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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 56/2019**

BRAJENDER KUMAR MISHRA Petitioner
Through: **Mr. Rakesh Kumar, Advocate**

versus

AMITA MISHRA & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER
% **16.01.2019**

CRL.M.A.822/2019

Allowed, subject to all just exceptions. The application is disposed of.

CRL.REV.P. 56/2019

1. This criminal revision petition has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 hereinafter referred as 'Cr.PC.') impugning the order dated 5.11.2018 (hereinafter referred as 'impugned order') passed by the Judge, Family Court, Tis Hazari (Central), New Delhi (hereinafter referred as 'Trial Court') in MT No.5862022/2016.

2. Brief facts of the case leading to the present litigation are that, the respondent No.1 is the wife and respondent No. 2 is the minor son of the petitioner. Some disputes arose between the parties and since 2014 both the parties are living separately

from each other. Sometime in 2016, the respondent No.1 filed a complaint under Section 125 of the Cr.PC. before the Trial Court and vide order dated 04.08.2016 the Trial Court directed the petitioner to pay ad-interim maintenance to the tune of Rs. 10,000/- per month to the respondents w.e.f. the date of filing of the application. Thereafter, during the proceedings of the matter, the Trial Court vide the impugned order dated 05.11.2018 enhanced the amount of interim maintenance to Rs. 30,000/- in favour of the respondents. Hence, the present revision petition.

3. Learned counsel for the petitioner submitted that the learned Trial Court has not taken into consideration the exact income of the petitioner and has awarded maintenance to the respondent wife and the minor child @ Rs.20,000/- per month and Rs.10,000/- per month respectively, without any basis and also without taking into consideration the expenses and the expenditure which the petitioner has to bear. It is further submitted by the learned counsel for the petitioner that the petitioner is having a handicapped brother and also has to pay for the rental accommodation at Pune, where he is working. Additionally, the petitioner also has to pay the loan instalments.

4. Further, the learned counsel for the petitioner submitted that the income-tax returns (ITRs) of the petitioner depicts the gross total income and does not show the expenses of the petitioner and that the learned Trial Court has not taken into

consideration the deductions, which are required to be made from the salary of the petitioner while filing the ITRs.

5. It is further submitted by the learned counsel for the petitioner that the total income of the petitioner is only Rs.40,000/-, after necessary payments of the tax, as per law.

6. I have gone through the impugned order which reveals that the Trial Court has taken into consideration the ratio laid down in the judgments of ***Damanreet Kaur v. Indermeet Singh Juneja***, 2012 (1) JCC 306, ***Mamsta Jaiswal v. Rajesh Jaiswal***, 2000(3) MPLJ 100, and ***Sunita Kachwaha & Ors. v. Anil Kachwaha***, AIR 2015 SC 554. Thereafter, the Trial Court after hearing the parties and taking into consideration the law laid down in the aforesaid judgments has held that the respondent wife is not employed and has no source of income, and even further after the perusal of the income of the respective parties and the expenditure affidavits filed, allowed the application for the interim maintenance filed by the respondent wife.

7. I have also gone through the ITRs placed on record, which reflects the income of the petitioner from the salary as Rs.8,41,014/- and the gross total income as Rs.8,76,114/-. There are certain other entries and some other details mentioned therein which reveals that the gross income tax liability of the petitioner is Rs.63,405/-, as computed under Section 161 of the Income Tax Act, 1961.

8. So far as the impugned order fixing up the income of the petitioner at Rs.70,000/- is concerned, the deduction and all the entries made in the ITRs have been taken into consideration by the Trial Court. The Trial Court has assessed the income only *prima facie* at this stage. The Trial Court has also taken into consideration the responsibilities and the financial liabilities which the petitioner is bearing towards his handicapped brother and the rent which the petitioner is paying for the accommodation at Pune as well as the loan instalments paid by him and had directed to pay Rs.20,000/- p.m. and Rs.10,000/- respectively to the respondent wife and the minor child w.e.f. the date of filing of the application, till the disposal of the petition. The maintenance amount granted to the respondent wife and the minor child is not exorbitant, but is in consonance with the standard and the income of the petitioner, giving due weightage to the other responsibilities, as per law, at this stage.

9. It is clarified that the grant of interim maintenance to the respondent wife and the minor child is not the final verdict by the Court. It is subject to the final verdict of the petition pending before the learned Trial Court.

10. In view of the aforesaid facts and circumstances, I do not find any flaw in the impugned order passed by the Trial Court. Hence, this Court does not find it appropriate to issue notice to the respondents. Accordingly, the petition is disposed of. However, if it is found, after the evidence and arguments before

the Court that the respondent wife and the minor child are entitled for less maintenance, the same shall be adjusted from the amount payable to the respondent wife and the minor child. It is clarified that observations made hereinabove shall not tantamount to any expression on the merits of the main petition. The Trial Court is directed to expedite the proceedings.

CHANDER SHEKHAR, J

JANUARY 16, 2019

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