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

CRL.REV.P. 182/2020 & CRL.M.A. 4421/2020 (Stay)

Date of Decision: 21.01.2022

IN THE MATTER OF:

SH. NAWAB SINGH ..... Petitioner
Through: Ms. Mehak Verma, Advocate

Versus

SMT. SUDESH DEVI ..... Respondent
Through: Mr. Pradeep Sehrawat, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present revision petition filed under Sections 397/401 read with Section 482 Cr.P.C., the petitioner has assailed the order dated 06.01.2020 passed by the learned District & Sessions Judge, Dwarka Courts, South-West District, New Delhi in connected Criminal Appeal Nos. 88/89 of 2019 arising out of the complaint filed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as "the DV Act").

2. The parties in the present case were married to each other on 11.05.1992 whereafter they lived together for more than 20 years. During this period, two children were born out of the marriage. While the daughter namely, *Neelesh* was born on 26.09.1998, the son namely, *Shubham* was born on 03.11.2001. Both the children are stated to be studying. The daughter is pursuing her graduation from *DAV College,*

Chandigarh and is stated to be living as a paying guest. The son is studying in XII standard in *Rao Maan Singh, Senior Secondary School, Najafgarh*.

3. The respondent/wife preferred an application under Section 23 of the DV Act in the main petition filed under Section 12 of the said Act. In the said application, the respondent/wife alleged that after 7-8 months of the marriage, the conduct of the petitioner was intolerable. It was further stated that she had been taking care of the children and the petitioner was not providing any maintenance to her. The learned MM in its order dated 19.09.2019 noted that the respondent/wife alongwith her children were living in the self-acquired property of the petitioner/husband, while he was residing on rent. The petitioner placed on record certain photographs to show that the respondent was running a business of selling pickles in her name. The learned MM while placing reliance on the said photographs deemed it fit not to grant any maintenance to the respondent. It was further directed that the stay granted vide earlier order dated 31.05.2019 against all the properties of petitioner would stand vacated except with respect to the property No. *RZ-238, Rajesh Marg, New Roshanpura, Najafgarh, New Delhi-110085* as the same was stated to be a shared household.

4. The aforesaid order came to be challenged by both the parties vide their separate appeals. The Sessions Court while noting the conduct of the respondent in not disclosing her business of making and selling pickles came to the conclusion that no actual proof of income had come on record. The Sessions Court in absence of proof of actual income and in view of the fact that since both the children were living with the respondent estimated her income as Rs.30,000/- per month. The

petitioner has claimed income of Rs.48,000/- as his net salary and had also admitted to own seven acres of agricultural land and other properties in places other than Delhi.

5. The Sessions Court estimated total income of the petitioner to be around Rs.70,000/- per month and came to the conclusion that husband's contribution towards the maintenance for respondent and children comes to Rs.35,000/- per month. As the respondent was occupying the shared household, having rental value of approximately Rs.8,000/- per month, the said amount was deducted from the petitioner's contribution and an amount of Rs.27,000/- per month was estimated to be paid towards the maintenance of the respondent and the children.

6. Insofar as the appeal preferred by the petitioner challenging the stay on the shared household before the Sessions Court is concerned, the same was partially allowed to the extent that in case the said household is alienated, the petitioner would provide suitable alternate accommodation to the respondent. By way of the present petition, the petitioner has challenged the impugned order only qua the payment of interim compensation @ Rs.27,000/- per month to the respondent and the children.

7. Learned counsel for the petitioner submitted that the allegations contained in the complaint were false and incorrect and the impugned order was passed without due application of mind. It is contended that the estimation of petitioner's monthly income around Rs.70,000/- per month is without any rational basis.

8. I have heard learned counsels for the parties and have also gone through the entire material placed on record.

9. A perusal of the material placed on record would show that the factum of marriage between the parties and the birth of two children is not disputed. It is also admitted that the respondent is living in the self-acquired property of the petitioner alongwith two children, whereas the petitioner is residing on rent. The respondent has claimed that she was not earning and was completely dependent on the petitioner. It was further claimed that she was not provided any maintenance by the petitioner. On the other hand, the petitioner has placed reliance on the photographs placed on record before the Trial Court to submit that the respondent was engaged in the business of selling pickles in her own name however, no income proof of the same was placed on record.

10. The petitioner, who is posted as Assistant Sub-Inspector with Delhi Police has claimed his net salary to be Rs. 48,376/- per month alongwith an income of about Rs.4,200/- pm from the agricultural land.

11. During the course of submissions, learned counsel for the petitioner, on instructions, has submitted that the petitioner's monthly salary is Rs.66,056/- and the entire loan amount has already been paid. The Sessions Court while assessing the petitioner's monthly income to be Rs.70,000/- included his net salary @ Rs.48,000/- and income from other sources to be around Rs.20,000/- per month.

12. It is borne out from the record that the Trial Court vide order dated 31.05.2019 had initially granted stay against the various properties of the petitioner which was ultimately vacated vide order dated 19.09.2019 except the shared household bearing property No. *RZ-238, Rajesh Marg, New Roshanpura, Najafgarh, New Delhi-110085*. While estimating the respondent's monthly income to be Rs.30,000/-, though without any rational basis but only on the basis of photographs, the Sessions Court

combined the two incomes and observed that family resource cake comes to around Rs.1,00,000/- per month.

13. In Annurita Vohra *v.* Sandeep Vohra reported as **2004 SCC OnLine Del 192**, this Court held as follows:-

> *"2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurative with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members."*

(emphasis added)

14. In terms of the decision of this Court in Annurita Vohra (Supra), where family cake was divided in six shares while granting 4/6 shares to

the respondent and the children, the interim maintenance amount came to be around Rs.65,000/- per month deducting the respondent's estimated income of Rs.30,000/- from the above, the petitioner's contribution towards the maintenance was calculated to be Rs.35,000/- per month. The aforesaid amount was further reduced by deducting Rs.8,000/- which was stated to be the rental value of the shared household. Accordingly, the petitioner was directed to pay an amount of Rs.27,000/- [Rs.35,000/- (minus) Rs.8,000/-] to the respondent per month as interim maintenance.

15. Considering that the Sessions Court while arriving to the conclusion had already deduced the respondent's estimated income i.e., Rs.30,000/- as well as the approximate rent of the shared household i.e., Rs.8,000/-, this Court finds no illegality or perversity in the impugned order.

16. In view of the above, the present petition is dismissed alongwith the pending application.

17. Needless to say that in the final order of maintenance if any higher or lesser amount is granted, the amount paid by the petitioner as interim maintenance shall be adjusted.

18. A copy of this order be communicated electronically to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 21, 2022
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