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

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Judgment delivered on: 09.08.2019

+ CRL.REV.P. 659/2017 & CrI. M.A. 14463/2017

BINITA DASS

..... Petitioner

versus

UTTAM KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Arvind Kumar with Mr. Vaibhav Kumar,
Advocates.

For the Respondent : Ms. Sofia Bhambri, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 19.05.2016 whereby the appeal of the petitioner impugning order dated 04.08.2015, declining the application of the petitioner for grant of interim maintenance, has been dismissed.

2. Petitioner had filed an application under Protection of Women from Domestic Violence Act, 2005 and along with the application had filed an interim application under Section 23 seeking interim maintenance. Said application has been rejected by the Trial Court by

order dated 04.08.2015 solely on the ground that the petitioner and respondent are equally qualified and petitioner was previously employed and has not disclosed any cogent explanation or disability on her part so as to disable her to earn her living.

3. The Appellate Court by impugned judgment dated 19.05.2016 has also dismissed the appeal on the ground that the petitioner was earlier working in a private company and has the capacity to work and with earnest efforts she shall be able to search a suitable job for herself.

4. Clearly both the Trial Court as well as the Appellate Court have erred in not appreciating the judgments of this Court wherein it has specifically been held that capacity to earn and actually earning are two different things. Reference may be had to the decisions of this court in *Kanupriya Sharma vs. State & Anr*, Crl.Rev.P.849/2018 decided on 31st May, 2019 and *Babita Bisht vs. Dharmender Singh Bisht*, Crl.Rev.P.456/2015 decided on 29th May, 2019.

5. This court in *Kanupriya Sharma (Supra)* relied upon judgment of the Supreme Court of India in *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 and held as under:

“22. 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 where under 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.

23. The rationale for grant of maintenance under section 125 Cr.P.C. as expounded by the Supreme Court in Bhuwan Mohan Singh (supra) applies on all fours to the grant of maintenance under the DV Act."

6. It is not the case of the respondent, that petitioner is actually employed or earning. The only ground taken is that she is qualified and capable of earning. The Supreme Court in *Shailja & Anr. Vs.*

Khobbanna (2018) 12 SCC 199 has held that whether the wife is capable of earning or whether she is actually earning are two different requirements.

7. Qualification of the wife and the capacity to earn cannot be a ground to deny interim maintenance to a wife who is dependant and does not have any source of income.

8. In view of the above, the impugned judgment dated 19.05.2016 and the impugned order dated 04.08.2015 cannot be sustained. The same are accordingly set aside.

9. The petition is allowed. Matter is remitted to the Trial Court. Parties shall appear before the Trial Court for directions on 28.08.2019.

10. Trial Court is directed to pass an appropriate order assessing interim maintenance after taking into account the income of the respondent as well as his dependant family members within three months.

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

AUGUST 09, 2019
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SANJEEV SACHDEVA, J