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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 27th July, 2018*
+ **MAT.APP.(F.C.) 169/2018**

JAI KISHAN

..... Appellant

Through: Mr. Maninder Jeet Singh, Adv.

Versus

ANAMIKA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE P.S. TEJI

G.S.SISTANI, J. (ORAL)

CM. No.29627/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

MAT.APP.(F.C.) 169/2018

3. This is an appeal under Section 19 of the Family Courts Act, 1984 against an interim order dated 14.05.2018 passed by the Family Court by which an application seeking interim maintenance under Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') filed by the respondent/wife was allowed. By virtue of the said order, interim maintenance of Rs.10,000/- per month alongwith cost of Rs. 11,000/- as litigation expenses were awarded to the respondent/wife.
4. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 10.12.2016

at Delhi, as per Hindu rites and customs. It is the case of the respondent/wife that the parents of the appellant were not satisfied with the dowry articles. They humiliated and tortured her. After marriage, the appellant left for his place of his posting i.e. Champhai, Mizoram on 10.01.2017. After reaching his place of posting, the appellant switched off his phone and was not available to the respondent/wife. On 16.05.2017, the appellant returned to Delhi from his place of posting and on the next day, under the influence of liquor, the appellant assaulted and ousted her from the matrimonial home. After persistent requests, the respondent was allowed to re-enter the house after two hours. A complaint dated 06.06.2017 was filed by the respondent/wife before CAW cell regarding the harassment and cruelty committed upon her. The respondent is living at the first floor of the matrimonial house and rest of the family is residing on the ground floor. As per the respondent, the appellant and his parents stopped providing any financial assistance to her and left her to fend for herself who has no independent source of income. As per the respondent, the appellant is working as a teacher in Kendriya Vidyalya Sangathan and is receiving a salary of more than Rs. 65,000/- per month.

5. Mr. Maninder Jeet Singh, learned counsel appearing on behalf of the appellant submits that the order and decree which is impugned before us is per-se illegal and is not maintainable either in law or on facts and and the same is liable to be set aside. To substantiate his argument that the learned Family Court fell in error in fact and law, the counsel has challenged the findings of the Family Court, more particularly in para 5.1 of the impugned judgment.

6. It is further contended that the learned Family Judge has overlooked the fact that the mother of the appellant is a house wife and his father is a cobbler. There is no regular employment of his father. In the light of this submission, the Family Court has erred in not taking into consideration the written statement filed by the appellant in its entirety to substantiate his claim that it is the sole responsibility of the appellant to maintain his parents. The counsel for the appellant further submits that the Family Court has passed the interim order with a pre-conceived notion and has not correctly applied the law laid down in the case of ***Annurita Vohra vs. Sandeep*** reported at **(2004) 1 DMC 568** wherein a share of the income of the husband was also awarded to his parents. It was also contended by the counsel for the appellant that the learned Family Court has wrongly calculated the disposable income of the appellant as Rs. 40,000/- per month. The counsel has relied upon the bank statement of the appellant as per which the income of the appellant for the month of February and March, 2018 was calculated as Rs. 37,102/- and Rs. 39,670/- respectively.
7. Counsel for the appellant further submitted that it was mandatory on the part of the respondent/wife to file her bank statements of last three years before the Family Court in view of the decision rendered by this Court, in the case of ***Kusum Sharma vs. Mahinder Kumar Sharma*** reported at **(2015) 217 DLT 706**. The counsel for the appellant contended that the learned Family Judge has erred in granting exemption to the respondent/wife from filing the same, more particularly when the exemption was not prayed by her. It was further contended that prior to the modification of order dated 06.12.2017 passed in the case of ***Kusum***

Sharma (supra), there was no discretion with the Family Court to dispense filing of requisite documents alongwith the income and assets affidavits. In this background, the learned Family Court has erred in the application of the said judgment in the correct perspective.

8. We have heard the learned counsel for the appellant and carefully examined the order dated 14.05.2018 passed by the Family Court. Learned counsel for the appellant has challenged the findings of the learned Family Court enumerated in para 5.1 of the impugned judgment. At the outset, we deem it appropriate to extract relevant para 5.1 which reads as under:

*“5.1 I find no merits in the submissions of Sh. Maninder Jeet Singh, ld. Counsel for the petitioner that petitioner has not disclosed complete information in the income and assets affidavit or has not filed the bank account statement. The Hon’ble High Court of Delhi in **Kusum Sharma Vs. Mahinder Sharma’s bearing FAO No. 369/1996** decided on **06.12.2017** has given the discretion to the court to dispense with or modify the information required in appropriate cases. In the present case, when applicant/wife belongs to lower strata of society and has no regular source of income; the court is of the opinion that she can be exempted from filing the detailed income and assets affidavit and can be exempted from filing the bank account statement, at this stage. It may however, be noticed that since the petition was filed on 18.11.2017 i.e. prior to the directions dated 06.12.2017 passed by the Hon’ble High Court of Delhi in **Kusum Sharma’s case (supra)**, the income and assets affidavit of the petitioner is already on record. The court, however, finds that petitioner can be exempted from filing further documents in support of the affidavit. The notice under Section 91 Cr.P.C. has not been issued by the court, therefore, the applicant/petitioner is not obliged to answer the same.”*

9. The issue of interim maintenance has been discussed time and again by the Hon'ble Supreme Court and this Court in various judgments.
10. In the case of **Chaturbhuji v. Sita Bai** reported at (2008) 2 SCC 316, the Hon'ble Supreme Court discussed the object of the maintenance proceedings and also duty of a man to maintain his wife, children and parents when they are unable to maintain themselves. The Apex Court further interpreted the phrase "unable to maintain herself". The relevant paras 6 to 8 read as under:

*"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase **"unable to maintain herself"** in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat (2005) 3 SCC 636.*

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain

herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386 it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”

(Emphasis Supplied)

11. In the case of **Jayant Bhargava v. Priya Bhargava** reported at **181 (2011) DLT 603**, this Court, based on the decision of the Supreme Court in **Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.**, reported at **(1997) 7 SCC 7** observed as under:

“12. It is settled position of law that a wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home. It is the duty of the courts to ensure that it should not be a case that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation, poverty. During the

pendency of divorce proceedings the parties should be able to maintain themselves and should be sufficiently entitled to be represented in judicial proceedings. If in case the party is unable to do so on account of insufficient income, the other spouse shall be liable to pay the same.”

(Emphasis Supplied)

12. With regard to the submissions raised by the counsel for the appellant that it was mandatory on the part of the respondent/wife to file the bank statement of last three years before the Family Court in view of the ***Kusum Sharma (supra)*** and the Family Court has erred in exempting the respondent/wife from filing the same, we are of the view that post modification of order dated 06.12.2017 passed in the case of ***Kusum Sharma (supra)***, a discretion is vested in the Family Court in cases belonging to the lowest strata of the society or case of a litigant who is a permanently disabled/paralytic, the Court may, for the reasons to be recorded, dispense with or modify the information required from the parties. In our view, the Family Court has rightly exercised his discretion and correctly applied the subsequent order.
13. With regard to the application of the judgment passed in the case of ***Annurita Vohra (supra)***, we are of the view that the facts of the relied case are distinguishable as the opening para of the relied judgment starts with the fact that there were no dependants other than the wife and children of the husband. In the present case, the father of the appellant is not unemployed and has an independent source of income. Furthermore, it has emerged from the records that there are other brothers of the appellant who would share the responsibility of

maintaining their parents. Thus, we affirm the view taken by the learned Family Court.

14. In the present case, the appellant's admissions reveal that his salary for the month of February and March, 2018 was calculated as Rs. 37,102/- and Rs. 39,670/- respectively which in our view is a substantial amount. It has been repeatedly held that in matrimonial cases, the parties generally try to concede their real income. We do not find force in the argument raised by the counsel for the appellant that the learned Trial Court has wrongly calculated the disposable income of the appellant as Rs. 40,000/- per month.
15. After a careful reading of the impugned judgment and in view of the aforesaid dicta, we are of the view that despite the fact that the wife of the appellant (respondent herein) is residing at the matrimonial home, it is the natural duty of the appellant to maintain his wife, when she is unable to maintain herself. The phrase "*unable to maintain herself*" has been interpreted by the Apex Court in the aforesaid dictum. It includes the means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion, for her survival. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband.
16. We find no infirmity in the interim order passed by the Family Court. The present appeal is devoid of any merit. Resultantly, the appeal is dismissed.

CM. No.29626/2018 (Stay)

17. In view of the judgment passed above, the application stands dismissed.

G.S.SISTANI, J.

P.S. TEJI, J.

JULY 27, 2018

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