

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

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Judgment reserved on: 17th July, 2019
Judgment delivered on: 10th October, 2019

+ CRL.REV.P. 951/2017

MANISH DIVEDI

..... Petitioner

versus

SMT JYOTSANA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anuj Kapoor, Advocate with petitioner in person.

For the Respondents: Ms. Kavita Jha with Mr. Vaibhav Kulkarni and Ms. Devika Jain, Advocates with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order dated 16.11.2017, whereby ad-interim maintenance was granted to the respondent under section 125 Cr.P.C in the sum of Rs 10,000/- per month from the date of application i.e. 01.09.2017.

2. The marriage between the parties was solemnized in accordance with Hindu Rights and Ceremonies on 29.01.2017. However, due to differences respondent left her matrimonial house on 16.04.2017.

3. Subject petition was filed by the Respondent/wife under section 125 Cr.P.C. contending that she had to leave the matrimonial home because of harassment and demand of dowry on the part of the petitioner and his family. A car eco-sport was given by the father of the respondent, the car was bought in the name of the petitioner. It is contended that prior to marriage it was represented that petitioner works in a bank, however, subsequently the respondent came to know that petitioner was not employed in any bank but used to work along with his father at his shop. The father of the petitioner is into the business of gold and diamond jewellery.

4. It is contended that on account of the cruel behaviour of the petitioner and his family respondent had to leave the matrimonial home. It was contended that normally in a month for his personal expenditure, petitioner would spend approximately ₹ 1, 25, 000/-. Apart from this he would take ₹ 40,000 from his mother who was receiving monthly rental from her properties of ₹ 3,00,000/-. Monthly maintenance of ₹ 55,000 was claimed by the respondent.

5. The Trial Court by the impugned order assessed ad-interim maintenance at Rs. 10,000/- per month.

6. The contention of the petitioner- husband is that the trial court has erred in holding that the petitioner is running a business dealing

with gold and diamond ornaments along with his father and draws an income of Rs 1,25,000/- per month.

7. It is alleged that petitioner was a student and was pursuing his education as MBA at the time when the impugned order was passed and currently is dependent on his father for his day to day expenditure. It is alleged that the father of the petitioner earns Rs 12,000/- per month by selling stones on commission basis at a small tenanted shop.

8. It is submitted that respondent has taken all dowry articles and stridhan with her. Further, it is contended that respondent is equally qualified and has the capacity to earn.

9. The Supreme Court in *Sunita Kachwaha & Others versus Anil Kachwaha* 2014(16) SCC 715 has held as under: -

“7. Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

8. *The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.*

(underlining supplied)

10. Further, this court in *Kanupriya Sharma vs State & Anr.* 2019 SCC OnLine Del 8816: (2019) 200 AIC 323 relying upon decision of Supreme Court in *Shailja & Ors. Vs. Khobbanna* (2018) 12 SCC 199 has categorically held that whether the wife is capable of earning or whether she is actually earning are two different things.

11. 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 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."

12. In the present case, the Trial Court has assessed ad-interim maintenance at Rs. 10,000/- per month holding that prima facie it is not believable that the Petitioner would marry in an arranged marriage as a student and without having any financial wherewithal. The Trial

Court has noticed that on the preceding date of hearing, father of the petitioner was present and he conceded that his son was working with him. The Trial Court was prima facie of the view that it appeared to be a case where the husband was shirking away from his moral and legal liability to maintain the wife. The Trial Court on perusal of the photographs of the marriage opined that they spoke for themselves.

13. The Trial Court has only assessed ad-interim maintenance. Ad-interim maintenance is only tentative and subject to fixation of interim or final maintenance. At this stage the trial court has to only form a prima facie opinion. The Trial Court has prima facie looked at the status of the parties. The Trial Court has correctly opined that the photographs of marriage spoke for themselves. Nature of marriage ceremonies speak volumes about the status of parties, their lifestyle and their family. The Trial Court has looked at the photographs of the marriage ceremonies that were produced by the respondent and made an assessment of the status of parties and rightly so.

14. Further, it has not been denied by the petitioner that a car Eco-Sport was given in dowry in the marriage by the father of the respondent. The Respondent has placed on record bank statements to show that the payment for the purchase of the car were made from the accounts of the parents of the respondent/wife.

15. To counter the contention of the petitioner, that his father is also having a meagre income of Rs. 15,000/- per month, Respondent has also placed on record sale deed of two properties purchased in Rohini in the name of the mother of the petitioner for Rs. 15,00,000/- each in the year 2016.

16. The documents produced by the Respondent further support the prima facie view formed by the Trial Court in assessing ad-interim maintenance at Rs. 10,000/- per month.

17. In view of the above, I find no infirmity in the impugned order and no merit in the petition. The Petition is accordingly dismissed. Interim order dated 16.02.2018 is vacated. Petitioner is however granted six weeks' time to clear the arrears.

18. It is clarified that the opinion expressed herein is prima facie and the trial court would assess the interim and final maintenance without being influenced by anything stated herein.

19. Order *Dasti* under signatures of court master

SANJEEV SACHDEVA, J

OCTOBER 10, 2019
HJ