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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 944/2019 & CRL.M.A. 35385/2019-delay
CRL.M.A. 35386/2019-Stay

ABHISHEK DUBEY Petitioner
Through: Mr. Manoj Kumar Dwivedi with
Mr. Piyush Dwivedi, Advs.

versus

ARCHANA TIWARI Respondent
Through: Mr. Namit Saxena, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER
15.10.2019

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CRL.REV.P. 944/2019

Vide the present petition, petitioner seeks setting aside of impugned judgment and order dated 11.04.2019 passed in CA No. 345 of 2018 by the Special Judge – NDPS/learned Addl. Sessions Judge and the order dated 17.07.2018 passed in CC No. 473826/2016 by the learned Metropolitan Magistrate.

It is stated in the present petition that since the respondent belongs to Delhi and her lifestyle has been very lavish and western since beginning, therefore her expectations were very high from the Petitioner and his family members. Within few months of getting married, the respondent started

quarrelling with the petitioner and his family members. At every instance, she used to make complaint to the petitioner against his family members stating, *"your family is very orthodox and I am not ready to ruin my precious life with people like you"*.

Learned counsel appearing on behalf of the petitioner submits that the respondent alleges in her maintenance petition that on 29.03.2016, her mother-in-law was abusing her and the Petitioner came to the kitchen and started fighting with her because of not getting more dowry and gifts from her parents.

She further alleges that her mother-in-law along with her sister-in-law were provoking the petitioner over the phone and used to beat the respondent and in the evening and on one day she fainted and petitioner left there in that situation. When the respondent came back to her senses, she called her father and narrated the incident and pleaded to save her from the petitioner and his family. The very next day, father and brothers of the respondent came to Lucknow to her place, however, the petitioner and his other family members started fighting and beating them. Accordingly, police was called and a complaint was registered against the petitioner and his family members. Thereafter she came back to her matrimonial home and carried her daily use clothes along, leaving her jewellery and other valuables behind, as her jewellery was already with her mother-in-law.

In Para 19 of the petition, the respondent states that she requires a sum of Rupees 1 lakh to maintain herself and Para 20 of the maintenance petition, she states, *"the petitioner is presently unemployed lady and living in a rented accommodation with her brother due to which her brother has to take a bigger flat on rent and even pay for her sister, liability for which*

incurs upon the respondent besides other expenses which she is also incurring to maintain herself including food, clothing, lodging, medical, travelling and other miscellaneous expenses which she is meeting with the help and assistance of her father and brother.”

Accordingly, learned counsel submits that in view of her high ambitions and expectations of maintenance of ₹1 Lakh per month in view of the abovesaid allegations as the respondent averred in her maintenance petition, she left petitioner's parents house and moved to Delhi. Learned counsel further submits that the petitioner is residing in a rental accommodation since 2016 and presently residing as a tenant in house i.e. 537F/200 A, Indrapuri Colony, Sitapur Road, Lucknow, U.P. because he was kicked out, by his parents, due to misconduct and misbehaviour of the respondent wife towards his parents. Prior to that, the petitioner was disowned by his parents from their movable and immovable property vide publication dated 05.03.2016 (C.R. No.2575) published in the Hindi news paper "Swatantra Bharat".

It is contended that the petitioner is earning an amount of ₹10,000/- and the Trial Court vide order dated 17.07.2018 has directed the petitioner to pay ₹10,000/- in favour of the respondent which is not possible for the petitioner and the Appellate Court has failed to consider this fact.

To strengthen his arguments, learned counsel for petitioner has relied upon the case of ***Manish Jain versus Akanksha Jain (2017) 15 SCC 801 (Civil Appeal No.4615/2017)*** decided on 30.03.2017, whereby the Hon'ble Supreme Court has held as under:

"The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and

whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

Thus, the present revision petition deserves to be allowed by setting aside both the orders passed by the Courts below.

Respondent filed complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Metropolitan Magistrate (‘MM’), Saket, New Delhi alleging cruelty and torture towards the respondent alongwith the payment of dowry against the petitioner and his family members.

To establish her claim, the respondent filed additional documents in CC No.473826/2016 before the learned MM, putting Facebook profile photograph of the petitioner to show his lifestyle.

In reply to the present petition, it is stated that the petitioner is a known businessman in Lucknow and usually deals his business in cash. The petitioner is also one of the biggest suppliers in Lucknow and earns around Rs.2 lacs/day. The petitioner and his family, who are co-accused in the present case, have also invested Rs.5 crores with local builders and the same is dealt under the name of ‘Nirman Traders and Engineers’. Copy of visiting/business card of the petitioner is attached herewith and annexed as Annexure R/2.

A true copy of the bill dated 10.02.2015 of Nirman Traders and Engineers which is signed by the Petitioner’s mother is attached herewith as Annexure R/3.

A copy of the Facebook Page dated 13.07.2017 of Nirman Traders and Engineers which carries the phone number and email id of the Petitioner is attached herewith as Annexure R/4.

A true copy of the Facebook Pages dated 04.05.2017 of the petitioner and Nirman Traders and Engineers which carries the phone number and email-id of the petitioner which show the current trading done by him, is attached herewith as Annexure R/5.

A true copy of the Just Dial Page dated 20.03.2018 of Nirman Traders and Engineers which carries the phone number of the Petitioner husband's father is attached herewith as Annexure R/6.

It is further stated that the petitioner has produced a fake rent agreement showing as if he was living in a rental accommodation on 2nd Floor of House No. 2, Shriram Puram Maharishi Tiraha, IIM Road, Lucknow, however, the truth is that there is no 2nd Floor in the said building at all. A true copy of the photographs of said House which clearly show that there is no second floor there, is attached herewith as Annexure R/7.

In addition to above, learned counsel appearing on behalf of the respondent submits that the petitioner has a huge agricultural income with immovable property in his mother's name to the tune of over 300 bighas. The agricultural proceeds annually run to crores. True copy of Khasra Khatauni is attached herewith as Annexure R/9.

Learned counsel for the petitioner disputes the agricultural land and submits that the agricultural land is in the name of mother and her three sisters (Mausi).

It is further submitted that the petitioner has filed income tax return for the preceding three years on 28.05.2019 i.e. after passing the impugned

order, thereby, to show the total gross income of ₹1,20,000/-.

Be that as it may, the petitioner is a graduate and admittedly, earlier he used to manage the business of Nirman Traders and Engineers. Thereafter, after separation, the parents of the petitioner have disowned them by publication.

Thus, the said publication is in my considered view, to establish that the petitioner has no income except whatever he is receiving while working as Supervisor with Indradev Associates.

The Petitioner has admitted before the Trial Court, that he is staying on rent on the 2nd Floor of House Number 2, Shriram Puram Maharishi Tiraha, IIM Road, Lucknow, which belongs to an Advocate, namely, Dharmendra Mishra, appearing on behalf of the petitioner in Lucknow Court. Thus, the petitioner has committed perjury by stating the said fact before the Trial Court whereas he is not residing there and the address is fake. Accordingly, I hereby direct the Trial Court to issue proceedings against the petitioner under Section 340 Cr.P.C.

If a person is in business and dealing in cash, it will be difficult to establish how much earning such a person has. However, the Court can assess the income by taking into consideration the standard of living and what he was earning before separation from the wife. It seems the petitioner is in car trading business. In addition, he is looking after family business. Thus, on conservative side, he is earning at least ₹.50,000/- to ₹.1,00,000/- per month.

The respondent is legally wedded wife of the petitioner and is duty bound to maintain her as per his status. In the present days, ₹10,000/- is a meagre amount awarded by the Trial Court, to maintain as per standard of

the husband.

Accordingly, while dismissing the present petition, I hereby enhance an amount of ₹20,000/- per month, as interim, to be paid from the date of filing of the DV Act petition.

The Trial Court is directed that while deciding the DV Act petition finally, it shall take into consideration all the facts and circumstances and the fact that how much the petitioner is earning from all sources.

Finding no merit, the present petition is dismissed in view of the above.

It is made clear that Trial Court shall not get influenced by the observations made by this Court while deciding the DV Act petition filed by the respondent.

SURESH KUMAR KAIT, J

OCTOBER 15, 2019

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