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

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Reserved on: 14.09.2023

Pronounced on: 17.10.2023

+ **CRL.REV.P. 321/2023 & CRL.M.A. 8092/2023**

JINENDER KUMAR JAIN

..... Petitioner

Through: Mr. Arindam Mukherjee, Ms. Gargi Tuli, Ahmad Ibrahim and Ms. Garima Raisinghani, Advocates

versus

AISHWARYA JAIN

..... Respondent

Through: Ms. Saubhagya Agarwal, Ms. Shivangi Gupta, Ms. Babita Verma and Ms. Aastha, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

1. The instant revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C. ') has been filed by the petitioner for setting aside order dated 17.02.2023 passed by learned Judge-02, Family Court, South District, Saket Courts, New Delhi ('Family Court') whereby interim maintenance amounting to Rs. 80,000/- per month has been awarded to the respondent/wife, in a petition filed under Section 125(1) of Cr.P.C.

2. Briefly stated, facts of the present case as disclosed in the



petition are that the petitioner and respondent were friends since 2012 and they had got married to each other on 27.11.2020. Thereafter, the respondent had gone to Dimapur, Nagaland to stay at her matrimonial house with the petitioner, but eventually, differences had started arising between them. As per petitioner, the respondent was disrespectful towards the petitioner and his family members, and she used to force the petitioner to leave his family members in Dimapur and shift to Delhi with her. Thereafter, the respondent/wife had left the matrimonial home and had gone back to her parental home in Delhi on 16.05.2021 i.e. within 6 months of the marriage. Despite best efforts for reconciliation, the parties could not reach settlement. It is stated that on 13.09.2021, the respondent had filed a false and frivolous complaint against the petitioner and his family members including his sisters and brother in laws who had never resided with them, with the CAW Cell, South Delhi. Further, on 10.12.2021, an FIR bearing no. 321/2021 was registered against the petitioner and his family members under Sections 498A/406/34 of Indian Penal Code, 1860 at Police Station, Greater Kailash, New Delhi. On In the meanwhile, on 01.12.2021, the respondent had also filed a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005, and on 10.03.2022, she had filed the present maintenance petition under Section 125 of Cr.P.C. before the learned Principal Judge, Family Court, Saket Courts, Delhi seeking monthly maintenance of Rs. 2,50,000/-.

3. Vide order dated 17.02.2023, the learned Family Court had directed the petitioner to pay a sum of Rs. 80,000/- per month as



interim maintenance to the respondent. Aggrieved by this order, the petitioner has preferred the present revision petition seeking setting aside of the said order.

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Learned counsel for the petitioner argues that the interim maintenance awarded to the respondent/wife is arbitrary, and is in complete disregard of provisions of law and without proper assessment of the financial status and capabilities of both the parties. It is stated that the impugned order has been passed admittedly on basis of guess work as mentioned in the order itself, and relevant factors, as discussed by the Hon'ble Apex Court in case of *Rajnish v. Neha (2021) 2 SCC 324*, have not been considered while determining the quantum of interim maintenance of Rs. 80,000/-. It is stated that the income of the petitioner during the years 2020-2022 was only around Rs. 4.6 lacs per annum. It is also stated that as per the bank account statement of the respondent, she has not been incurring an amount of Rs. 80,000/- per month as expenses and in fact, even the amount of Rs. 40,000/- deposited every month by the petitioner had not been fully utilized by the respondent. It is stated that as mentioned in his income affidavit, the petitioner is receiving a remuneration of Rs. 55,000/- per month which is sufficient in a rural place like Dimapur, Nagaland and should not be seen as a benchmark in Delhi where the cost of living is much higher. It is further submitted that the respondent is now living a far more luxurious life at her parent's house than she was in her matrimonial home in Nagaland. It is also argued that the the respondent is not a destitute woman as claimed by her and is a graduate and holds a degree of



Bachelors of Mass Communication from Amity University and is well-qualified and has the capacity to earn. It is submitted that she has previously worked at “Social Vocia” as a Social Media Strategist and Account Manager and she also has a side business of running a bakery by the name of “AI Forno by Aishwarya” which gives her additional income. Moreover, there is no child born out of wedlock and the respondent has no dependents to provide for. Learned counsel for the petitioner also argues that the learned Family Court has erred in relying on extracts from the petitioner's and his family members' social media profiles, which included posts from the period before his marriage and details about properties owned by his mother. Therefore, it is argued that the impugned order be set aside.

5. On the other hand, learned counsel for the respondent argues that the present petition is not maintainable as there is no material illegality or irregularity in the impugned order passed by the learned Family Court. It is stated that the respondent in her petition under Section 125 of Cr.P.C. had prayed for interim maintenance of Rs. 2,50,000/- based on the income, standard and the lavish lifestyle of the petitioner, as evident from documents placed on record but the learned Family Court *vide* the impugned order has awarded interim maintenance of Rs. 80,000/- which is only 32% of the total interim maintenance prayed for. It is further stated that the learned Family Court has correctly determined the interim maintenance by considering the factors such as: (i) several Immovable properties owned by the petitioner in posh areas of Delhi, Sanchi, Vidisha, Nagaland and across India, (ii) petitioner is the director of several



companies and holds substantial shareholding thereof, (iii) for bypassing the rules and regulations of Dimapur, Nagaland, the business i.e. M/s. J/A Brothers is being run in the name of some other person but in reality, petitioner and his family members are the owners, (iv) petitioner owns and interchangeably uses 4-5 luxurious high-end cars, value of which runs into crores, (v) petitioner has a luxurious lifestyle and frequently travels in business class to foreign destinations, wears expensive branded clothes and accessories regularly, as evident from social media posts, and (vi) during the investigation in a case under Section 498A registered against the petitioner, he has stated that he had spent Rs. 1 crore on the wedding. It is argued that the learned Family Court has arrived at its conclusion on the basis of cogent reasons after duly considering the contentions of both the parties with respect to the standard of living, education, residence, employment, ownership of properties, income/business, lavish lifestyle, foreign travel, marriage expenses incurred, capacity to repay loan, monthly expenses, ITR disclosure etc. and considering the documents on record. It is further submitted that the learned Family Court has already considered the alleged contention of the petitioner that he earns a salary of Rs. 55,000/- and that his income as per the ITR for the assessment year 2021-2022 comes out to Rs. 4,56,000/-, but considering the documents placed on record reflecting his lavish lifestyle, the learned Family Court was of the *prima facie* opinion that some guess work has to be factored in on the basis of holistic assessment of documents. Thus, it is prayed that present petition be dismissed.



6. This Court has heard arguments addressed by learned counsel for the petitioner and learned counsel for the respondent and has perused material on record.

7. The relevant portion of impugned order dated 17.02.2023, passed by the learned Family Court *vide* which the interim maintenance to be paid by the petitioner to the respondent was fixed at Rs. 80,000/-, reads as under:

“4. Arguments heard. Record perused.

5. Coming to the income affidavit filed by the parties. As per the income affidavit of the petitioner, petitioner has done her graduation in Journalism and Mass Communication from Amity University, Noida. Since the date of separation i.e. 16.05.2021 she is residing at her matrimonial home. Her monthly expense is Rs.2,50,000/-.

6. As per the income affidavit filed by the respondent, he is Graduate and has done BBA. He is residing at his father's house at Dimapur, Nagaland. The date of separation is 16.05.2022. He is working as a Manager in M/s. J. A. Brothers whose proprietor is Mr. James Akham. He is getting a salary of Rs.55,000/- and his monthly expenses are about Rs.30,000/-. He owns agricultural land at Sanchi, Raisen and land at Nateran, Vidisha. He has also taken loan from 8 companies / persons to meet out his marriage expenses and personal needs. As per the income tax returns pertaining to assessment year 2022-2023, his total income comes out to Rs.4,62,000/- and income for the assessment year 2021-2022 comes out to Rs.4,56,000/-.

7. Ld counsel for the petitioner has argued that the respondent has suppressed his income and lifestyle. Though he has shown himself to be a Manager in the sole proprietorship concern of one Mr. James Akham whereas in the reality he is owner of various companies. For the purposes of bypassing the rules and regulation of Dimapur, Nagaland, the companies are being run in name of some other person but in reality he and his family members are the Owners of the companies. She has stated



that the photographs placed on record shows the respondent wearing clothes and accessories of luxurious brand and has been a frequent flyer to international tourist destinations. She has stated that the respondent owns various properties in his name and has been leading a luxurious lifestyle. She has placed reliance on judgments passed by the Hon'ble Supreme Court and Hon'ble High Court of Delhi to lay stress on the point that a deserted wife has a right to live the same lifestyle which she used to have while she was living with her husband. She has stated that the respondent during the investigation in case under section 498-A registered against him has stated before the police that they had spend Rupees One Crore on the wedding.

8. Respondent on the other hand has controverted all such assertions made by the petitioner and her counsel. He has against stated that his salary just Rs.55,000/- out of which he is meeting with personal expenses as well as paying off the loan taken at the time of marriage.

9. There is no denial that the court while ordering for maintenance has to take into account the financial status as well as earnings of the husband. Since the spouses in the proceedings for maintenance do not truthfully disclose their true income, therefore, some guess work on the part of the court is permissible, In the case of titled as "**Kiran Tomar Vs. State of UP and Anr.**" decided by the Hon'ble Supreme Court of India on 31.10.2022, it was observed that:

"when parties are engaged in matrimonial conflict, there is tendency to under estimate income. Hence it is for the family court to determine on holistic assessments of the evidence what would be the real income of the second respondent so as to enable the appellant to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together..

10. However, at this stage, the court has to decide the interim maintenance for which a detailed evaluation of documents placed on record by the parties can neither be done nor is desirable. Sifting the documents with a fine comb cannot be done at this stage. The documents placed on record are voluminous and are mostly photocopied documents which need to be proved by way of evidence.



11. Considering the totality of facts and circumstances, the income affidavit filed by the parties the status of the parties, their place of residence etc. I deem it appropriate to direct the respondent to pay a sum of Rs.80,000/- per month to the petitioner as interim maintenance from the date of filing of petition till final disposal of petition on merits. Arrears of the maintenance to be cleared in 6 months and adjustment be made for the amount paid, if any, towards "ad interim' maintenance..."

8. The Hon'ble Apex Court in case of *Rajnesh v. Neha (supra)*, while discussing the criteria for determining quantum of maintenance, had made the following observations:

“III. Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive



at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications...”

9. A perusal of the impugned order reveals that though the learned Family Court has recorded the rival submissions of both the parties i.e. the husband’s case that he earns Rs. 55,000/- per month whereas the case of wife that her husband lives a luxurious life, the order fails to record any reasons and explanation as to why and on what basis or documents placed on record, the learned Family Court had awarded the interim maintenance of Rs. 80,000/- to the respondent. The learned Family Court has also not recorded as to what income it had assessed of the petitioner/husband and as to what proportion of his income had been awarded as the interim maintenance to the respondent wife.

10. There is no dispute on the proposition that if the parties do not disclose their true incomes, the Courts are permitted to do some guess work in order to ascertain the true income, however, such guess work is also required to be done on the basis of some documents placed on record and the Court must record its satisfaction alongwith reasons, whether detailed or in brief, as to what documents or material had persuaded the Court to arrive at the amount of interim maintenance so fixed.

11. In the concluding paragraph of the impugned order, the learned Family Court has stated that the order was being passed in view of



totality of facts and circumstances, the income affidavit filed by the parties, the status of the parties, their place of residence, etc. In this regard, this Court notes that the income affidavit filed by the petitioner herein/husband mentions his monthly income as Rs. 55,000/- per month and his expenses as Rs. 30,000/- per month. It further mentions that he resides at his father's house in Dimapur, Nagaland. Conversely, the income affidavit of respondent herein/wife mentions that her monthly expenditure is about Rs. 2,50,000/- however she has no earnings. Further, with respect to the 'status of the parties', the learned Family Court has not recorded any observations as to what was reflected from the record and what had weighed in the mind of learned Judge while arriving at a conclusion that the respondent herein was entitled to a maintenance of Rs. 80,000/- per month. To the contrary, learned Family Court has observed in the impugned order that the records of the case were voluminous and were mostly photocopied documents which need to be proved by way of evidence and the material on record did not require any detailed evaluation. The Family Court may direct the parties to file brief synopsis and relevant entries of the bank account status to decide the application.

12. At the cost of repetition, it is essential to note that in cases where the parties are suspected of concealing their actual income from the Court, some degree of guess work may be necessary, but nevertheless, this guess work must be premised on some reasonable basis and guided by the principles laid down by the Hon'ble Apex Court in case of *Rajnesh v. Neha (supra)* and other precedents on the



issue of quantum of interim maintenance.

13. Thus, the matter is remanded back to the learned Family Court to decide the issue of interim maintenance under Section 125 of Cr.P.C. afresh after hearing both the parties again and pass a reasoned order for fixing and arriving at any amount of interim maintenance payable to the respondent by the petitioner, on the basis of material placed on record including the income tax returns and bank account statements of the parties.

14. In the meantime it is ordered that instead of paying Rs. 80,000/- per month, the petitioner will pay an amount of Rs. 50,000/- per month till the application seeking interim maintenance is decided afresh by the learned Family Court, which shall be decided expeditiously and preferably within a period of two months.

15. Accordingly, present petition along with pending application stands disposed of.

16. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 17, 2023/dk