

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on : 16th May, 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 549/2017 & CrI.M.A.12063/2017 (stay),
CrI.M.A.9259/2018 (under Section 340 Cr.P.C.), CrI.M.A.8384/2019
(for correction of order dated 07.02.2019)

VARUN KAPUR

..... Petitioner

versus

NEHA KAPUR

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Petitioner in person

For the Respondent : Ms. Nidhi T. Raj, Advocate with respondent
in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 07.04.2017 whereby the interim maintenance was granted to the respondent under Section 125 Cr.P.C. in the sum of Rs. 15000/- per month from the date of the application besides litigation expenses assessed at Rs. 11,000/-.

2. The contention of the petitioner-husband is that the trial court has erred and has not considered the income of the petitioner. It is contending that the petitioner is earning Rs. 15,000/- per month and as such awarding of Rs. 15,000/- per month is highly excessive.

3. It is alleged that the petitioner is not in a position to go to work on regular basis because of mental stress and harassment on account of the litigation between the parties. The petitioner has placed reliance on the income tax returns to contend that he is earning only Rs. 15,000/- per month.

4. Further, it is contended that the respondent is an MBA and holds a diploma in tours and travels and has the capacity to earn. It is further contended that respondent has concealed her bank statement which would show that she had sufficient money in her account. Further it is contended that the respondent had herself left the matrimonial home and as such approached the court with unclean hands. It is contended that the respondent has a capital of more than Rs. 10 lacs by way of *stridhan* articles/gold and diamond jewellery/money from sale of car.

5. Per Contra, the respondent has contended that the marriage of the parties was solemnized through matrimonial service provided by Laxmi Narayan Mandir, Kirti Nagar and in the application form, the petitioner had clearly mentioned that he was engaged in the family business of manufacturing bathroom fittings and wholesale trading and earning about Rs. 25 to 35 lacs per annum.

6. It is contended that lavish marriage functions were performed and even a car was given as dowry. Further it is contended that the parties had gone for a honeymoon trip to Dubai and thereafter had

taken other trips to Vaishno Devi and Amritsar.

7. It may be noticed that the father of the petitioner is engaged in manufacturing and trading of wholesale sanitary ware and employing several individuals in his showroom/office.

8. Today the minimum wage payable to an unskilled worker is about Rs. 15,000/- per month. It is admittedly not the case of the petitioner that he has any dispute with his father or is not living with him. Petitioner also has a brother. It is unbelievable that petitioner would work as a commission agent and earn Rs. 10,000/- to Rs. 15,000/- per month and when the petitioner's father runs a business and employs several individuals and pays far higher salary than what the petitioner allegedly earns as a commission agent.

9. On this ground alone, I find no merit in the submissions of the petitioner.

10. The trial court, by the impugned order, has noticed that the petitioner is participating in the business being run by his father under the name and style of M/s Nik India and is earning not less than Rs. 80,000/- per month. The family has several immovable properties in Bawana Industrial Area. Trial court has noticed that the status of the parties is reflected from the fact that the petitioner had been gifted a car in the marriage and further the couple were sent to honeymoon to Dubai, though it was stated that the same was financed by his father. The matrimonial alliance was fixed through matrimonial service

where petitioner himself showed his earning at Rs. 25 to 35 lacs per annum.

11. Petitioner has no other dependent member on him. The trial court has further noticed that as per the income tax returns for the assessment years 2013-14, 2014-15 and 2015-16 the income has been shown by the respondent as Rs. 2,41,915/-, Rs. 3,84,181/- and Rs. 4,72,341/-. In contrast, in the income affidavit petitioner has claimed to be working as a commission agent and is only earning Rs. 15,000/- to 20,000/- per month.

12. Trial court has rightly held that the petitioner has purposely tried to reduce his income with an effort to escape payment of maintenance. Trial court has correctly drawn an adverse inference and held that the income of the petitioner should be assumed to be at least Rs. 4,53,562/- per annum, i.e., Rs.37,796.83 per month.

13. The trial court has rightly assessed that the respondent-wife is entitled to a reasonable maintenance commensurate to the status of the petitioner-husband and accordingly awarded interim maintenance at Rs. 15,000/- per month.

14. It is settled position that at the time of the assessment of the interim maintenance the court has to assess the maintenance taking a prima facie view based on the documents produced on record. There is no denial to the fact that at the time of seeking matrimonial alliance the petitioner had stated that he was engaged in his father's business

and was earning approximately Rs. 25 lacs to 35 lacs per annum. The trial court has rightly drawn an adverse inference against the petitioner based on the income tax returns filed by the petitioner prior to commencement of the disputes.

15. It is surprising that the person who was showing a gross income of approximately Rs. 4.5 lacs before the disputes starts, reduced his income to Rs. 1.5 lacs per annum. This clearly appears to be a move on the part of the petitioner to show lesser income so as to avoid an order of maintenance. Trial court has rightly drawn an adverse inference and assessed the income of the petitioner on the basis of the income tax returns for the year 2015-16. Admittedly there are no other dependent member on the petitioner.

16. The Supreme Court of India in *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 has held that *Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the*

husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

17. Accordingly, I find no infirmity in the view taken by the trial court in awarding interim maintenance of Rs. 15,000/- per month to the respondent.

18. The petition is accordingly dismissed.

Crl. M.A. 9259/2019 (under Section 340 Cr. P.C.)

19. The petitioner has filed the subject application under Section 340 Cr. P.C. contending that in her reply to the revision petition, the respondent has deliberately stated incorrect facts. It is alleged that the marriage expenses of Rs. 45 lacs were incurred and that the expenses for honeymoon trip were borne by the father of the respondent.

20. It is contended that the taxable income of father of the respondent is Rs. 1,30,000/- and as such he could not spend Rs. 35 lakhs on the marriage. Further it is contended that she has alleged as she was deserted by the petitioner whereas it was she who left the matrimonial home. Further it is alleged that she had made false allegations in the complaint made to the Crimes against Women Cell that she was trying to save her marriage.

21. Further allegations were made in the application with regard to the bank accounts alleged to be in the name of the respondent and with regard to the sale of the car given to the petitioner at the time of the marriage and utilization of funds thereto.

22. Said application pertains to the merits of the contention of the parties which are matters of trial before the trial court. None of the contentions raised in the present application warrant exercise of powers under Section 340 Cr. P.C.

23. Subject application, appears to have been filed to prejudice the court and has got no relevance on the merits of the subject proceedings i.e. fixation of interim maintenance.

24. I am further of the opinion that it is not expedient in the interest of justice that an inquiry be called for in the present facts and circumstances of the case under Section 340 Cr. P.C.

25. I find no merit in the application.

26. In view of the above, the petition as well as the application are accordingly dismissed.

27. Petitioner is granted two months time to clear the entire arrears of maintenance.

28. Order *Dasti* under signatures of the Court Master.

JULY 01, 2019
'rs'

SANJEEV SACHDEVA, J

