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

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Reserved on: 10.01.2023

Pronounced on: 02.02.2023

+ **CRL.M.C. 2331/2020 & CRL.M.A. 5396/2022**

SMT. SAVITA DEVI

.... Petitioner

Through: Mr. Saurabh Kansal, Ms. Ashu Chaudhary, Mr. Pritpal Singh, Mr. Divyam Aggarwal and Ms. Shaurya Sharma, Advocates.

Versus

SH. LALIT KUMAR

.... Respondent

Through: Mr. Farasat Ali Siddiqui and Mr. Ravi S. Gupta, Advocates with respondent.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") against the order dated 11.03.2020 passed by learned Additional Sessions Judge-05, South East District, Saket Courts, New Delhi (hereinafter "learned ASJ") whereby the learned Session Judge has reduced the maintenance amount from Rs.15,000/- to Rs.10,000/- (Rs. 7,000/- for Petitioner and Rs. 3,000/- for the son of the parties).

2. The brief facts of the case are that the marriage between the parties was solemnized on 19.02.2006 and from the wedlock, a child namely Harshit was born on 05.07.2008. It is alleged by the petitioner that respondent and his family used to ill-treat the petitioner as she had failed to fulfill their demand of dowry. In the year 2013, respondent's family allegedly threw the petitioner as well as respondent out of the matrimonial home and thereafter in 2015, respondent deserted the petitioner and returned to his parents. It is further alleged that respondent had also filed a divorce petition under Section 13(1)(a) of the Hindu Marriage Act (hereinafter "HMA") before the Family Court, Saket and petitioner had filed a complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter "DV Act"). The learned Metropolitan Magistrate, Mahila Court, Saket Courts (hereinafter "learned MM") *vide* order dated 04.02.2019 directed the respondent to pay an interim maintenance of Rs. 15,000/- i.e., Rs. 10,000/- to petitioner and Rs. 5,000/- to their son. The relevant portion of the order dated 04.02.2019 passed by learned MM reads as under:

"...I have perused the income affidavits of both the parties and documents filed in support. Marriage between the parties and paternity of minor son is not disputed. Respondent has further not disputed that the complainant is merely 12th class, while has concealed his own specific educational qualification by vaguely stating himself to be a graduate from DU and post graduate from Himachal University without providing details of such qualifications. He has not disputed complainant to be unemployed and has claimed himself to be earning Rs. 8,000/- per month as daily service executive at Uma

Maheshwari Traders. He has filed an undated certificate purportedly issued by an employer to declare that he is working as such since 21.07.2015, at a salary of Rs. 8,000/- per month which is even below the minimum wages prescribed under Minimum Wages Act for an uneducated unskilled labour. Even the statement of accounts filed by respondent does not show credit of any such income to his account. It is therefore difficult to believe that a hale hearty man who is admittedly a post graduate is working at a meager salary of Rs. 8,000/- per month. It is pertinent to note that the bank account statement filed by him reveals a average withdrawal of Rs. 10,000/- to Rs. 30,000/- every month prior to the litigation. His claim to his earnings is also subsequent to the filing of the petition. His affidavit of income is also an admission of fact that he is not paying maintenance or bearing even the educational expenditure of his minor son despite claiming to be earning Rs. 8,000/-. He has not produced any documents to show his educational status and thus appears to be concealing his true income. At the same time, complainant is unable to prime facie show respondent to be owner of any immovable property.

In view these facts and that the respondent is a post graduate and capable of withdrawing and expending Rs. 10,000/- to Rs. 30,000/- each month, his income is ascertained to be earning atleast Rs. 25,000/-30,000/- per month. Having no other liability but to maintain his legally wedded wife and minor son, respondent no. 1 is directed to pay interim month maintenance of Rs. 10,000/- to complainant form the date of this order (as ad-interim maintenance was awarded vide order dated 16.07.2015) and Rs. 5,000/- per month as interim maintenance towards minor son from the date of filing of the petition. (as no ad-interim order was passed qua him), till final disposal of this case. Needless to say that interim maintenance so ordered is inclusive of maintenance towards food, clothing, boarding/lodging, medical,

educational and other ancillary expenses. This maintenance however does not include expenses towards rent or alternative accommodation as the complainant is admittedly residing in her matrimonial house. Simultaneously, interim orders restraining respondents from evicting the complainant from matrimonial house no. 31, Ali Ganj, K.M Pur, New Delhi, without due process of law, shall continued...”

3. Being aggrieved by the aforesaid order, the respondent filed an appeal under Section 29 of the DV Act before the learned ASJ whereby vide order dated 11.03.2020, the learned ASJ had reduced the maintenance to a sum of Rs. 10,000/- i.e., Rs. 7,000/- for petitioner and Rs. 3,000/- for their son. Being aggrieved by the observations and findings of the learned ASJ, the present petition has been filed for setting aside the impugned order dated 11.03.2020. The relevant portion of the said order reads as under:

“5. It is seen that in column no.4 of the petition as filed before the Ld Trial Court, the respondent disclosed the expenses on food, clothes, medication and other basic necessities at Rs.3000/- per month only, whereas, on the school fees and related expenses of the child, the respondent showed the expenses at Rs.1500/- per month and further she showed her household expenses at Rs.6000/- per month. As such, the total expenses as shown by the respondent on herself and on her child are Rs.10500/- per month only, whereas, the Ld Trial Court granted Rs.15000/- per month i.e. Rs.10,000/- for the respondent and Rs.5000/- for the child. On the contrary, in the separate application as moved under section 23 of the D V Act, the respondent showed the expenses on the child at Rs.8,000/-per month and on herself at Rs.10,000/- per month and the Ld Trial Court perhaps considered the relief as prayed by the respondent in the said application.

Ld Trial Court took into consideration the bank statement of the respondent and pointed out that on average, there are withdrawals of Rs.10,000/- to Rs.30000/- per month prior to litigation and concluded that the income of the appellant herein must be atleast Rs.25000/-to Rs.30000/- per month. Ld Trial Court did not believe the fact as put by the appellant that he was earning just Rs. 8000/- per month as revealed in the certificate issued by one Uma Maheshwari Traders and opined that even minimum wages for unskilled labour are more than that.

6. To the mind of this court, Ld Trial Court has calculated the income of appellant on higher side. The contentions of the appellant herein that he was earning Rs.8000/- per month as shown in the certificate issued by the employer is definitely not believable. When there was no certainty regarding the income of appellant, one of the options before the Ld Trial Court was to take minimum wages but consideration of the amount shown as credit in the account of the appellant was also just on the part of the Ld Trial Court. But again to the mind of this court, the Ld Trial Court has considered the income of appellant on the higher side. While deciding the present appeal, the court should also take into consideration that the respondent and her child are residing in the accommodation of the family members of the appellant and not spending anything on the separate accommodation. As such, the respondent should be given maintenance only for the day to day expenses for food, clothing, medication etc. for herself and for the child as well as for the education of the child.

7. Balancing the overall facts and circumstances, this court deem its appropriate that the respondent gets Rs.7,000/- per month for herself w.e.f. 04.02.2019 as order by the Ld Trial Court and at Rs.3000/- per month for her child from the date of institution of the case before the Ld Trial Court. The appellant shall clear all the arrears within three months from today. It is made clear that the

total amount of Rs.10000/- is inclusive of amount of Rs.2500/- as order by Ld Trial Court on 16.07.2015 towards as ad-interim maintenance...”

4. Learned counsel for the petitioner states that the impugned order suffers from infirmity since the order passed by learned ASJ is unjust, improper, illegal and contrary to the principles of natural justice. It is further stated by learned counsel that the learned ASJ did not appreciate the fact that husband can file fake income affidavit to evade his responsibilities. It is argued that respondent is earning Rs. 25,000/- from Uma Maheshwari Communication and also earning Rs. 20,000/- from property bearing no. B-1/166B, Street No. 6, New Ashok Nagar, Delhi-110096 as well as Rs. 50,000/- p.a. from agricultural land situated at Village Samaypur, Tehsil Vallabhgarh, Faridabad, Haryana. Learned counsel for the petitioner further argued that learned ASJ failed to consider the fact that petitioner is not well educated and does not keep bills for petty expenses. It is further argued that learned ASJ on the basis of income affidavit, which was filed by the respondent, reduced the interim maintenance.

5. Learned counsel for the respondent, on the other hand, states that there is no infirmity in the impugned order and learned ASJ after considering the material on record as well as income affidavit filed by respondent had reduced the interim maintenance from Rs. 15,000/- to Rs. 10,000/-. It is further argued that due to bad behavior of the petitioner, parents of the respondent had decided to disown the petitioner and respondent.

6. I have heard the rival submissions on behalf of the parties and

have gone through the material on record.

7. It is a settled law that it is obligatory on part of an able-bodied husband to earn sufficient money by legitimate means or even by physical labour, so as to maintain his wife and minor child, and he is not permitted to contend that he cannot maintain his family due to insufficient earnings. [Ref: *Anju Garg v. Deepak Kumar Garg* 2022 SCC OnLine SC 1314, *Rajnesh v. Neha and Anr.* 2021 2 SCC 324, *Bhuwan Mohan Singh v. Meena and Ors.* (2015) 6 SCC 353, *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705]

8. After hearing both the parties, this Court is of the considered opinion that the petitioner herein has studied only upto 12th standard and is burdened with responsibility of a minor child. The respondent, on the other hand, as per record is a post-graduate and as observed by learned MM in order dated 04.02.2019, had withdrawal entries to the tune of Rs. 10,000/- to Rs. 30,000/- per month prior to initiation of litigation between the parties. It is also apparent from the record that the respondent herein did not place on record details of his exact educational qualification and had filed on record only an undated certificate allegedly issued by his employer declaring that he was earning Rs. 8,000/- per month. It was rightly observed by learned MM that though the certificate mentioned that he is working and earning Rs. 8,000/- per month since 21.07.2015, the credit entries of the statement of accounts of respondent show no credit entry of Rs. 8,000/- per month as his salary/income in his account and rather reveals withdrawal entries of Rs. 10,000/- to Rs. 30,000/- per month. In case he was earning Rs. 8,000/- per month since the year 2015, he

could not justify how there are withdrawal entries of Rs. 10,000/- to 30,000/- per month. Court of learned MM, therefore, had rightly held that being a post graduate and capable of withdrawing and spending Rs. 10,000/- to Rs. 30,000/- per month, the income of the respondent could not be less than Rs. 25,000/- to Rs. 30,000/- per month.

9. Learned MM also rightly observed that the petitioner herein was not able to place on record any document to show respondent's income from any immovable property. It is apparent from the record that the petitioner is residing in her matrimonial home and there are orders of learned MM that she will not be dispossessed or evicted from the matrimonial home without due process of law. Thus, it is clear that the petitioner herein does not have to spend anything on rent, etc. It is case of the petitioner herself from the affidavit filed on record that her monthly expenditure is about Rs. 10,500/-.

10. It is to be kept in mind that this Court, as of now, is dealing with an order which is only interim in nature and the final order regarding the grant of maintenance will be passed after both the parties lead their evidence and the amount so awarded as interim maintenance will be liable to be adjusted in the future maintenance in case learned MM comes to a conclusion that the petitioner was entitled to lesser amount of maintenance at the time of final disposal of the case than was granted as interim maintenance.

11. Therefore, considering the overall facts & circumstances of the case and the fact that nothing has been brought on record that the respondent has any other liability except to maintain the petitioner and his minor son who is residing with the petitioner, and the admission of

the petitioner herself that her monthly expenditure is Rs. 10,500/- per month, this Court is of the opinion that an amount of Rs. 12,000/- is just amount to be paid as interim maintenance to the petitioner and the minor son.

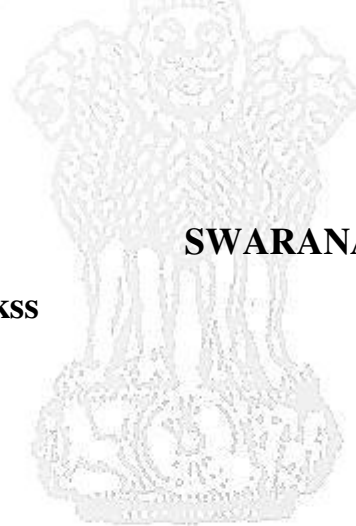
12. In such circumstances, the orders passed by learned MM and learned ASJ are modified to such extent.

13. Needless to say, nothing expressed in this order is an opinion on the merits of the case pending before the learned Trial Court.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/kss



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