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

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Reserved on: 18.07.2023
Pronounced on: 07.08.2023

+ **CRL.REV.P. 167/2018 & CRL.M.A. 3938/2018**

HEMANT SAHNI

..... Petitioner

Through: Ms. Kawaljit Kochar,
Advocate

versus

**THE STATE GOVT OF NCT OF DELHI
& ANR**

..... Respondents

Through: Mr. Gautam Khazanchi and
Ms. Suruchi Jaiswal,
Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present criminal revision petition filed under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks setting aside of order dated 16.12.2017 passed by learned Additional Sessions Judge/Special Judge (NDPS), West, Tis Hazari Courts, Delhi in Criminal Appeal No. 176/2017 whereby his appeal was dismissed on grounds of maintainability, and order dated 24.05.2017 in case bearing number 5550135/2016 passed by learned Metropolitan Magistrate (Mahila Court-03), West, Tis



Hazari Court, Delhi.

2. Briefly stated, the facts of the present case are that the petitioner and respondent no. 2 got married on 14.04.2010 according to Hindu rites, customs and ceremonies, and one child was born on 26.02.2012 out of this wedlock. However, it was alleged that since the day of marriage, the petitioner and respondent no. 2 did not have cordial relations since the petitioner and his family members had always harassed respondent no. 2 mentally and physically for one reason or the other, especially for the purposes of dowry. Accordingly, respondent no. 2 had preferred a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned MM and had also filed an application under Section 23(2) of the DV Act seeking grant of interim maintenance.

3. The learned MM *vide* order dated 24.05.2017 had directed the petitioner to pay an amount of Rs.3,750/- per month each in favour of respondent no. 2 and her minor child as interim maintenance from the date of filing of petition and it was also ordered that respondent no. 2 shall be entitled to claim maintenance till further orders or till remarriage as well as that the arrears of maintenance were to be cleared within 6 months from the date of the said order. The relevant portions of the order dated 24.05.2017 reads as under:

“..Regarding the income of the respondent no.1, the petitioner has alleged that respondent no.1 is working at a petrol pump as a Manager. She has been unable to place on record any document in this regard. The respondent no. 1 in his income affidavit has stated that he is doing a private job at a salary of Rs.6.000/- per month. However, very conveniently, he has not disclosed his place of employment. Heavy reliance has been placed upon an income certificate from the Niab Tehsildar, Nagpur, as per which



his annual income is Rs.72,000/- per month. However, the respondent has also placed on record a salary certificate issued by one So. Shishir Shyam Prakash Gulati dated 12.08.2015, as per which he is employed with him as a domestic help. No clarification has been provided by the respondent as to whether he is still working there or at a different place. However, in his reply dated 18.03.2017, in para no.8, he mentions that he is doing private service at a petrol pump at Nagpur, earning Rs.5,000/- per month. This reply has been prepared after the issuance of the income certificate. The contradiction in the income is apparent. Also, as mentioned above, the respondent has concealed his place of employment from the Court as the name of the petrol pump and its address. and also his designation has not been provided. Hence, in the opinion of the Court, the respondent has concealed his true income. Hence, considering the facts and circumstances and the fact that the respondent is gainfully employed at a petrol pump, the Court is of the opinion that he must be earning atleast Rs. 15,000/- per month. His income is assessed as such...”

4. Being aggrieved by the aforesaid order, the petitioner had preferred an appeal under the DV Act before the learned ASJ whereby *vide* order dated 16.12.2017, the learned ASJ had dismissed the appeal file by the petitioner herein being not maintainable and devoid of merits. The relevant portion of the impugned order reads as under:

“11. The Ld. Trial Court has rightly observed that in the income certificate, the appellant has only averred that the respondent no.1 is earning but there is nothing on record to substantiate that the respondent no.1 is working. It is pertinent to mention that the appellant has concealed his true income by taking various pleas wherein, on the one hand, he has filed a salary certificate issued by one Shishir Shyam Prakash Gulati dated 12.08.2015 wherein it is stated that the appellant is employed as a domestic-help and on the other hand, in reply dated 18.03.2017, the appellant has stated that he is doing a private service at petrol pump at Nagpur and he is earning Rs,5,000/- per month. Moreover, in his income certificate, the appellant stated that he is doing[^] private job at a salary of Rs.6,000/- per month, It is pertinent to mention that very conveniently the appellant has not disclosed about his place of employment even before this court. Thus, this court is of the considered view that the Ld. Trial Court has correctly held the



income of appellant as Rs.15,000/- per month. With due respect, there cannot be any dispute as regards law laid down by Hon'ble Courts in the judgments relied upon on behalf of appellant in written synopsis of final arguments. However, with due respect, in the considered opinion of this court the same are not found helpful to appellant in the instant case, as the facts and circumstances of instant case are quite different from facts and circumstances of the cited decisions..”

5. Learned counsel for the petitioner states that the conclusion of the learned ASJ as well as learned MM are absolutely based on conjectures and the conclusion of the court that the petitioner must be earning Rs.15,000/- per month has absolutely no basis. It is stated that the petitioner herein had given his salary certificate/statement which clearly showed that the petitioner was earning only Rs.6,000/- per month at the time the statement was given. It is stated that the petitioner had earlier submitted that he was earning a sum of R.5,000/- but later he had changed his job and the salary had increased to Rs.6,000/- per month and in these circumstances, the opinion of the learned MM that the petitioner was lying about his income is incorrect. It is also stated that respondent no. 2 had herself admitted in her police complaint filed in Nagpur in the year 2013 that the petitioner does a job for mere Rs.4,000/- per month. It is stated that petitioner is also paying arrears every month and hardly has any resources even for his personal needs and food and is totally dependent on his father for subsistence. It is also stated that respondent no. 2 had herself committed acts of cruelty against the petitioner and his family members and had intentionally left the company of the petitioner in collusion with her family members. It is also stated that the petitioner earns Rs.6,200/- per



month by working as a helper and in this regard he has placed on record a copy of cheque dated 15.01.2018 and the salary certificate thereof. In these circumstances, it is prayed that the amount of Rs.7,500/- awarded by both the Courts below be reduced to Rs.5,000/- per month.

6. On the other hand, learned counsel for respondent no. 2 submits that petitioner has approached this Court with unclean hands and he has not mentioned that he had filed a divorce petition in Nagpur where he had mischievously not served respondent no. 2 and had got an ex-parte order, which subsequently had been set aside and the divorce petition had been transferred to Delhi. It is stated that when the divorce petition got transferred to Delhi, the petitioner after a few days had stopped appearing and ultimately the matter had been dismissed in default and the same was not even challenged by the petitioner. It is stated on behalf of respondent no. 2 that the Courts below had considered the records filed by both the parties and had concluded that there was nothing on record to show that respondent no. 2 was working. It is stated that the Courts below also considered that the petitioner had not disclosed his place of employment and had placed reliance on an income certificate issued by Naib Tehsildar, Nagpur which showed that his annual income was Rs.72,000/- per month, whereas in his reply filed to the petition, he had stated that he was working at a petrol pump in Nagpur and earning Rs.5,000/- per month. It is stated that the learned MM had considered the contradictions in the income of the petitioner as well as the concealment of his place of employment, name of the petrol pump, its address, his designation, etc. and had thereafter arrived



at a conclusion that even if the petitioner was working at a petrol pump, his income could not be less than Rs.15,000/- per month. It is also stated that the learned MM had considered that respondent no. 2 had no means of income and that the petitioner has no other liability except to maintain his wife and his child. In reply to the present petition, it was also stated that the petitioner had also been paying insurance policy every month, leading a luxurious life by maintaining a car, keeping costly mobile phones, and living in a 3000 sq. yards home in Maharashtra. It is, thus, stated that there is no infirmity in the orders passed by both the Courts below as far as the amount of grant of interim maintenance is concerned.

7. This Court has heard the arguments addressed by both sides and has perused the material placed on record.

8. In the present case, the petitioner had alleged that respondent no. 2 was working and earning for herself, for which he had mentioned different things in his income affidavit and reply. However, as held by the learned MM and also observed by learned ASJ, the petitioner had failed to bring on record any material whatsoever to show that respondent no. 2 was engaged in some kind of employment and earning for herself. Thus, at the stage of grant of interim maintenance, the respondent no. 2 was presumed as a housewife, dependent on the petitioner i.e. her husband, in absence of any documentary proof to the contrary. Similarly, respondent no. 2 had stated that the petitioner was employed as a manager at a petrol pump, but she had also failed to bring on record any document in this regard.

9. Thereafter, the learned MM had found certain discrepancies in



the statements of the petitioner and the documents placed on record qua his employment and earnings by the petitioner. These can be summed up as under:

(i) The petitioner had earlier filed a salary certificate dated 12.08.2015 issued by one Shishir Shyam Prakash Gulati wherein it was stated that the petitioner was employed as a domestic-help and was earning Rs.5,000/- per month

(ii) Thereafter, he had filed an income certificate dated 05.01.2017 issued by Naib Tehsildar, Nagpur (after the institution of present case by respondent no. 2/wife) as per which his annual income was Rs.72,000/- per annum.

(iii) In the reply dated 18.03.2017, the petitioner had stated that he was doing a private service at a petrol pump at Nagpur and earning Rs.5,000/- per month

(iv) In his income affidavit dated 21.03.2017 filed before the learned MM, the petitioner had stated that he was doing a private job at a salary of Rs.6,000/- per month.

10. The learned MM had specifically taken note of the contradictions in the statements of the petitioner as in March, 2017 itself, the petitioner on one hand had stated that he was earning Rs.6,000/- per month by doing a private job without disclosing any details of the said job, and on the other, he had claimed that he was working at a petrol pump and earning Rs.5,000/- per month without disclosing any details thereof such as name of petrol pump or its address or as to for what purpose he was employed at the petrol pump. Now, before this Court, the petitioner states that he was working at some 'Kumar Motors' in



Nagpur in the month of December, 2017 and was earning Rs.6,200/- per month.

11. This Court in case of ***Bharat Hegde v. Saroj Hegde*** 2007 SCC OnLine Del 622 had also observed that while deciding interim maintenance, some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

12. It is a well-established legal principle that an able-bodied husband must be presumed to earn a sufficient income through legitimate means, including physical labor if necessary, to support his wife and minor child, and he cannot assert that he is unable to maintain his family due to insufficient earnings. [Ref: ***Anju Garg v. Deepak Kumar Garg*** 2022 SCC OnLine SC 1314, ***Rajnesh v. Neha*** 2021 2 SCC 324, ***Bhuwan Mohan Singh v. Meena*** (2015) 6 SCC 353, ***Shamima Farooqui v. Shahid Khan*** (2015) 5 SCC 705]. The law on this point is clear that an able bodied man is expected to earn minimum wages prevalent at a particular time fixed by the government concerned. Therefore since, at this stage, there is no exact proof of earning of the petitioner husband and both the Courts below have noted that there are discrepancies in the record with respect to income of the petitioner, as also discussed in the preceding paragraphs, this Court is of the opinion that the minimum wages applicable in NCT of Delhi during relevant time of an unskilled or a semi-skilled person which were about Rs.15,000/- be taken as income of the petitioner.

13. In these circumstances, this Court does not find any infirmity with the observations of the learned MM and learned Additional



Session Judge that the petitioner had taken different plea with respect to his income and had apparently concealed his true income. Thus, the income assessed by the learned MM and upheld by the learned ASJ for the purpose of deciding interim maintenance seems appropriate in the facts and circumstances of the case.

14. It is also essential to bear in mind that the order being dealt with by this Court is merely interim in nature. The final order regarding the grant of maintenance will be made after both parties present their evidence, and the amount awarded as interim maintenance will be subject to adjustment in the future maintenance if the learned MM determines that the respondent no. 2 is entitled to a greater/lesser amount at the time of final disposal of the case than what was granted as interim maintenance.

15. Accordingly, in view of aforesaid, the present petition stands dismissed, alongwith pending application.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 7,2023/ns