

Shri S K Sharma vs Mahika Sharma & Anr. on 14 October, 2022

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 14, 2022

+ CRL.REV.P. 283/2021 & CRL.M.As. 14440/2021, 14441/2021, 15232/2021, 15233/2021, 15234/2021, 15368/2021, 17211/2021, 1919/2022, 1920/2022, 4019/2022

SHRI S K SHARMA

Through: Mr. Mohd. Azam Ansari, Ashfaque Ansari, Shahnawaz Alam, Adv. w petitioner in person.

versus

MAHIKA SHARMA & ANR.

..... Respondent
Through: Mr. Pankaj Mendiratta and Mr. Ta Adv. for R1 and R2
Mr. Vikrant Goyal, Adv. for R3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

"In the premises mentioned above, this Hon ble Court:-

(A) Be graciously pleased and kind to quash and set aside the orders dated 10 Aug 2021 and 04 Aug 2021 passed by Ld Principal Judge Sh Praveen Kumar, Ld. Family Court South, Saket, New Delhi in maintenance case being M.No.108 of 2012 (Mahika Sharma & Anr. vs. Sunil Kumar Sharma) u/s 125 Cr.P.C.

(B) Pass such order(s) as this Hon ble Court deems fit and proper in facts and circumstances of the case and in the interests of justice."

2. The present criminal revision petition has been filed for quashing and setting aside the impugned orders dated August 10, 2021, and August 04, 2021, in Maintenance Case (M. No.108/2012) in the case titled Km. Mahika Sharma @ Manu Sharma & Anr. vs. Sh. Sunil Kumar Sharma.

3. As per the facts of the present case the respondents on August 17, 2012, filed a maintenance case being M. No. 108/2012 in Family Court Saket, New Delhi.

4. On October 14, 2015, interim maintenance order of 20,000/- was passed by the Family Court (hereinafter referred to as „FC). Md. Azam Ansari learned counsel appearing on behalf of the petitioner submitted that the petitioner till date, has paid a huge sum of around 17 lakhs by taking loans from friends and relatives.

5. Mr. Ansari submitted that upon challenging the aforesaid interim order dated October 14, 2015, before this Court, the same was dismissed on the ground of delay, however, vide order dated February 06, 2019, this Court has clarified that it has not observed anything on merits of the case and it is to be decided finally by the FC.

6. On May 11, 2021, a direction was given by this Court to FC to decide the maintenance case on merits, if 3 lakhs are paid by the petitioner. It is submitted that vide an Order dated July 12, 2021, this Court clarified that 20 lakhs as claimed by the respondents are disputed.

7. Mr. Ansari contended that the Family Court Judge wrote an email to this Court complaining about a few days late payments of 2 lakhs by the petitioner to the respondent which resulted in strong apprehension of judicial bias. Thereafter, the petitioner filed Transfer Petition vide no. TP (Crl) 40/2021, seeking transfer of maintenance case to some other FC on the ground of apprehension of judicial bias. This Court finding a prima facie case in favour of the petitioner was pleased to issue a notice in the said transfer petition.

8. According to Mr. Ansari, the defence of the petitioner was again struck off on July 23, 2021, for 5 days late payment of 50,000/- observing that the FC cannot extend the date fixed by this Court, despite the fact that an application was moved by the petitioner for extension of time which was disposed of on July 27, 2021, by this Court observing about the above-stated late payment. Thus, the delay was impliedly condoned by this Court.

9. On July 24, 2021, the review petition was filed before the FC, and before the review could be decided, all facts including the order of this Court dated July 27, 2021, were brought to the notice of the FC wherein an Order dated August 04, 2021, was passed dismissing the review petition with a punitive cost of 75,000/-. In this regard, Mr. Ansari stated that it is beyond understanding as to how a review being a statutory remedy can be dismissed with such punitive cost, and the said fact further strengthened the apprehensions of the petitioner of judicial bias by the FC.

10. On July 28, 2021, the order dated July 23, 2021, was challenged before this Court in CM (M) 516/2021. Consequently, on August 09, 2021, the petition was listed before this Court and the petitioner was directed to file subsequent order passed by the FC upon objections raised by the respondents which were filed the same day.

11. On August 10, 2021, the impugned judgment disposing of the maintenance case was passed by the FC, despite bringing it to the notice of the FC about the pendency of the appeal before this Court

on August 11, 2021, even the submissions to this effect, was not recorded following which an application for clarification was filed before the FC.

12. It is submitted by Mr. Ansari that this Court disposed of the petition vide order dated August 11, 2021 granting liberty to the petitioner to raise all grounds while challenging the order dated August 10, 2021, as the impugned order was only an interim order.

13. On August 16, 2021, the clarification application was dismissed on the ground that the final order is passed by the FC.

14. That apart, Mr. Ansari submitted that the FC must have recused from hearing the petitioner's case or at least should have rejected the recusal request of the petitioner before proceeding to hear the matter. Despite praying for recusal by way of written submissions filed before the FC dated August 05, 2021, the FC passed the impugned judgments / orders dated August 10, 2021, and August 04, 2021.

15. Mr. Ansari submitted that the petitioner's evidence was not even read by the FC resulting in awarding the maintenance of 30,000/- PM up to March 31, 2016, and 40,000/- PM w.e.f April 01, 2016, to the respondents being beyond the means of the petitioner. The fact that the petitioner's evidence was not read can be seen in paragraph 17 of the impugned judgment as reproduced hereunder:

"17. Respondent has relied upon judgment- Sheshrao Raibhan Ingale (supra). The said judgment is of no help to the respondent as it clearly lays down that when the defence is struck off, defendant is not entitled to press his pleas. He is not even be entitled to adduce evidence. However, he can cross examine the plaintiff and his witnesses and can show that on the basis of the material on record, the plaintiff is not entitled to any decree. Thus, the evidence led by the respondent cannot be read in his favour. The respondent has cross examined both PW-1 and PW-2. Their examination and chief and cross- examinations have been considered by the court. Respondent is not entitled to examine his witnesses in respect of the defences raised by him. However, the examination-in-chief and part cross-examination of the respondent which was conducted on 14.07.2021 can be relied upon by the petitioner so far as it supports her case."

In this regard, Mr. Ansari submitted that had the petitioner's evidence been read by the FC, no amount of maintenance could have been awarded to respondents as the pension amount was already proved in evidence i.e., 25,815/- PM by way of exhibiting the bank passbook and bank statement by the petitioner. The petitioner also proved in his evidence about his mother of 87 years was dependent on him by exhibiting Air Force Discharge Book. Mr. Ansari contended that it has further been proved in evidence that the respondent's mother (Preeti Sharma) income is 1,41,804/- besides proving that she owns a flat in Gurgaon from where 45 thousand monthly rent is coming and further, the question-answers as reproduced in the written submissions strongly suggesting ownership of another flat in Vikaspuri, Delhi. Therefore, the petitioner could not have

been burdened to pay any maintenance to the respondents till the time, the financial condition of the petitioner is improved i.e., till the time petitioner gets a job.

16. Mr. Ansari further contended that the striking off defence of the petitioner vide order dated July 23, 2021, is illegal indicating a biased approach towards the petitioner as even time to take instructions was denied to the petitioner's counsel about balance non-payment of 50,000/-. That apart, the balance payment was made on the very next working day i.e., on July 27, 2021. Furthermore, Mr. Ansari submitted that the petitioner has paid the entire amount i.e., 3 lakhs as directed by this Court vide order dated May 11, 2021, hence the order dated July 23, 2021, striking off defence, is illegal and untenable. The only ground for striking off the defence of the petitioner was non-compliance of the order dated May 11, 2021, passed in CM (M) 368/2021, which as per the petitioner, stands fully complied with, if not on July 23, 2021, but on the next working day itself i.e., on July 26/27, 2021, when the balance payment of 50,000/- was actually made by the petitioner to the respondents. Moreover, the second written submission filed by the petitioner on July 26, 2021, was also ignored by the FC.

17. Mr. Ansari submitted that the order dated July 23, 2021, was also challenged before this Court in CM(M) No. 516/2021 wherein the following order was passed on August 11, 2021:

"1. The present petition seeks to assail the interim order passed by the learned Family Court on 23.07.2021 in H.M.A. No. 388/2021 and M. No. 108/2012. After filing of the present two petitions, both the petitions being HMA No. 388/2011, as also, M. No. 108/2012, stand already decided by the learned Family Court on 10.08.2021 and therefore, nothing survives for adjudication in the present petition, which is accordingly dismissed. It is however made clear that the petitioner will be at liberty to raise all grounds as may be available to him, while assailing the final judgment dated 10.08.2021 of the learned Family Court, including the grounds raised in the present petition.

2. Needless to state, this Court has not expressed any opinion on any of the grounds raised by the petitioner in this petition".

18. Mr. Ansari has also placed on record the affidavit of income of the petitioner as per the format prescribed by the Supreme Court.. He further contended that the respondents were examined in evidence and the detailed income affidavit which is mandatory as per the Judgment of the Supreme Court in the case of Rajnesh vs. Neha & Anr., Criminal Appeal No.730/2020, was not filed. Mr. Ansari also placed reliance upon the written submissions of the petitioner filed before the FC which is reproduced hereunder:

"At this stage it is respectfully submitted that fresh income affidavit was never filed by the petitioner thereafter nor Mahika Sharma deposed for her cross examination which was repeatedly apprised to this Hon'ble Court during multiple hearings and on one occasions this Hon'ble Court orally observed that it cannot force a witness to depose. Thereafter, CM(M) 418/2021 was filed in Hon'ble High Court and Hon'ble

High Court was pleased to observe as under in Para 2 & 3 of the order dt. 9.7.21:

"2. Learned counsel for the petitioner submits that the learned Family Court has failed to appreciate that it was incumbent upon respondent no.2, i.e, the petitioner's estranged wife, to file a detailed affidavit setting out her income, assets and liabilities, which she has failed to do so. He submits that the learned Family Court ought to have therefore issued a direction to her to file the same in a timebound manner. He further submits that the respondent no.1, their daughter, is not appearing before the Court for cross-examination which is causing delay in the maintenance proceedings and, therefore, seek a direction to be issued to her to appear for cross-examination on the next date of hearing before the learned Family Court.

3. In my view, both the grievances contained in this petition are not required to be raised before this Court at this stage since it will be open for the learned Family Court to draw appropriate inferences....."

Thus, this Hon'ble Court be pleased to draw appropriate inferences against Manu Sharma for not subjecting herself to cross examination and against Preeti Sharma for not filing her latest affidavit in terms of Hon'ble SC judgment in Rajnesh vs. Neha case which respondent already filed on 1.5.21. Hon'ble HC order dt 9.7.21 is at pages 24-25".

19. It is further contended by Mr. Ansari that none of the documents were proved by the respondents, thus, mere placing documents on record will not prove the documents as the petitioner has strongly objected the mode of proof of the respondent's documents by way of raising the following objections in evidence:

"(Objection by the Counsel for the respondent - the Counsel strongly objects all the exhibits having been exhibited in this examination in chief for the reason that those have not been tendered by the authors of those exhibits and thus, strongly object the mode of proof of those exhibits) Sd/-(Respondent's mother) Sd/-(Arjun Sehgal) 24 June 2021 Local Commissioner/24.6.21"

Hence, the observation of the FC in paragraph 8 of the impugned judgment that respondents have proved all the 14 documents placed on record is required to be quashed. That apart, the documents relied upon by the petitioner i.e., petitioner's reply / WS were also completely ignored by the FC in the impugned judgment.

20. Mr. Ansari contended that it is not proved in evidence that the petitioner is a man of sufficient means as falsely alleged by respondents, yet arbitrarily and without coming to a definite finding of the exact income of the petitioner and without any cogent evidence on record, the guess work of petitioner's monthly income is arbitrarily done by the FC. Moreover, the awarding of maintenance amount by the FC i.e., of 30,000/- and 40,000/- PM up to March 31, 2016, and from April 01, 2016, respectively requires kind interference by this Court and deserves to be quashed.

21. It is further submitted that to award maintenance from the date of the petition, special reasons have to be assigned which was also not done in the present case without which, the maintenance, if any and if at all to be ordered in this case, has to be from the date of the judgment and not from the date of the petition which is well settled through various judicial precedents.

22. Mr. Ansari submitted that the appreciation of evidence was not done properly in paragraph 16 of the impugned judgment and evidence in favour of the petitioner that was also reproduced in the written submissions filed by the petitioner was completely ignored by the FC while passing the impugned judgment.

23. It is further submitted that the testimony of respondents as reproduced in the written submissions filed by the petitioner was neither reliable nor trustworthy, however, the FC held that the testimony of Ms. Preeti Sharma (PW1) is reliable and trustworthy. According to Mr. Ansari, the testimony of Ms. Preeti Sharma (PW1) was fully shaken as can be seen from her answers during the cross-examination. Therefore, the finding of the FC is perverse and contrary to records and requires kind interference by this Court. It is further submitted by Mr. Ansari that it is the joint responsibility of parents to take care of children but the petitioner is in dire straits hence, he is totally unable to pay any maintenance. Furthermore, it is contended that the respondents' earnings are more than two lakhs per month including rental income and various financial investments which were concealed by respondents before the FC by not filing a mandatory affidavit as per the Judgment of the Supreme Court in the case of Rajnesh vs. Neha (supra).

24. That apart, it is submitted that even as per Section 125 of Cr.P.C, the respondents are not entitled to maintenance because of the following reasons:

a) Section 125 of Cr.P.C under which the maintenance is being claimed lays down specifically two things; sufficient means and the major child is having some physical or mental abnormality, unable to maintain himself or herself to claim maintenance. However, in the present case, both are absent.

Moreover, it is submitted that the petitioner is not having sufficient means and the elder child Mahika Sharma is major of around 23 years of age (D.O.B; November 12, 1998), and the second child is almost major aged around 18 years (D.O.B; December 05, 2003) and none of the two children is having any physical and mental abnormality, thus, they are not entitled for maintenance under Section 125 of Cr.P.C.

b) That apart, it is contended by Mr. Ansari that Ms. Preeti Sharma (PW1) is earning more than two lakhs per month including rental income from her Gurugram Flat (₹ 1,41,804/- is admitted salary), and it has also been alleged that she owns at least three houses in Delhi and NCR region including other financial investments.

25. Mr. Ansari has also placed on record the income tax returns (ITR), extra income, total pension of the petitioner in the following manner:

Sl.	Total Income (As Total	Extra
-----	------------------------	-------

No.	per ITR which Pension included Pension as recorded in paragraph 20 of the impugned order)	Income
1.	2,68,500/-	2,21,703/-
2.	4,65,850/-	2,76,690/-
3.	5,22,490/-	2,85,948/-
4.	6,74,600/-	3,02,059/-
5.	5,24,690/-	3,09,780/-
6.	3,11,780/- (This ITR detail was not produced by the IT authorities)	2000/-

In view of the above-stated information, it is submitted that the total extra income for 6 years starting from 2016 to 2021 is 10,61,950/-. Therefore, yearly extra income comes to 1,76,991/- and monthly extra income comes to 14,749/-. That apart, the pension amount is 25,815/-. Hence, the extra total income of the petitioner is 25,815/- + 14,749/- = 40,564/- per month, 1/4th of which comes to 10,141/- per month. Thus, even if maintenance is to be awarded the same would be 10,141/- per month only. Moreover, it is the submission of Mr. Ansari that in this Covid Pandemic, the petitioner has lost his job and he is around 63 years of age with high and abnormal diabetic crossing 400 and he also has an 87 years old dependent mother, therefore, the petitioner may not be burdened with even 10,141/- per month.

26. Mr. Ansari also submitted that there are only two bank accounts of the petitioner and both have been seized vide order dated August 04, 2021, thus, there is no question of any concealment whatsoever by the petitioner about his true income. Furthermore, it is contended by Mr. Ansari that the FC has made an error in considering those issues in favour of the respondents which were not even raised in the original maintenance petition.

27. Mr. Ansari stated that the FC has no jurisdiction to pass the order dated August 04, 2021, as the order dated October 31, 2018 by this Court in CRL. M.C. 4816/2015 was passed in a domestic violence case that vests within the exclusive jurisdiction of the Metropolitan Magistrate (MM) wherein a similar petition of respondents is already pending. It is averred that the FC had assumed the jurisdiction of the Metropolitan Magistrate (MM) which is illegal.

28. It is submitted that no reference can be made for an alleged civil contempt as illegally done in the present case. It is further contended by Mr. Ansari that Reference is made only for criminal contempt and not for civil contempt. Secondly, no contempt lies after one year, despite this law, reference was illegally made. Further, the pension of the petitioner cannot be attached, however, the FC has illegally attached it. He seeks the prayers made in the petition.

29. Mr. Pankaj Mendiratta learned counsel appearing on behalf of the respondents submitted that the petitioner has concealed the material fact that he is in arrears of more than 42,00,000/- Lakhs of maintenance, as awarded by the FC. In this regard, it is stated that the petitioner has misled this Court by making a false statement that he is in the arrears of 2 Lakhs. Mr. Mendiratta submitted that such malafide conduct of the petitioner is also apparent from the fact that the petitioner challenged the order dated August 04, 2021, through the present appeal and had further challenged the reference dated August 05, 2021, sent by the FC to this Court, through a separate petition vide CRL. M.C. No. 2343/2021, though the same is part of the order dated August 04, 2021.

30. It is submitted that the impugned order has been passed by the FC after giving ample opportunities to the petitioner which he has failed to avail and the same has also been observed in an order dated July 23, 2021.

31. Mr. Mendiratta contended that the petitioner is liable to be prosecuted for the Criminal Contempt of Court for using derogatory words against the FC. It is further stated that upon a similar allegation this Court dismissed the transfer petition twice and even the Supreme Court did not entertain the same. Mr. Mendiratta submitted that the petitioner is already in violation of his own undertaking given to this Court as well as to the FC to which a contempt reference had been sent by the FC to this Court and the same is pending before this Court vide CONT. CAS (C) 540/2021 titled COURT ON ITS OWN MOTION VS. SUNIL KUMAR SHARMA. Accordingly, this Court issued notice to the petitioner on August 11, 2021.

32. Mr. Mendiratta submitted that perusal of the judicial record would show that the FC has passed the orders and decided the case while complying with the orders and directions of this Court which was later affirmed by the Supreme Court of India. That apart, the order deciding the case has attained finality with the order dated July 30, 2021, passed by the Supreme Court.

33. It is submitted by Mr. Mendiratta that it is the own admission of the petitioner that the payment was delayed. Accordingly, the FC proceeded with the matter in view of the orders dated May 11, 2021, May 12, 2021 passed by this Court, and the order dated July 30, 2021, passed by the Supreme Court. It is further submitted that the delay in making the payment is the admitted fact and the said payment was made outside the time frame fixed by this Court therefore, the FC has rightly struck off the defence as it was outside the domain of the FC to extend the time fixed by this Court.

34. It is contended by Mr. Mendiratta that despite giving repetitive opportunities to the petitioner, he has not come with clean hands before the court regarding his income and assets. In view of the same, the FC upon the application of the respondent and after perusing the material on record passed the impugned order for attachment of pension and bank account. In addition, it is submitted that the petitioner is also not complying with the order for the payment of interim maintenance, and on this sole ground alone the present petition is liable to be dismissed.

35. It is further submitted that the petitioner has never complied with the interim maintenance order dated October 14, 2015, passed by the FC on time, and he is also running into arrears of 42,00,000/-.

36. As far as the contention of the petitioner with respect to the email sent by the FC to this Court is concerned it is submitted that the Coordinate Bench of this Court vide order dated June 17, 2021, did not find any illegality in the email sent by the FC. In the said order this Court has observed that the said email was sent only with a view to bringing to the notice of this Court the petitioner's failure to comply with the order / undertaking and it was not at all a complaint as alleged by the petitioner. That apart, the Coordinate Bench had also observed that default on the part of the petitioner may amount to a violation of the orders and since the amount stood paid hence no further action was taken by the Coordinate Bench on the email of the FC. Hence, from the perusal of the above-stated order dated June 17, 2021, it clearly shows that this Court does not find any illegality on the part of the FC, as alleged by the petitioner.

37. Mr. Mendiratta while addressing the transfer petition as mentioned by the petitioner in the present petition stated that the said transfer petition is the second transfer petition against the FC. The first transfer petition was not entertained by this Court and therefore the same was withdrawn. However, the petitioner preferred an SLP before the Supreme Court for the transfer of the case but the Apex Court was also not inclined to entertain the same and hence the petitioner withdrew the same with liberty to approach this Court. Thereafter, the second transfer petition was filed before this Court, however, the Court after hearing the said matter did not find any illegality and did not give any indulgence to allow the said transfer petition or to stay the proceedings before the FC.

38. It is submitted that it is the duty of both the parents to maintain the children therefore the income of the respondent is not of much relevance as the petitioner is also socially, morally, and legally bound to maintain the children, from which he is running away by making false excuses which otherwise is contrary to the facts and circumstances as well as evidence on record.

39. It is stated by Mr. Mendiratta that the petitioner is portraying himself as a man of limited resources and having limited financial capabilities being completely dependent merely upon his pension. However, in an application moved by the petitioner he has admitted to having spent a sum of 34,000/- within a span of 7 days towards expenses on the local commissioner, typing, traveling, etc. The said conduct of the petitioner has also been observed by the FC in the order dated August 04, 2021.

40. Mr. Mendiratta stated that the petitioner has preferred as many as 35-40 petitions/applications within a span of approx 10 months i.e., since March 2021. It is further submitted that the petitioner is stated to be the resident of Lucknow, however, for moving every petition/application before the FC, this Court, and Supreme Court he is coming all the way to Delhi, to sign and verify the documents. The aforesaid conduct of the petitioner shows that he has sufficient sources of income. The said conduct of the petitioner fortifies the observation made by the FC in the order dated August 04, 2021.

41. Mr. Mendiratta stated that the petitioner with an intention to delay the adjudication of the matter, which was time-bound by this Court filed one application on July 11, 2021, for seeking 8 weeks time to file his evidence affidavits in the Hindu Marriage Act (HMA) case, as both the matters i.e., under Section 125 of Cr.P.C and divorce case, were being heard together. The FC vide order

dated July 13, 2021, dismissed the application dated July 11, 2021, thereafter, the said order was challenged before this Court vide CM(M) 436/2021, wherein this Court decided the petition by observing as under:

".....8. At this stage, learned counsel for the petitioner prays that in case the Court is not inclined to interfere with the impugned order, the time granted by the learned Family Court to the petitioner to file his reply to the respondents' claims noted in paragraph 6 herein above, may be extended by two weeks....."

".....11. Accordingly, with the consent of the parties, while disposing of the petition in the aforesaid terms, the time granted by this Court, in CM (M) 368/2021, to the learned Family Court to dispose of the maintenance petition stands extended till 14.08.2021.....".

42. Furthermore, the petitioner challenged the order dated July 15, 2021, passed by this Court in CM(M) 436/2021 before the Supreme Court and the Apex Court vide order dated July 30, 2021 dismissed the SLP by observing as under:

".....3. We have expressed no opinion on the maintainability of the review and this order shall not amount to any extension of the time which has been prescribed for the disposal of the case before the trial court.....".

In this regard, he submitted that the above-stated information clearly shows that the time fixed by the FC cannot be extended and the FC had duly complied with the orders and decided the case within the time prescribed by this Court as well as by the Supreme Court.

43. Mr. Mendiratta submitted that the petitioner has also falsely stated that his mother is dependent upon him. He had concealed the fact that his mother is staying in Jhansi, however, the petitioner is stated to have been living in Lucknow. It is further submitted that the petitioner has also concealed the fact that his younger brother Sanjay Shama who is a class one Gazetted officer in Central Government posted as Sr. Divisional Account Officer is there to take care of his mother. That apart, the mother is also a beneficiary of the medical facilities extended to the petitioner, as the petitioner is an ex- serviceman.

44. That apart, it is submitted that the contention of the petitioner regarding seizing his bank account is illegal, does not require any consideration.

45. Mr. Mendiratta also stated that the judgment relied upon by the petitioner i.e., *Abhilasha vs. Parkash & Ors.*, Criminal Appeal No.615/2020, would not be applicable in the present circumstances of the case. The Supreme Court in the case of *Abhilasha vs. Parkash* (supra) while relying upon the judgment in the case of *Jagdish Jugtawat vs. Manju Lata & Ors.*, (2002) 5 SCC 422, has held that where the case under Section 125 of the Cr.P.C. is decided by the Court of Magistrate, the Magistrate cannot pass an order thereby granting maintenance to the daughters who have attained majority, being a summary procedure. He further submitted that where the case under

Section 125 of the Cr.P.C. has been decided by the FC the said Court can grant maintenance to the daughters who have attained majority in terms of the conjoint reading of Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 so as to avoid further harassment and multiplicity of litigation. However, the present case has been admittedly decided by the FC after thorough trial therefore, the FC has validly and within the law has passed the reasonable / impugned order.

46. It is further submitted that the impugned orders dated August 04, 2021 and August 10, 2021 are based on factual findings of the Trial Court in which the said Court after going through the available evidence, documents and other material available on record arrived at a reasonable conclusion. Thus, there is no illegality in the impugned orders passed by the FC and the said impugned orders does not call for any interference or indulgence of this Court. In this regard, Mr. Mendiratta has placed reliance upon the judgment in the case of Amit Kapoor vs. Ramesh Chander & Anr., (2012) 9 SCC 460, wherein the Court has held as under:

"8.....Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

XXXX XXXX XXXX

12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression „prevent abuse of process of any court or otherwise to secure the ends of justice , the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused."

47. Having heard the learned counsel for the parties, the scope of the petition is limited to a challenge to the orders dated August 10, 2021 and August 4, 2021 whereby the FC has decided the maintenance petition filed by the respondents. It also decided a review petition filed by the petitioner seeking review of the order dated July 23, 2021 whereby the FC has struck off the defence of the petitioner.

48. The first issue that arises for consideration is whether the FC is justified in striking off the defence of the petitioner. The ground for striking off the defence is, that the petitioner has not complied with the orders passed by this Court. This reference is primarily with regard to the order dated May 11, 2021 passed by this Court in CM (M) 368/2021 with the following directions:

"11. Considering the above facts and circumstances, the following directions are issued:

☐Ld. Counsel for the Petitioner undertakes that the Petitioner shall furnish/ pay a sum of Rs.2 lakhs by way of a demand draft to the Respondent, on or before 25th May, 2021; ☐Upon the said payments of Rs.2 lakhs being made, the Petitioner's evidence shall be tendered before the Family Court and the cross-examination shall be conducted on 28th May 2021;

☐The total maintenance amount, which is due till date from May, 2020 onwards is the sum of Rs.2,40,000/-. Accordingly, a further sum of Rs.1 lakh shall be paid by the Petitioner on or before 30th June, 2021.

☐Upon the conclusion of the cross-

examination of Respondent by the Petitioner, the Petitioner would be given two weeks time to file his evidence by way of an affidavit.

12. This is the last and final opportunity being given to the Petitioner to pay the amounts as directed above i.e., a total of sum of Rs.3 lakhs, subject to which, the petition for maintenance filed by the Respondent, shall be adjudicated on merits by the Id. Family Court, on or before 31st July, 2021."

49. On a perusal of the aforesaid order, it is clear that; (i) the petitioner was to pay an amount of 2 lakhs by way of a demand draft to the respondent, on or before May 25, 2021; (ii) further, an amount of 1 lakh on or before June 30, 2021; and (iii) the maintenance petition was to be decided on or before July 31, 2021.

50. The above order has been passed in the backdrop of an order dated May 30, 2019 passed by the Supreme Court in SLP (Crl.) 4980/2019, a petition filed by the petitioner challenging the order dated May 03, 2019 passed by this Court, wherein the Supreme Court granted three months time to the petitioner to pay a sum of 2,00,000/-, however, the same was not paid by the petitioner till May 06, 2021 when the defence of the petitioner in the divorce petition being HMA No.388/2021

was struck off for non payment of the amount directed by the Supreme Court in SLP (Crl.) 4980/2019. So, in view of order dated May 11, 2021 of this Court in CM (M) 369/2021, wherein the challenge was to the order dated May 06, 2021, (striking off the defence) the same was set aside whereby the right of defence of the petitioner was restored. The order dated May 11, 2021 was considered as an undertaking of the petitioner. Despite undertaking that the amount of 2,00,000/- shall be paid by May 25, 2021, and 1,00,000/- by June 30, 2021, which period, was extended by this Court on June 23, 2021, to pay 25,000/- by June 30, 2021 and balance 75,000/- within three weeks, thereafter, the amount of 2,00,000/- was paid on June 02, 2021 and 25,000/- was paid on July 22, 2021 clearly in violation of order of this Court dated May 11, 2021.

51. So, on July 23, 2021, the fact that the complete amount as directed in the order dated May 11, 2021 was not paid, the Court had rightly passed the order striking off the defence of the petitioner. Though, the petitioner had filed a review petition on July 24, 2021 even on that date, the order dated May 11, 2021 was not complied with as the final amount of 50,000/-, was paid only on July 27, 2021. So, it is clear that the directions of the Supreme Court dated May 30, 2019 and this Court dated May 01, 2019 and June 23, 2021 have not been adhere to.

52. The above reveal that it is not for the first time in the proceedings before the FC that the defence of the petitioner was struck off. It is precisely for the above reasons that the petitioner despite undertaking has not adhered to the time lines, that the FC has in its order dated July 23, 2021 while striking off the defence of the petitioner recorded as under:

XXXX XXXX XXXX

(e) The respondent moved Supreme Court of India and filed Spl. Leave to Appeal No. 4980/2019 inter alia challenging the order dated 03.05.2019 passed by the Delhi High Court. However, the same was also dismissed vide order dated 30.05.2019 and Hon'ble Bench held "Having heard the learned counsel appearing on behalf of petitioner and upon perusal of the record, no case is made out to interfere in view of the specific undertaking given by the petitioner. Hence, the special leave petition is dismissed". The Hon'ble Bench was pleased to further extend the time to make the deposit as per the undertaking given by the respondent by three months. It is pertinent to mention here that said period also got elapsed on 30.08.2019. The respondent has failed to make any payments and is stated to be currently in huge arrears. A sum of Rs 3,00,000/- was paid in view of the order passed by the Supreme Court of India and remaining Rs.2 lakhs were paid on 02-06-2021, as per the order passed by the High Court of Delhi on 11-05-2021 in CM(M) no. 368/2021.

(f) The respondent has failed to comply with the directions of the Courts despite giving undertaking in the High Court of Delhi. A bare perusal of the orders passed by the High Court of Delhi and Supreme Court of India clearly shows that the respondent has become habitual of not-complying with the orders of the Courts.

(g) Vide order dated 11.5.2021 High Court directed the respondent to pay Rs 1 lakh by 25.5.2021 to which again respondent did not comply in its letter and spirit and he paid the said amount only on 02.06.2021:

(h) Respondent again sought for extension of time to pay Rs. 1 lakh before the High Court of Delhi and vide order dated 23.6.2021 in CM (M) 368/2021 passed by High Court of Delhi speaking through Hon'ble Mr. Justice Jasmeet Singh, respondent was ordered to pay the sum of Rs.25,000/- by 30.6.2021 and balance amount of Rs.75,000/- within 3 weeks thereafter. Ld. Counsel for petitioner has stated that respondent has again not paid the amount of Rs.75,000/- by 21st or 22nd July, 2021. Only an amount of Rs. 25000/- is stated to have been paid.

(i) Respondent was directed by this Court to pay cost of Rs.10,000/- vide order dated 13.07.2021 within 4 days but he has failed to do so. Ld. Counsel for respondent has admitted that no cost has been deposited till date."

(emphasis supplied)

53. Even the order dated August 4, 2021 whereby the review petition of the petitioner was rejected, the FC did not find any error apparent on the face of the record to recall its earlier order dated July 23, 2021, which I find is justified.

54. The second issue which arises for consideration is whether sending of a communication by the Trial Court to this Court stating about the delay in making payment of 2 lakhs would result in strong apprehension of judicial bias. I am not in agreement with the plea of Mr. Ansari. In this regard, the communication of the Presiding Officer, FC has to be looked from the perspective of the order passed by this Court in CM (M) 368/2021 wherein the Court had granted further time to make payment in terms of the order passed by the Supreme Court of India on May 30, 2019 in Petition(s) for Special Leave to Appeal (Crl.) No(s). 4980/2019 titled as Sunil Kumar Sharma v. Preeti Sharma which admittedly has not been complied with by the petitioner. The communication made by the Presiding Officer of the concerned FC to the Registrar General of this Court on July 14, 2021, reads as under:

"To The Registrar General, High Court of Delhi, New Delhi, Sub: For seeking directions qua violation of the order(s) dated 11.5.2021 and 12.05.2021 in CM (M) 368/2021 and CM(M) 369/2021 respectively by the contemnor-Sh. Sunil Kumar Sharma.

Respected Sir, It is respectfully and humbly submitted that vide above said orders, both passed by High Court of Delhi speaking through Hon'ble Ms. Justice Prathiba M. Singh in above mentioned petition(s), Sh. Sunil Kumar Sharma (petitioner therein) was directed to pay an amount of Rs.2 lakhs to the respondent on or before 25.5.2021. The petitioner did not pay the said amount on or before the stipulated date. He made the payment of Rs.2 lakh to the respondent only on 2.6.2021. Any payment made subsequently will not purge the contempt and, thus, he has committed the contempt of the court. In the past also Sh. Sunil Kumar Sharma did not comply with the orders passed by the Apex Court qua payment of maintenance amount to the respondent. He appears to have wilfully disobeyed the orders of the High Court of Delhi.

It is, therefore, prayed that the matter be placed before the concerned Court for passing necessary directions in the aforementioned petition(s). As Sh. Sunil Kumar Sharma has wilfully disobeyed the orders of the High Court of Delhi, it is the bounden duty of the undersigned to bring it to your kind notice so that the majesty of the Court is not lowered. It is also submitted that as the Court of undersigned has been directed to dispose of the said case on merits on or before 31.7.2021 subject to payment made by Sh. Sunil Kumar Sharma, the case has been proceeded further in order to avoid delay in the disposal of the petitions pending in the Court."

55. The contents of the communication do indicate, the Presiding Officer brought to the notice of this Court the factum that the petitioner has not complied with the order passed by this Court timely and any payment made subsequent thereof, would not purge the contempt as committed by him. The said communication must be construed as an information to this Court about the violation of the order dated May 11, 2021, leaving it to this Court to take action as deem appropriate. That apart, it is a fact that, on the same ground the petitioner had filed transfer petitions which were either withdrawn or no order of transfer was passed. So, this submission of Mr. Ansari is liable to be rejected. Mr. Ansari in support of his submission has relied upon the order dated September 22, 2014 in the proceedings initiated by the State against one person Sadhu Ram, which proceedings, according to him were pending before the Presiding Officer, who had passed the impugned judgment in this case, to contend that in the said case allegation of bias has been proved against the officer. I have seen the order on which reliance has been placed by Mr. Ansari. The same is dated September 22, 2014 passed by the Officiating District and Sessions Judge in an application moved by the complainant for transfer of her application from the Court of Sh. Prveen Singh, ASJ (North-East) to some other Court. At the outset, I may state that the Officer who has passed the impugned judgment, in the present case, is Praveen Kumar and not Praveen Singh. Even otherwise, it was only a ground on which the application was filed for transfer contending in view of the words spoken by Presiding Officer, Praveen Singh which were reflected in Para 7 & 8 of the transfer application, the applicant (in the said case) apprehends that she will not get justice from the concerned Court and so the application be transferred. The Officiating District and Sessions Judge was of the following view:

"In my view, this application is a sort of putting pressure upon the Presiding Officer in an indirect manner to give the complainant the desired relief by leveling some baseless and vague allegation especially when it is admitted by the counsel for the complainant that after the grant of the bail to the accused persons on 3.7.2014, a handwritten complaint was given to the then officiating Distt & Sessions Judge (NE) Sh. Rakesh Kumar and in that handwritten complaint there was no such allegations now made in the present transfer application. When the complainant/applicant has already availed the legal remedy then she must await for the judicial decision on the same and in case of any grievance against the said decision, avail the further remedy. No ground exists for transfer of the application for cancellation of the bail moved by the applicant from the Court of Sh. Praveen Singh ASJ (NE). He is directed to decide the same as per law without being influenced in any manner with the observations of this Court."

56. Hence, the plea of Mr. Ansari that the writing of a letter by the Presiding Officer shows bias is totally unfounded and attempt is only to challenge the impugned order making all sorts of allegations including the allegation of malafide which in the facts of this case cannot be sustained. Mr. Ansari has relied upon the judgment in the case of State of Punjab v. Davinder Pal Singh Bhullar, AIR 2012 Supreme Court 364, in support of his submission of bias. I have seen the judgment, the same is distinguishable on facts and as such has no applicability.

57. Insofar as the challenge of the petitioner to the order dated August 10, 2021 deciding the maintenance petition filed by the mother / respondents is concerned, the challenge is primarily on the following grounds:

(i) FC must have recused from hearing the petitioner's case or at least should have rejected the recusal request of the petitioner before proceeding to hear the matter further.

(ii) The petitioner's evidence was not even read by the FC resulting in awarding the maintenance of 30,000/- per month up to March 31, 2016, and 40,000/- per month w.e.f. April 01, 2016, as the same is beyond the means of the petitioner.

(iii) No amount of maintenance could have been awarded to the respondents as the pension amount has already proved in the evidence, that the petitioner is drawing 25,815/- per month as pension.

(iv) The petitioner's mother who is of 87 years old is dependent on him.

(v) The respondent's mother (Preeti Sharma) income is 1,41,804/-

besides the fact she owns a flat in Gurgaon from where she is earning 45 thousand as rent and she owns another flat in Vikaspuri, Delhi.

(vi) The burdened of maintenance to the respondents could not have been put on the petitioner, till such time the financial condition of the petitioner is improved.

(vii) The filing of the documents of the respondents on record will not prove the documents, as the petitioner had objected to the mode of proof of the respondent's documents by raising objections.

(viii) Hence, the conclusion of the FC that the respondents have proved all the 14 documents on record, are required to be quashed.

58. None of the above submissions of Mr. Ansari are appealing. I have already rejected the plea of Mr. Ansari, that the Presiding Officer of the FC sending a communication to this Court would result in strong judicial bias. So, the plea at (1) above being related to the same argument, this plea is also rejected.

59. In so far as the plea of Mr. Ansari that till such time the documents are proved by calling the authors of those documents, the same cannot be exhibited though look appealing on first blush, but in the facts of this case where the FC has also relied upon the testimony of the petitioner herein, by way of his affidavit and his cross- examination and the evidence as tendered by the concerned Officer from the Income Tax Department, the Trial Court having come to the following conclusion, the same cannot be faulted. There is evidence for the Court to come to the conclusion as it has, in the impugned order. It is not a perverse finding, without any basis/foundation. The FC has in paragraph 18 of the impugned order noted the facts as culled out from the cross examination of the petitioner is as much as:

i. He has professional qualification.

ii. The petitioner admitted between 2000-2009, he was partner in a private firm.

iii. He started filing ITR w.e.f. 2000.

iv. He did not file ITRs in order to conceal his real income and hence, adverse inference be drawn by the Court.

v. He admitted between 2009 till April, 2020 he had been a part-

time consultant in Lucknow and Jhansi and is already mentioned in ITRs.

vi. He did not disclose the names of the companies because of non-

disclosure agreement, which stand is not accepted by the FC. vii. Having concealed the name of the companies he has worked with between 2009-2020, he has concealed his true income and as such an adverse inference is drawn.

So, it is noted that the conclusion of the Court is independent of the documents which were required to be proved by calling its authors (as contended by Mr. Ansari). So, it follows that there is justification for FC to draw the above conclusion in the impugned order in the following manner:

"18. I find the testimony of PW-1 reliable and trustworthy. Her testimony could not be shaken in the cross-examination conducted on behalf of the respondent. It was/is the joint responsibility of the parties to the petition to take care of their children. The petitioner has narrated several incidents of cruelty and has relied upon documents to prove the same. Being fed up of the cruelties subjected by the respondent, the petitioner lodged a police complaint dated 22.03.2010 (Ex. PW1/A) and filed a petition under D.V. Act in the Court of Ld. M.M. Interim relief was granted to the petitioner vide order dated 13.04.2010 (Ex. PW1/10) whereupon respondent vacated the matrimonial house at Lodhi Road on 18.04.2010. It also stands proved that petitioner took financial assistance from her father/relatives to repay respondent's

debts and to buy scooter for him. Petitioner has proved the documents in this respect as Ex. PW1/2. She was harassed by the lenders. She has proved several letters of the lenders as Ex. PW 1/4. The petitioner and her daughters were not taken care of by the respondent when they were not well. The petitioner has proved the documents in this respect as Ex. PW1/5 and Ex. PW1/6. The petitioner was defamed by the respondent by alleging that both the daughters are not his daughters and DNA test should be conducted. He used to call the petitioner and her daughters as lesbians as they used to sleep together. He used to call the petitioner as Chudail and Bhootani. To take care of her daughters, the petitioner had to often take leave from her department and she has proved documents in this respect as Ex. PW 1/7. The petitioner has relied upon the Bio-data dated 12.06.2008 of the respondent (Mark-A4) wherein respondent has given details of his 10 years profession carrier. In his Resume, the respondent has mentioned that he was in private security and the details of his employment from 1999 till 2009 are also mentioned therein. In the cross- examination of the respondent when he was asked about his professional and educational qualification till date, he deposed that he is a graduate and a diploma holder in Electrical Engineering. It appears that he deliberately did not disclose his other qualifications as in response to question no. 3, he stated as under :

"Ques. 3. Do you hold any other Degree (Professional /Qualification) apart from the above mentioned ones? If yes, kindly provide the details of the same.

Ans. Dyuring pre-release courses in the year 1992, i underwent the training in Diploma Course and Computer and Tours and Travel Agency management Course."

Thus, it stands proved that the respondent is a professionally qualified person and was in business. He was discharged on 31.08.1992 from Indian Air Force as a Sergeant. He has admitted that from 2000 to 2009, he was a partner in Vigil Services with Lt. Col. V K. Sharma. He has admitted that ITRs were filed by him after the year 2000. In response to a question as to why he has not filed ITRs, he has replied that owing to his engagement in his younger brother's murder case, he could not do so. The respondent is contesting the cases filed by the petitioner with full vigour and has filed multiple petitions up to the Apex Court. The conduct of the respondent shows that he tried to evade filing of the TTRS in order to conceal his true income from this Court. Thus, an adverse inference is to be drawn against him for not filing the ITRS. He has admitted in his cross examination that since 2009 till April 2020, he had been a part time consultant in Lucknow and Jhansi and the income is already mentioned in his ITRS. He has not disclosed the names of the companies and the places where he worked on the ground that there is an oral non-disclosure agreement and for the said reason, the names cannot be shared. The plea taken by the respondent is not believable at all. The respondent has deliberately not shared the details of the companies in which he worked from 2009 till April 2020 to conceal his true income and, therefore, an adverse inference has to be drawn against him in this respect too.

(Emphasis supplied)

19. At the time of vacating the matrimonial house, he was employed with the firm M/s Knight Watch Company and vide letter dated 03.05.2009 (Mark A7) respondent was getting a salary of Rs. 28,000/- plus petrol and mobile expenses for the position of General Manager (Operations). He also invested money which stands proved vide agreement (Mark-A8) (colly) with Ambey Car Rental Pvt. Ltd. The respondent had also booked plots with several developers/builders. The petitioner has relied upon the document-(Mark-A9) (Colly.) in this respect. Respondent purchased a WagonR Car in the year 2008. It has also been proved that respondent was a member of Club Mahindra and was owing LIC Policies which shows his actual standard of living. Petitioner has also proved the fee receipts relating to the education of her daughters as Ex. PW 1/13 (Colly) and the medical documents Ex. PW 1/14 and Ex. PW 1/15.

20. PW-2 Mr. Harsh has proved the income details of the respondent since 2015-16 till 2020-21 vide letter dated 08.07.2021 Ex. PW 2/1. For the AYS 2016-21, total income of the respondent as per ITR was Rs. 2,68,500/-, Rs.4,65,850/-, Rs.5,22,490, Rs.6,74,600/- and Rs.5,24,690/- respectively. As per Ex. PW 2/2, amounts of Rs. 63592/-, Rs.1417/-, Rs.152129/- and Rs.192478/- were deducted under Chapter VI-A for the years 2017-2021. It appears that for these years certain investments were made by the respondent.

60. The Court below has come to a conclusion that the income of the respondent from all sources could not be less than 60,000/- per month and after holding that it is held that it is the joint responsibility of both the parents to take care of the children and has awarded an amount of 15,000/- each for a period from the date of filing of petition till March 31, 2016 and 20,000/- per month to each of the daughter w.e.f April 1, 2016 subject to adjustment of the interim maintenance already received by the respondents. The same cannot be said to be on the higher side. The plea of Mr. Ansari that the Trial Court could not have arrived at that figure is unmerited because it has come on record that the children are pursuing their academic, cultural and professional courses / higher studies and the fact that the Court had also observed that the education in Private School and professional institutions in a city like Delhi is high and the fact that the petitioner is also drawing pension, this Court is of the view that the maintenance as granted by the FC in favour of the respondent cannot be said to be unreasonable or on a higher side. The above conclusion of the FC shall also answers, the submission made by Mr. Ansari at (ii) and (iii) above.

61. The plea of Mr. Ansari that the FC has overlooked the fact, the petitioner's mother is 87 years of age and is dependent on him, is also unmerited. As a biological father of the respondents, the petitioner is required to look after the unmarried daughters. He cannot overlook his responsibility even if he has to maintain his aged parents. In this regard, reference be made to the Division Bench judgments of this Court in the case of Poonam Sethi v. Sanjay Sethi, MAT. APP. (F.C.) 31/2021 and Varun Singh v. Priyanka Singh, MAT APP. (F.C.) 38/2022. I have seen the judgments so relied upon by Mr. Mendiratta and I agree with the conclusion arrived at by this Court in the above two judgments. The petitioner being a father is liable to provide financial assistance to his daughters who are unmarried and living with their mother.

62. One of the submissions of Mr. Ansari is that the respondents being reluctant to live with the petitioner, they are not entitled to the maintenance. In support of his submission, he has relied upon

the judgment of the Supreme Court in the case of Ajay Kumar Rathee v. Seema Rathee, Civil Appeal No.5141/2011 decided on March 10, 2022. The plea is unmerited. No such case was set up by the petitioner before the Family Court and the plea that has been urged by Mr. Ansari is a mixed question of fact and law. I have also seen the judgment in the case of Ajay Kumar Rathee (supra) more specifically at page 36 of the compilation wherein the Supreme Court has said that „it appears from her approach that she does not want to maintain any relationship with the appellant and is about 20 years of age . This reference is with regard to the daughter of the parties before the Supreme Court. It is also held by the Supreme Court that the daughter shall not be entitled to any amount but the Supreme Court has also said while determining the amount to be paid as permanent alimony to the respondent, it is still taking care to see that if the respondent so desires to support the daughter, funds are available. In that sense, the Supreme Court had included in the permanent alimony, the financial support to the daughter. Hence, the judgment of the Supreme Court shall not help the case of the petitioner.

63. One of the submissions of Mr. Ansari, is by challenging the order dated August 4, 2021 which is an order passed on the Review Petition that the FC could not have directed that the petitioner's pension account be attached for an amount of 10,000/- and for an amount of 20,90,000/- and further directed the employer of the petitioner to release 2/3rd of the pension account of the petitioner every month in the name of Saket Welfare Bar Association being illegal and contrary to the law. In this regard, he has relied upon the judgment in the case of Radhey Shyam Gupta v. Punjab National Bank & Anr., MANU/SC/8339/2008. On the other hand, the submission of Mr. Mendiratta was contrary. I have seen all the judgments relied upon by the counsel for the parties.

64. Suffice to state, the judgment in the case of Union of India v. Jyoti Chit Fund and Finance and Ors., on which much reliance has been placed and has been overruled by the Supreme Court in its judgment in the case of Radhey Shyam Gupta (supra), wherein the Supreme Court in paragraph 24 has held as under:-

"24. Having considered the submissions made on behalf of the respective parties, we are inclined to accept Mr Mehta's submission that the order impugned in the revision petition before the High Court did not attract the bar of the proviso to sub-section (1) of Section 115 of the Code as it sought to finally decide the manner in which the decree passed in Suit No. 66 of 1992 by the learned Additional and Sessions Judge, Bayana, Rajasthan, was to be satisfied. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it

has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code."

65. One of the submissions of Mr. Ansari is that the respondents being major they are not entitled to maintenance under Section 125 Cr.PC. In support of his submission, Mr. Ansari has relied upon the judgment of the Supreme Court in Abhilasha (supra) wherein the Supreme Court has in paragraph 36 stated as under:-

"36. The purpose and object of Section 125 Cr.P.C. as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act, 1956."

66. In the present case the FC had given direction in the following manner:-

".....The respondent is, therefore, directed to pay maintenance of Rs.15,000/- per month to each of the daughter from the date of filing of the petition till 31.03.2016. In view of the testimony of PW2 and taking into consideration the fact that people working in private sector do not disclose their true income from Income Tax authorities, from 01.04.2016 onwards respondent is directed to pay maintenance of Rs.20,000/- per month to each of the daughter till they are legally entitled to receive the same....."

67. In view of the order passed by the FC, the issue raised by Mr. Ansari does not arise for consideration.

68. The conclusion is very clear and I say nothing more. Mr. Ansari made submission with regard to the reference made by the FC to this Court. Suffice to state such reference/contempt petition shall be considered while considering those petitions which have been numbered separately and are not dealt with in this judgment.

69. In view of the above position of law, the direction of the Family Court in the order dated August 04, 2021 to the extent of (a) & (c) cannot be sustained as those directions were primarily relatable to the pension being drawn by the petitioner which cannot be attached. Moreover, there is a specific stipulation in the Pension Act, 1871 and Pension Regulations, 1961 which bars attachment of pension of the petitioner in the process of execution of a decree/order of the Court.

70. So, from the above narration, the following position emerges; the order dated August 10, 2021 is upheld; and the order dated August 04, 2021 to the extent of direction (a) & (c) is set aside. CRL. MA No. 15368/2021 (for issuance of directions) CRL. MA No. 1919/2022 (for restraining the respondents) CRL. MA No. 1920/2022 (for proceeding ex-parte)

71. In view of my conclusion above, these applications have become infructuous.

CRL. MA No. 4019/2022 (to correct - the inadvertent)

72. This is an application filed by the petitioner with the following prayers:-

"In view of the abovementioned facts and circumstances, it is, therefore, most respectfully prayed to replace the words "the order of the Air Force" with the words "the action of the bank" in the last order dated 21.02.2022 being an inadvertent but a factual error or pass any order being in conformity with petitioner's prayer in writ petition."

73. Suffice to state, the order dated February 21, 2022 stands corrected to mean "the order of the Air Force" shall be read to mean "the action of the bank".

74. The application is disposed of.

V. KAMESWAR RAO, J OCTOBER 14, 2022/jg/aky