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

% Judgment delivered on: 01st July, 2019

\+ CRL.REV.P. 667/2015

ABHISHAT CHAUDHARY ..... Petitioner

versus

SHILPA CHAUDHARY ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Maldip Sidhu, Advocate

For the Respondents : Ms. Amrita Sharma, Advocate
Ms. Anju Thomas, Advocate for BSES.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 667/2015 & Crl.M.A.15406/2015(seeking interim relief of stay of order dated 22.07.2015), Crl.M.A.15408/2015 (on behalf of petitioner seeking permission to file additional documents), Crl.M.A.6600/2018 (on behalf of respondent for placing additional documents on record)

1. Petitioner impugns order dated 22.07.2015, whereby, the interim maintenance application of the respondent under Section 125 Cr.P.C. was allowed and petitioner was directed to pay maintenance @ Rs.25,000/- per month with effect from the date of the application i.e. 01.06.2013 and further to pay Rs.22,000/- as litigation expenses.

2. Parties were married on 14.02.2009 and separated on 23.11.2011. As per the respondent, she was harassed and beaten up constantly and finally on 22.11.2011, she was badly beaten up because of which, she had to leave her matrimonial house and start residing with her parents.

3. Per contra, the contention of the petitioner is that the respondent/wife voluntarily left the matrimonial house without any reason.

4. The Trial Court allowed the interim maintenance application of the respondent on the ground that she had no source of income and was suffering from piles and severe depression due to mental trauma and that she was subjected to harassment by the petitioner and his family members. Trial Court did not find the income tax returns filed by the petitioner as reliable on the ground that he was self-employed and did not make true and fair disclosures.

5. Trial Court found that the petitioner was not truthful in his disclosure and had merely stated that he was working as a commission agent and was earning Rs.10,000/- per month but no details were provided. It further found that the petitioner had made investments in shares and was making payments for LIC premium. Adverse inference was drawn by the Trial Court because the petitioner was not forthcoming about his income.

6. It is an admitted position that apart from the respondent, there are no other dependant members on the petitioner.

7. Contention of the petitioner is that the Trial Court has erred in not appreciating that the petitioner was working as a commission agent and was regularly filing his income tax returns disclosing his true income. Further, it is contended on behalf of the petitioner that the respondent is qualified as an MBA and is running her business and earning more than Rs.1 lakh per month.

8. It is settled position of law that capacity to earn and actually earning are two separate things. The contention of the petitioner is that the respondent is an MBA and duly qualified and is earning approximately Rs.1 lakh per month from business, however, he has failed to show any material that the respondent is actually gainfully employed or earning.

9. The contention of the petitioner that the respondent is running a consultant business in the name and style of "M/s. Nucleus Management Resources Pvt. Ltd." is also not substantiated. Record reveals that the said company is no longer in existence in the records of the Registrar of Companies and has been struck off.

10. The contention of the respondent is that she had initially intended to start a business, however, her husband, the petitioner forced her to leave work.

11. Further medical records had been produced by the respondent to show that she is receiving treatment from several hospitals including Moolchand Hospital. Further, it may be noticed that the Trial Court had also examined the respondent personally and found that the respondent was suffering from severe depression besides other ailments and was not in a position to take up any kind of work.

12. Trial Court further disbelieved the income of the petitioner of Rs.10,000/- per month noticing that the income affidavit filed by the petitioner had disclosed that the monthly expenditure of the petitioner itself came to about Rs.19,500/- per month besides his annual investments of Rs.86,000/- per month in Public Provident Fund thereby taking his bare monthly expenditure to Rs. 26,666/- besides other investments in shares, debentures and mutual funds.

13. Trial Court has also noticed that the petitioner had contended that he had borrowed Rs.11 lakhs from his parents in the year 2009 and had repaid Rs.5 lakhs to his mother besides further taking a loan of nearly Rs.6 lakhs from his friends which also he was paying back. Thus, Trial Court has rightly noticed that the monthly expenditure of the petitioner is far in excess of Rs.50,000/- to Rs.60,000/- per month.

14. Material has been placed by the respondent on record to show that the petitioner is engaged in running businesses under the name and style of "Samson X Exports" and "Aggressive Creation". Both companies are stated to be dealing in manufacturing and trading of

leather accessories including optical cases, leather covers of arms and ammunitions, wallets, handbags, etc.

15. Respondent has contended that in the website listings of these concerns, the contact details are that of the petitioner and the key contact person is also the petitioner himself. Website listings show the estimated annual sale of approximately US Dollar 1 million.

16. Contention of the petitioner is that said concerns do not belong to him but belong to his sister-in-law and he is only working as a commission agent for them.

17. The above contention of the petitioner *ex facie is not* believable as in all listings on various online directories the only contact person shown is the petitioner. If his sister-in-law was the key person of the said firm then there would be some reference to her or her details, however, none of the listings suggest any other person except the petitioner as the owner of the entity. In any eventuality, this would be an issue of trial before the Trial Court.

18. Subject proceedings emanate out of an order of grant of interim maintenance. For considering of an interim maintenance, the Trial Court has to form a *prima facie* opinion on a material that is produced, leaving the proof of the same to the stage of trial.

19. Material produced on record suggests that the petitioner is the owner of Samson X Exports, which has a turnover of nearly US

Dollar 1 million. Even before this Court, Sister-in-law of the petitioner was directed to be present in Court to produce material to show that she was the owner of the said business and the petitioner had no concern with the same, however, no such material was placed on record.

20. The other contention of the respondent is that the residential premises of the petitioner, had been reconstructed and built into a four storey structure with modern construction. It is contended that the father of the petitioner is retired from service and would not have the capacity or the means to finance the construction of a four storey building and thus it has to be presumed that the entire money for construction has been contributed by the petitioner. This goes on to show that the petitioner has substantial income which he has not disclosed. Though this aspect has been denied by the petitioner, however, it would be a matter of trial.

21. 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.

22. Taking a *prima facie* view on the material that has been produced, it can safely be inferred that the petitioner is not truthful with regard to disclosing his source of income or his earning. Even, despite several opportunities given by this court, the petitioner could not produce any material to suggest that his income was only Rs.10,000/- per month and not substantially more as has been found by the Trial Court. Despite several opportunities no material has been

placed by the petitioner on record to *prima facie* show that his version was believable.

23. I am in complete agreement with the view taken by the Trial Court by the impugned order that the petitioner is not forthcoming in disclosing his true income which is in his special knowledge. The Trial Court has rightly drawn an adverse inference against the petitioner. Though it appears that the assessment of the Trial court that the income of the petitioner would not be less than Rs.50,000/- to Rs.60,000/- per month seems to be on lower side, however, for the present, as the subject proceedings emanate out of an order assessing interim maintenance, it would be appropriate to maintain the order of the Trial Court directing payment of the interim maintenance at Rs.25,000/- per month.

24. I find no infirmity in the view taken by the Trial Court. There is no merit in the petition. Petition is, accordingly, dismissed.

25. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019
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