delhi. She is unable to maintain herself.

6. In counter affidavit dated 15th March, 2010, the respondent stated that for the last 18 months, the petitioner was getting a salary of approx. Rs.30,000/- per month and has received approx. Rs.22,000/- per month as salary in hand after TDS and other deductions. Few documents were filed alongwith his affidavit. It was stated by him that the amount which is being received by her is diverted into the joint accounts of her with her mother. On the other hand, the respondent is unemployed and he is suffering huge financial losses. Therefore, the question of granting the relief under Section 24 of the Act does not arise.

7. On the same day, the impugned order was passed whereby the application filed by the petitioner was dismissed, mainly, on the reason that the petitioner has been employed with M/s Images Consumer Media Pvt. Ltd., from where she had been drawing salary of Rs.20,000/- per month. She had concealed this fact from the Court in her application and even in the affidavit dated 20th October, 2008 wherein she had reiterated that she has no independent source of income to maintain herself. Therefore, as per the learned Trial Court, she was not entitled for any alimony.

8. The said impugned order has been challenged by the petitioner before this Court. During the pendency of the present petition, as per the order dated 18th November, 2011, an affidavit dated 13th December, 2011 was filed by her wherein she has admitted that from January, 2008 to April, 2008, she did her internship with Designer Gaurav Gupta. In May, 2008, she became a trainee and joined FNL Magazine of Images Group as Junior Fashion Stylist which was an on-job training with an approximate stipend/ income of Rs.21,315/- per month. But due to recession, her stipend was reduced to Rs.16,315/- for a period of three months, i.e. July, August & September, 2009. She was promoted as Fashion Stylist in December, 2009. The said magazine shut down in January, 2010. She was temporarily accommodated in another magazine Salon International of the Group and ultimately, she resigned on 31st March, 2010.

9. It was also mentioned in the said affidavit that from April, 2010 up to the date of filing of the affidavit, she was unemployed and doing a Fashion Designing Diploma course from NIFT, Hauz Khas, New Delhi. She admitted that she has a joint bank account with her mother Mrs. Shashi Jain with an FDR of Rs.2 lacs and Savings Bank Account with balance of Rs.5654/-. She also admitted that she had another joint account with her father Mr. V.B. Jain but the same had already been closed in November, 2011 with last balance of Rs.4767/-. She further submitted that she has a Toyota Corolla Car, Model 2005 which was initially gifted by her father at the time of her marriage

to the respondent which was retained by him and returned on the directions of this Court during the hearing of the bail application. She has an insurance policy since 2009 with an annual premium of Rs.35,000/-. One mobile phone registered with Airtel Company. Along with the affidavit, she has filed certain documents in support of her contentions.

10. In the affidavit dated 14th December 2011 filed by the respondent it was stated that he has come to know from reliable sources that the petitioner has been working as a Stylist with Cosmopolitan Magazine since September, 2010 for the last more than a year at a salary of approx. Rs.50,000/- per month. She has also been invited in various fashion shows organized by different companies. She was featured and published in various issues of Cosmopolitan Magazine. Documentary evidence was also filed by the respondent.

11. The petitioner filed her counter-affidavit to the affidavit dated 14th December 2011 filed by the respondent wherein it was stated that the respondent is not residing at the address mentioned in his affidavit, i.e. A-6, Press Enclave, New Delhi and hence, has committed perjury by making the false statement. The said premises is a single residential unit wherein one Dr.Sapan Saraf is residing as a tenant. In fact, the said premises is owned by Mrs.Shuchi Jain who is the maternal aunt (Mami) of the respondent. The petitioner had sent greeting letters at the said premises addressed to Mr.Sapan Saraf and the respondent. The letter addressed to Mr.Sapan Saraf has been duly received whereas the one addressed to the respondent has been undelivered stating that the respondent does not reside at the given address.

12. The petitioner filed two affidavits dated 13th December, 2011 and 30th January, 2012. It was stated in her affidavit dated 30th January, 2012 that the respondent is, in fact, staying with his family at V-38, Green Park (Main), New Delhi. She has denied her salary of Rs.50,000/- as alleged by the respondent. She stated that she is only a contributor to the Cosmopolitan Magazine and she has never been employed with the said organization. Her name is not there on the Mast Head of the Magazine. She is not on the pay roll and she was paid only a sum of Rs.4500/- per shoot which includes travelling and out of pocket expenses and only once or twice shoot is to be done in a month's time. A letter from the said Cosmopolitan Magazine and the Mast Head of January, 2011 are also filed.

13. The respondent in his counter affidavit dated 3rd July, 2012 almost reiterated the earlier averments made by him except in para 5 of the affidavit. The respondent gave the details of the amount received by the petitioner from Cosmopolitan Magazine where she was receiving various payments amounting to Rs.5,000/-, Rs.10,000/- and Rs.15,000/- etc. and deposited in the account of M/s Apical Consultants owned by her father Mr.Vidya Bhushan Jain. The details of amount received by her for the months of March to June, 2011 were annexed with the affidavit.

14. In reply dated 12th July, 2012 to the counter affidavit filed by the respondent the petitioner clarified that she is not employed in the Cosmopolitan as alleged by the respondent and has always been invited as an invitee at shoots by the Cosmopolitan for which she was paid Rs.4500/- per shoot after deducting TDS, but the same was very rare and occasional. In order to prejudice the Court, the respondent has intentionally filed the statement of only new specific months where the fact remains

that it was rare and occasional that the petitioner was invited in the shoots for which she was paid Rs.4500/- and since January, 2012 the petitioner has done only three shoots and has been paid Rs.4500/- for one shoot and remaining payment of Rs.4500/- for the two shoots respectively is yet to be paid by the Cosmopolitan to the petitioner. Since last seven months, the petitioner has earned an average amount of Rs.1,930/- per month which is not at all sufficient for the maintenance and living of the petitioner.

With regard to the transfer of certain amount in the account of M/s Apical Consultants owned by the father of the petitioner, she stated that since she is not filing any income tax return and the amount was received by cheque, therefore, the said facility was obtained by her by depositing the cheques in the name of her father. It was also reiterated that the respondent is residing with his family in the house at Green Park as his mother has received the notice in the proceedings under Section 125 CrPC at Green Park address on his behalf.

15. In An additional affidavit dated 22nd May, 2013 she also annexed a CD and some photographs of her husband were filed. According to her, he is working in his 60 years old family business which is run in the name and style of M/s A.M. Electricals which deals in copper wiring trading. The CD and the photographs show that the respondent is sitting in the counter in the shop/business along with his brother and dealing with their clients at their Bhagirath Place office. The CD also shows that he is driving a Verna and Etios Cars with his family members, which is contrary to the averments made by the respondent that he does not drive any car and in fact, uses public transport. He is also picking up his brother's children from their school and dropping them home as per the photographs filed by the petitioner.

16. In view of the statement made by both the parties in their affidavits, pleadings and documents annexed, both have filed petition under Section 340 CrPC against each other by allegeing concealment of facts and making incorrect statements in the Court. Both the petitions are pending.

17. The respondent in his petition under Section 340 CrPC being Crl. M.A. No.17724/2012 sought reliefs against the petitioner for perjury by deposing falsely about her being a destitute when she is gainfully employed and earning a salary. The petitioner filed the petition being Crl. M.A. 4595/2012, under Section 340 Cr.P.C. against the respondent for committing perjury for furnishing incorrect and false address, inter alia, on the grounds that the respondent is not residing at A-6, Press Enclave, New Delhi, and in fact he is residing at V-38, Green Park Main, New Delhi. Some evidence has also been filed in support of her submission.

18. With the said backgrounds and facts of the present case, validity of the impugned order dated 15th March, 2011 is to be examined. It is to be examined as to whether the impugned order suffers from legal infirmity which would call for exercise of discretion under Article 227 of the Constitution of India or the petitioner is permanently debarred to claim the maintenance if Court comes to the conclusion that the act of the petitioner was not proper by not disclosing her income in the petition under Section 24 of the Act.

19. It is argued by Mr. Rahul Mehra, learned counsel appearing on behalf of the respondent that the petitioner has time and again deposed falsely on oath before the learned trial Court as well as before this Court by concealing gainful employment, salary income with an ulterior motive in order to obtain favourable orders. All the times she deposed that she has no independent source of income and is a destitute. Counsel has referred three affidavits dated 20th October, 2008 (in compliance of order dated 22nd April, 2008), affidavit dated 13th December, 2011 as well as affidavit dated 12th July, 2013 in support of his submissions and states that in fact, she has committed contempt of Court by filing false affidavit with regard to her employment and has also referred various documents in order to show her employment statements of joint account held with her mother Mrs. Shashi Jain and diverting her current income from cosmopolitan magazine into another account of a company started by her father Mr. V.B. Jain under the name and style of Apical Consultants with the sole object to conceal her income of gainful employment despite of receiving Rs.10,000/- as per order passed in appeal No.65/2008. She was receiving the salary from M/s. Images Consumer Media Pvt. Ltd. as a Junior Stylist in FNL Magazine at a salary of about Rs.25,000/- per month during the period 22nd May, 2008 till 31st March, 2010 by diverting into an undisclosed joint account with her mother. She resigned from the employment of M/s. Images Consumer Media Pvt.

Ltd. but soon after started working for fashion magazines i.e. Cosmopolitan. She has presided over various fashion based web sites and shows, distinguished 'guest' and/or Jury Member against remuneration and after confrontation with documentary evidence, she is left with no other choice but to admit that she has been generating income of a minimum of Rs.10,000/- per month in cash while working as a contributor/ fashion stylist with Cosmopolitan since January, 2011. Thus she is not a destitute but she has not only received substantial sums from her husband but has received salary from her gainful employment. Thus, the present petition filed by the petitioner is liable to be dismissed in view thereof.

20. Ms. Anu Narula, learned counsel appearing on behalf of petitioner, after reading all the affidavits filed by the petitioner, has argued that in nutshell the case of the petitioner is that she was a house-wife and had no source of income at the time of marriage, i.e. on 16th February, 2005, at the time of filing of divorce by the respondent-husband on 6th September, 2007 and at the time of filing of maintenance application on 22nd April, 2008. The petitioner was pursuing her diploma course in fashion designing from the J.D. Institute of Fashion Designing. The duration of the said course was from August 2006 to November, 2007.

21. Thereafter, the petitioner did unpaid internship with designer Sh. Gaurav Gupta with effect from January, 2008 to April, 2008. In fact, this internship is mandatory and is a part of the curriculum (letter of Sh. Gaurav Gupta enclosed). With effect from 20th/22nd May, 2008, the petitioner worked as a Trainee/Junior Fashion Stylist with FNL Magazine of Images Group. Initially, she was on probation and was not confirmed. Her initial salary was only around Rs.21,000/- per month which on account of recession was reduced to Rs.16,000/- approximately.

The petitioner was promoted as Fashion Stylist from Trainee/Junior Stylist in December, 2009 with the same magazine. This magazine shut down in January, 2010. The petitioner was temporarily

accommodated with another magazine - 'Salon International' (of the same group). However as the petitioner is a fashion stylist and the magazine was a beauty magazine, the petitioner having no other option tendered her resignation on 10 th March, 2010 and finally resigned on 31st March, 2010. With effect from April, 2010, the petitioner has been unemployed. To keep herself occupied, as well as to create a niche for herself in the fashion market, she did the following: She pursued the Fashion Designing Diploma Course from NIFT, Hauz Khas. With effect from November 2010, she gave fashion styling tips to gain experience and earn reputation in fashion market.

The petitioner was never/is still not an employee of Cosmopolitan Magazine as alleged by the respondent/husband. In fact her name is not even reflected on the mast head of magazine i.e. normally where the names of salaried employees figure. She is a freelancer consultant and stylist and is paid the nominal amount of Rs.4,500/- per shoot, and the said amount is inclusive of expenses like traveling etc. The shoots can range from once or twice in a month to once or twice in 3/4 months. For instance, with effect from November, 2011 till July, 2012 the petitioner only got three shoots and till July, 2012 she was not even paid for the two shoots out of the said three. There is a distinction between the editorial shoot and advertorial shoot; while editorial shoots are conducted by the magazine itself and the freelances/(as in the petitioner's case) are paid fixed amount of Rs.4500/-, (including expenses), whereas for advertorial shoots, the payment is made by the client to the worker through the medium of magazine, and not by the magazine. The fact remains that the petitioner is not a permanent employee of the said magazine and she does have any regular or substantial source of income. She has done freelance shoots, for whatever meager amount, only for Cosmopolitan and/or for its group/sister concerns like Women's Health (Cosmopolitan and Women's Health both are a part of India Today). Any shoot other than for Cosmopolitan and its sister groups, done by the petitioner has not been for any monetary gain but has been honorary/ ex gratia, to create a place for herself. For instance, the petitioner had done a shoot for Brunch, Hindustan Times. The petitioner was not paid anything for the said shoot.

22. It was argued that if the petitioner had any malafide intent to make concealment, she would not have disclosed even the above said facts as there is no whisper of the same by the respondent. It is submitted that her affidavits dated 13th December, 2011, January, 2012 and July, 2012 would show that she has revealed and disclosed all these facts before this Court.

23. The petitioner and respondent who appeared in person are also allowed to submit by the Court when certain queries were raised. The petitioner has informed the Court that she was not employed at the time of marriage. She is educated lady but was not permanently employed at any point of time. She tried her best to save her marriage but she was not able to do so. She apologized to the Court for not disclosing the income of her temporary employment. She stated that she was unaware about it. She will never repeat the same in future. It was stated that she actually had filed the affidavit as per advice given by the earlier counsel otherwise she never intended to hide anything from the Court. She has a great respect for the Court. The respondent, on the other hand, denied her version. He stated that it was done by her knowingly and deliberately in order to hide her income from the Court as well as from him. She does not deserve any indulgence particularly in the present jurisdiction. Thus, the petition is liable to be dismissed.

24. The learned Trial Court has dismissed the application of the petitioner under Section 24 of the Act mainly on the reason of concealment of facts. The learned Trial Court has in fact not dismissed the same considering the status of the parties, income of the respondent, his family background and their movable and immovable properties. The learned Trial Court has also failed to consider the aspect of future period of maintenance, if any, to be paid by the respondent in view of the settled law that the applicant is entitled to live in a similar life style as enjoyed by her in her matrimonial home.

25. As far as grant of maintenance to the petitioner for the period until full disclosure of her income is concerned, this Court is not inclined to pass such orders though the counsel for the petitioner tried to convince the Court that it was a bonafide mistake and it happened due to her unawareness. The petitioner filed the maintenance application in April 2008, however, full disclosure of her income has been indicated by her in affidavit dated 30th January 2012. Having considered the rival submissions of the parties and material placed on record, I am of the considered view that the petitioner is not entitled for any maintenance for the said period i.e. from date of application till 31st January 2012. Her prayer in this regard is rejected despite that the said circumstances may have happened due to oversight. But fact of the matter is that true information had not come before the Court.

26. At the same time, however, this Court cannot ignore the vital facts and circumstances of the present case. The petitioner is a well educated lady and has been involved in various litigations within two years of marriage. She has completed her training of fashion diploma course. At the time of inception of the litigation, she had no source of income and she was not working at the time of her marriage. It appears to the Court that in order to meet her expenses and to live her routine life, she was temporarily working place to place. Father of the petitioner is retired from a Government Job. No doubt, it has come on record that her income has been transferred to joint account with her mother and in the account of her father. She tried to give her justification thereto.

27. In the case of Arun Kumar vs. Meenu Kumar, 2012 (194) DLT 757 it was held in paras 23 to 24 as under :

"23. While there is no quarrel to the proposition that one must approach the Court with clean hands and must not suppress and withhold material facts as far as judgment relied upon in the case of Dudhiben Merakhbhai (supra) is concerned, the same is not applicable to the facts of the present case as it pertains to proceedings under Section 125 of Cr.P.C. and even otherwise in this case it is yet to be proved that respondent was living in adultery. The case of Smt. Mamta Jaiswal (supra) is also not applicable to the facts of the present case as it cannot be said that the respondent is sitting idle with a view to extract money from the petitioner but the moot question is as to whether the respondent has regular source of income and whether the income is such which permits her to stay and live in dignity and with the same status which she was enjoying in her matrimonial home.

24. While in the application under Section 24 of Hindu Marriage Act the respondent did not disclose that she was working on commission basis with AVIVA Insurance

Company. Concealment by the parties in filing an application under Section 24 of Hindu Marriage Act and the reply thereto is highly prevalent and such a practice should be strongly deprecated. In this case by an order dated 24.9.2007 passed by Additional District Judge both parties were directed to file affidavits with regard to their income and in the affidavit filed by the respondent on 3.4.2008, the respondent clarified and placed on record a certificate from AVIVA Insurance Company to show that she was serving not as a regular employee with AVIVA Insurance Company and she was on the payroll, nor she was entitled to fix remuneration and she received commission from the company in respect of insurance secured by her efforts. She also clarified in her affidavit the source for purchasing the SANTRO car and even annexed her bank statement as also saving bank account pass book. She has also rendered an explanation with regard to the purchase of a flat and the source of income after selling the property, which belonged to her father. An Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India. She has a right to live in dignity and according to the status of her husband. The certificate issued by AVIVA Insurance Company would show that the respondent was not on their payroll and, thus, it cannot be said that she had a regular source of income and further it cannot be said that by any income generated on commission she would be able to enjoy the same status which she was enjoying in her matrimonial home."

28. In case the entire arguments of the respondent are accepted as gospel truth, it would still show that she had not earned more than Rs.20,000/- per month being her temporary employments. The scheme of the Act is to provide maintenance to the wife which cannot be avoided if circumstances are in favour of the wife. The legislature in its wisdom has made the provision for providing maintenance to the deserted wife.

29. It is true that in various cases of similar nature, parties do not truthfully reveal their income, status of the family, details of the properties owned by them. Similar things have happened on the present case. Considering the overall view and facts and circumstances, as already stated in the earlier part of the order, this Court is not inclined to grant maintenance for the period starting from the date of application under Section 24 of the Act upto 31st January 2012 when the full disclosure was made. However, the petitioner is entitled to receive maintenance after the said period. It is the admitted position that the petitioner does not have any financial support from any quarter. Let me now examine the aspect of quantum of maintenance from the period starting from 1st February 2012 till disposal of the divorce petition filed by the husband which is pending before the learned Trial Court

30. It is settled law that while deciding amount of ad-interim maintenance Judge also ought to have taken into consideration properties of the husband and his joint family and their business and social status as well as financial position.

31. Quantum of maintenance contemplated under Section 24 of the Act is that which appears to the Court to be reasonable. In considering the question, naturally, the Court must take into

consideration income of the spouses and the needs of the claimant having regard to the status of the parties, their family background, the standard of living to which the claimant has been accustomed, legal and other obligations of the person liable to make the payment and other relevant circumstances.

32. In the case of Sh.Bharat Hegde vs. Smt. Saroj Hegde, 140 (2007) DLT 16 in which it was observed that the relevant considerations to be taken into account at the time of assessing maintenance claims are: Status of the parties, reasonable wants of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in matrimonial home, non-applicant's liabilities, if any, provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant, and the payment capacity of non-applicant. Equally, and as it often is the case, some guesswork is not ruled while estimating the income of the non-applicants when all the sources or correct sources are not disclosed. Paras 7 & 8 of the said judgment read as under:-

"7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The Court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act."

33. In Vinny Parmvir Parmar vs. Parmvir Parmar, (2011) 7 Scale 741, the Supreme Court held that the quantum of maintenance inter alia depends on the status of the husband. The Court in para 12 held as under:

"12.The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The Courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party....."

34. In Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.,1997(7) SCC 7, the Supreme Court held that there can be no set formula laid down for fixing the amount of maintenance. Rather, it depends on the facts and circumstance of each case. Thus, the Court must consider the status of the parties, their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in "reasonable comfort" considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case.

35. In her affidavit, the petitioner specifically made the statement that the respondent continues to live in his family house where the petitioner was earlier living, i.e. V-38, Green Park (Main), New Delhi which would have rental value of Rs.2 lacs per month whereas the rental value of the flat at Hauz Khas would be Rs.1 lac per month. It was stated by the petitioner that the electricity, water, gas and maintenance would require Rs.15,000/- per month and a sum of Rs.3500/- per month would be needed for a maid and servant. Towards food, a sum of Rs.12,000/- per month would be needed. Apart from this, security amount of about Rs.2 lacs as deposit would also be required. Besides the said requirements, to maintain herself, she requires a sum of Rs.25,000/- per month towards travelling, clothing and medical etc. and estimated sum of Rs.3 lacs would be needed towards furniture and household utensils and a driver salary would be Rs.6500/- per month. The

maintenance and fuel cost would be Rs.10,000/- per month.

36. She has also stated that the affidavit filed by the respondent about his income is totally false as undervalued income tax returns are filed by him. She has referred the reply dated 12th March, 2011 wherein the respondent has claimed himself to be in debt of huge amount in crores and that numerous litigations were pending against him. However, in the subsequent affidavit dated 14th December, 2011, the respondent has stated that there are no debts due to him. It shows that the respondent is earning a very handsome amount which has enabled him to pay off all his alleged debts and hence, the petition is liable to be allowed. The respondent is, in fact, visiting places like Mussoorie, Kashmir and other tourist places for vacations with his friends and family and staying at lavish hotels and resorts and also visiting lavish parties. The respondent himself has admitted to be staying at Jaypee Resort in Mussoorie with the petitioner which is a well renowned hotel. It shows the standard of his living that he currently drives a Toyota Corolla Car and he is residing with his family. Certain photographs are also filed by the petitioner. She also disclosed that the respondent and his family members has sold the Hauz Khas Apartment which was in the name of the grandfather of the respondent and the said money has been utilized to purchase a floor in V-36, Green Park (Main) with market value of approx. Rs.4 crores. The petitioner has also a right to inherit the said property. It was a joint family. They own a farm house on Bhartal Road, the value of which would be approx. Rs.20 crores. The value of the property V-38, Green Park (Main), New Delhi is approx. Rs.10 crores and that of the floor in V-36, Green Park (Main), New Delhi is approx. Rs.4 crores.

37. It is argued on behalf of the petitioner that the respondent's family is engaged in the flourishing business of manufacturing and trade of copper wires along with other miscellaneous trades and businesses. All these are joint family business wherein the respondent is also a part thereof. He also owned two flats in Swapna Dhara Building, Devi Dyal Compound, Thana, Mumbai, which have been transferred by the respondent on his father's name in and around 2008 in order to protect them from being attached by the Court in the Domestic Violence proceedings. Each of the said flats has the market value of Rs.40 lacs.

38. From the pleading of the respondent before other Courts, it has come on record that the respondent's family is having successful and flourishing business of electrical and non-ferrous metals for the last 22 years. They are successful in their business. His mother belongs to a family of journalists and lawyers. The respondent has maids and servants. The respondent took the petitioner to one month honeymoon for foreign tour and took her to exotic locations like Leh, Indo-Asiatic. He has been purchasing luxury cars like Toyota Corolla. He has been using bank accounts and credit cards of his brother. On the one hand, he projects about his poverty, closure of his business, on the other hand, record shows that he had various trips to USA and stayed at J.P. Residency (Manor), mobile bills to the tune of Rs.20,000/, foreign exchange, investment in trade marks, various his photographs of the parties as per prima facie evidence produced by the petitioner. Respondent has also admitted during the course of hearing that his family has two properties i.e. V-36 and V-38, Green Park Main, New Delhi. Though the petitioner has also given the details of various other properties including in Hauz Kahas and two properties in Mumbai Swapna Dhara Building and Devi Dayal Compound and around Soacres Farm House in the name of Jain Farm House in Bhagtal but

no clinching evidence is available on record.

39. From the material placed on record by the petitioner, prima facie it appears to the Court that even the respondent has not made full disclosure about his income and correct status of the family in the affidavits filed by him. The statements made by him are contrary to the statement made in the bail application. Prima facie, it appears to the Court that the respondent is hiding his income by trying to show himself as a pauper, however, the documents placed on record speak differently. At the same time the family members have a reasonably flourishing business and many properties as admitted by him. It has now become a matter of routine that as and when an application for maintenance is filed, the non-applicant becomes poor displaying that he is not residing with the family members if they have a good business and movable and immovable properties in order to avoid payment of maintenance. Courts cannot under these circumstances close their eyes when tricks are being played in a clever manner.

40. Having considered the entire gamut of the matter, it is apparent that the petitioner and respondent got married on 16th February, 2005 and started living at V-38, Green Park, New Delhi. Disputes arose between the parties in July, 2007 and in September, 2007 the respondent filed a petition for divorce. The petitioner filed petition under Section 24 of the Act in the month of April, 2008. At the time of filing the petition, she was housewife and pursuing her course of fashion designing. Up to 30 th January, 2012, she did not disclose her income either before the learned Trial Court or before this Court. The factual position about her income has fully come to the notice of the Court after filing of the affidavit dated 30 th January, 2012. Thus, I am not inclined to grant any maintenance to the petitioner from the date of filing of the petition under Section 24 of the Act till 31st January, 2012. However, she is entitled to stay and live in dignity with the same status which she was enjoying in her matrimonial home and considering the status of both the parties as well as status of family of the respondent, I am of the view that the petitioner is entitled to get the maintenance from the respondent from 1st February, 2012 till the disposal of the divorce petition. On the basis of the standard of living to which she was accustomed when she was living in her matrimonial house i.e. food, clothing, shelter, medical expenses, petrol, travelling expenses, driver's salary, electricity, salary of the maid etc., the petitioner is entitled for the maintenance to the tune of Rs.60,000/- per month with effect from 1st February, 2012, till the disposal of the divorce petition. The said amount is fixed in addition to her income which is quantified at this stage approximately at Rs.20,000/- per month and Rs.10,000/- which she is already receiving as per order passed in Criminal Appeal No.65/2008 by way of maintenance under Section 23(2) of the Domestic Violence Act, 2005. The arrears of the maintenance with effect from 1st February, 2012 till February, 2014 shall be paid by the respondent to the petitioner within four weeks from today. The petitioner shall also file an undertaking by way of affidavit within one week to the effect that in case her income would be more than Rs.20,000/-, she shall inform the Court as well as to the respondent within two weeks from the said date.

41. As mentioned earlier, both parties have filed applications under Section 340 Cr.P.C. against each other. The petitioner filed Crl. M.A. No.4595/2012 stating that the respondent in his affidavit dated 14th December 2011 has falsely stated himself to be residing at A-6, Portion B, Press Enclave, Saket, New Delhi, while as he is not residing at the said address but residing alongwith his family at V-38,

Green Park Main, New Delhi. The respondent on the other hand filed Crl. M.A. No.17724/2012 mainly stating the same facts as stated in the affidavits filed by him i.e. affidavit dated 14th December 2011 and counter affidavit dated 3rd July, 2012. He has stated that the petitioner has falsely stated herself to be destitute while she is gainfully employed and is receiving handsome remuneration thereof. In view of the peculiar circumstances of the present case, as the allegations made in these applications same as allegations taken in the pleadings of the main petition i.e. CM(M) 910/2010 and affidavits filed by the parties against each other, this Court feels that it is not expedient in the interest of justice to issue enquiry to be conducted under Section 195 of CrPC. Therefore, in the interest of justice as well as the parties, both the applications filed by the parties against each other under Section 340 CrPC being Crl. M.A. No.4595/2012 filed by petitioner and Crl. M.A. No.17724/2012 filed by the respondent are disposed of in view of orders passed in the main petition.

42. The impugned order is set-aside/quashed as the same is not sustainable in law. CM(M) No.910/2010 is accordingly disposed of.

43. The petitioner is entitled for cost of Rs.50,000/- in the present case.

(MANMOHAN SINGH) JUDGE FEBRUARY 21, 2014