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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd January, 2019

+ CRL. M.C. 812/2016 & CrI.M.A. 3423/2016

KHEM CHAND

..... Petitioner

Through: Mr. S.C. Singhal, Adv.

versus

BHAGWATI @ LAXMI & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner and the first respondent were married to each other on 02.12.2000 at Delhi. From out of the said wedlock, the second respondent took birth, she being a minor child in the care and custody of the first respondent. On account of certain circumstances, the first respondent left the matrimonial home with the second respondent on 20.10.2002. She was eventually constrained to file a petition (petition no. 912/3/2011) under Section 12 of Protection of Women from Domestic Violence Act, 2005 in the Court of Metropolitan Magistrate.

2. On her application, the Metropolitan Magistrate, by order dated 10.11.2014, directed the petitioner to pay the interim maintenance allowance of Rs. 3,500/- to the first respondent and Rs. 2,000/- to the second respondent w.e.f. 13.05.2011, the date of filing of the application. The petitioner challenged the said order by appeal (CA

no. 57/2014) which, however, was dismissed by Additional Sessions Judge, by judgment dated 19.01.2016.

3. The petition at hand filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) brought a challenge to the orders of the courts below to the above effect, it being the contention of the petitioner that he is unemployed and, therefore, unable to pay, the first respondent, on the other hand being gainfully employed in a beauty parlour.

4. The claim of the petitioner that the first respondent is earning her livelihood from work in a parlour is founded on some photographs showing her presence at a certain place. This, to say the least, is not sufficient evidence to show that she has regular income sufficient to maintain herself and the minor daughter of the parties. The denial of this on the part of the respondents cannot be disbelieved at this stage, the burden being of the petitioner to prove his contentions by better proof.

5. The petitioner claims that he is non-matriculate and has no source of income, he having been engaged in earning his livelihood as a driver of three wheeler scooter (TSR) till 2006, cannot be acted upon. He has not disclosed as to how he has been surviving all along. It cannot be believed that a person who was capable of supporting a family by getting married and raising a child would all of a sudden become devoid of all sources of income.

6. It is clear and is evident from the order of the sessions that the petitioner is concealing facts, intentionally withholding information about his income. It is noted that the Metropolitan Magistrate faced

with a situation wherein respondents were also unable to muster clear proof, has assumed the income notionally on the basis of minimum wages and on such basis has passed the order of interim maintenance. The approach of the Metropolitan Magistrate in these circumstances cannot be faulted.

7. The petition is dismissed.

R.K.GAUBA, J.

JANUARY 22, 2019

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