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

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Reserved on: 16.12.2022
Pronounced on: 17.01.2023

+ **CRL.REV.P. 617/2022**

ASHOK KUMAR

.... Petitioner

Through: Mr. Amit Kumar, Advocate.

versus

NEETU

....Respondent

Through: Mr. Rajan Kumar Prasad and Mr.
Rajeev Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by petitioner assailing the order dated 05.08.2022 passed by learned Additional Sessions Judge-03, South District, Saket Court, New Delhi ("Appellate Court") in the matter of "*Ashok Kumar vs. Neetu*" in appeal C.A. No. 54/2022 *vide* which the challenge to order dated 09.02.2022 passed by learned Metropolitan Magistrate-04, Mahila Court-South, Saket Courts, New Delhi ("Trial Court") in CT No. 317912020 tilted as "*Neetu Vs. Ashok Kumar & Ors.*" was dismissed.

2. The brief facts which have given rise to filing of the present revision petition are that respondent herein is the complainant/wife in a

petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) which she had filed against the husband/petitioner herein. The respondent had also filed an application under Section 23 of the DV Act against the petitioner for grant of interim maintenance. The respondent had alleged emotional psychological and physical cruelty against the present petitioner and had also pleaded that she was a housewife who was living with two children and had sought grant of Rs. 35,000/- as interim maintenance. Pursuant to the same, the petitioner herein filed a reply as well as both the parties had filed their income and expenditure affidavits. It is stated that the learned Trial Court *vide* the impugned order dated 09.02.2022, after hearing both the parties and perusing the documents on record had directed payment of Rs. 8,000/- per month as the maintenance to the respondent.

3. It is stated that the present petitioner is aggrieved by the said order since the income of the petitioner is only Rs. 3,300/-, however, he has the liability of more than Rs. 10,00,000/- (Rupees ten lacs) as more than Rs. 8,20,000/- have been taken by mother of the petitioner as loan at the rate two per cent per month from one Sh. Chander Pal Singh which he has to repay along with interest. It is also stated that the learned Trial Court failed to take note of the evidence filed by the present petitioner against the respondent regarding the cruelty and infidelity committed by the respondent against the petitioner/revisionist. It is also stated that the order was impugned before the learned Appellate Court, but the said appeal was dismissed *vide* order dated 09.02.2022.

4. It is argued by learned counsel for petitioner that the order of learned Appellate Court is also perverse since both the courts below had failed to appreciate that it was the petitioner who was aggrieved person and the respondent has misused provisions of law. It is also argued that the Courts below had also failed to appreciate that respondent/wife is more educated than the petitioner/husband and has more earning capacity, and is in fact earning Rs.10,000/- per month. It is contended that the learned Trial Court has misinterpreted the bank account statement of the petitioner by incorrectly concluding that the various credit entries ranging from Rs. 500 to Rs. 6,500/- reflected in the bank account of the petitioner during the period April, 2020 to August, 2020 are not his income and they pertain to collective rent of two months or more paid by one tenant. It is stated that the learned Trial Court also wrongly applied the impractical and hypothetical monthly income formula and thereby relying on the current minimum wages described by the Government of National Capital Territory of Delhi *vide* notification dated 18.06.2021, and directed him to pay maintenance on the basis of minimum wages of skilled labourer. It is stated that the minimum wages will be payable to an employee employed in an employment specified in para one or para two of the schedule of the said Act and not a person who is unemployed. It is also argued that the courts below wrongly held that the petitioner has skill of being a driver and has monthly income equivalent to a skilled labourer. It is therefore, stated that the order be set aside because the learned courts below did not consider the facts that the respondent had alleged only two source of income of the petitioner i.e. the petitioner is running

a school van and earning approximately Rs. 30,000/- per month and also getting Rs. 20,000/- per month from rent of his house. It is also stated that the petitioner is not running any school van as schools in Delhi were closed due to the Covid-19 pandemic and the van of the petitioner is more than 15 years old and not in running condition and the same could not be run in Delhi due to ban imposed by the Government and presently he is jobless and unemployed. Further the said van was already sold in scrap.

5. It is further argued that the property bearing No. 2/42, Dakshin Puri, New Delhi is built up property consisting of five floors and the respondent is living with the children on the ground floor of the property. The first floor of the property is lying vacant as due to daily brawls by the respondent; the tenant had left the first floor of the property during the midst of the Covid-19 pandemic and thereafter the respondent put her own lock on the lock of petitioner on the said portion of the property. Due to daily brawl and harassment of the respondent, the petitioner is residing separately on the second floor of the property and the tenant residing on the fourth floor also left due to daily brawls by the respondent. The third floor of the said property fetches a rent of merely Rs. 3,300/- per month and the tenant of the said floor has also given notice that he will vacate the said floor due to regular harassment, daily brawls and scene created by the respondent. Hence, the only income of the petitioner is Rs. 3,300/- per month. Thus the petitioner can be liable to pay the interim maintenance proportionate to his income and not beyond that.

6. Learned counsel for the respondent stated that he did not want to file reply to the present petition and wants to argue the matter.

7. During the course of arguments, learned counsel for the respondent stated that regular credit entries were seen in the bank account of petitioner at the time when he states to have not been earning anything. It is stated that the respondent has studied only up to 12th Standard and is a housewife who has two minor children. It is stated that she was subjected to emotional, psychological and physical cruelty and has no source of income and therefore, there is no irregularity in the impugned order and therefore the revision be dismissed.

8. The arguments on behalf of both the parties have been heard and the records of the case have been perused.

9. The issue which this Court has been approached to deal with is that whether the quantum of interim maintenance fixed by the learned Trial Court is excessive or not considering the facts of the present case.

10. To decide the case at hand, it will be necessary to first reproduce the relevant portions of impugned order dated 09.02.2022 *vide* which interim maintenance was granted in favour of respondent, which is as under:

“24. Taking a conservative view, being mindful of the Covid-19 pandemic situation, the respondent no. 1 who has the skill set of being a driver would have monthly income equivalent to that of skilled labour and his disposable monthly income would not be less than Rs. 18,000/- to Rs. 19,000/-. The respondent no. 1 has not filed any document pertaining to alleged loans. In absence of any documents

being filed in relation to purported loan liability it is presumed at this stage that the respondent no. 1 has no other legal liability except to maintain his wife and minor children.

25. Considering all the facts and circumstances, the respondent no. 1 is directed to pay a sum of Rs. 4,000/- per month towards interim maintenance for the aggrieved person and Rs. 2,000/- each per month towards the expenses of the minor children namely Shivam and Priyanshi of the parties with effect from filing of the application till the disposal of the case and said amount of Rs. 8,000/- in total is to be deposited in the bank account of the applicant on a monthly basis on or before every 7th day of English Calendar month failing which the default would be viewed in light of the judgment of the Hon'ble High Court of Delhi in Gaurav Sondhi Vs Diya Sondhi., 120 DLT (2005) 426. Arrears be cleared within six months from today.

11. The learned Appellate Court, while dismissing the challenge to aforesaid order, observed that there was no infirmity in the order passed by learned Trial Court. The relevant observations of learned Appellate Court are also reproduced herein-under:

“10. Admittedly respondent/wife is residing with her two minor children and she is having no source of income. Respondent living with two minor children cannot be expected to work for gain. Appellant is liable to maintain his wife and minor children.

11. Hon'ble Supreme Court of India in 'Bhuwan Mohan Singh Vs. Meena, AIR 2014 SC 2875' has held that it is the sacrosanct duty to render financial support even if the

husband is required to earn money with physical labour if he is able bodied and there is no escape route unless there is an order from the Court that wife is not entitled to get maintenance from husband on any legally permissible grounds and husband's mere plea that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife in presence of good physique along with educational qualification.

12. Having regard to the aforementioned facts and circumstances, am of the view that Id. trial court has rightly granted interim maintenance to respondent. Amount of interim maintenance granted by Trial Court cannot be said illegal or excessive. I do not find any illegality or infirmity in the order of Id. Trial court. The appeal is hence, dismissed.”

12. The case of petitioner is that awarding excessive maintenance to wife and ignoring the fact that he was not earning anything is untenable in law. The question raised before this Court by the petitioner is no more *res integra*. In the context of present case, a reference can be made to the decision of Hon’ble Apex Court in ***Shamima Farooqui v. Shahid Khan, (2015)5 SCC 705***, where it was observed as under:

*“14....Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. **If the husband is healthy, able- bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.***

*17. This being the position in law, it is the obligation of the husband to maintain his wife. **He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.***

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

(Emphasis supplied)

13. Similarly, in ***Bhuwan Mohan Singh v. Meena and Ors. (2015) 6 SCC 353***, it was observed by Hon’ble Supreme Court as under:

“2.Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") 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."*

(Emphasis supplied)

14. In ***Rajnesh v. Neha and Anr.*** 2021 2 SCC 324, Hon'ble Apex Court held as under:

"80. ...The plea of the husband and 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.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife

and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v Shila Rani Chander Prakash 1968 SCC OnLine Del 52. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligation for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

(Emphasis supplied)

15. Reiterating the same principle, the Hon’ble Supreme Court in **Anju Garg v. Deepak Kumar Garg 2022 SCC OnLine SC 1314** held as under:

*“13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. **The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child...**”*

(Emphasis supplied)

16. In the case at hand, the averments of the respondent were that the monthly income of petitioner stood at around Rs. 50,000/-, of which he used to earn Rs. 30,000/- from working as van driver and remaining Rs. 20,000 was generated from rental sources. However, no document was placed on record by respondent to support the said averments. On similar lines, no material was placed on record by the petitioner as well

to prove that respondent was earning an income of Rs. 10,000/- per month from teaching. Under such circumstances, the learned Trial Court rightly inferred that contentions of neither side regarding the income of opposite side could be established. Further, as per the income affidavit of respondent/wife, her expenditure stands at around Rs.5,500/- per month and expenditure on her minor children at around Rs.6,000/- per month, whereas she has no source of income. On the other hand, petitioner/ husband claimed in his income affidavit that his expenditure stood at Rs.3,000/- per month and expenditure towards his children at Rs.1,000/- per month, whereas he earns rental income of Rs.3,300/- per month from the fourth floor of the premises.

17. A perusal of impugned order dated 09.02.2022 passed by learned Trial Court shows that several credit entries ranging from Rs.500 to Rs.6,500/- were found in the bank account of petitioner, and no entry of Rs.3,300/- i.e. rent paid by tenant was found in the bank statement. It is further recorded by learned Trial Court that argument of petitioner was that rent was paid to him in cash. In view of such circumstances, it was observed by learned Trial Court that petitioner had not been clear about his actual earnings, and due to absence of evidence pertaining to actual income of petitioner, the learned Trial Court went ahead to assess the monthly income of petitioner as per latest minimum wages applicable in NCT of Delhi, on account of which, a skilled labour is supposed to earn Rs. 19,921/- per month. Considering the skill set of petitioner being a driver, he was held to fall under the category of skilled labour. The petitioner was directed to pay Rs.4,000/- to the respondent wife

and an additional Rs.2,000/- each for the two minor children, thereby total amount being Rs.8,000/- per month.

18. The petitioner, however, contends that the credit entries in his bank account as recorded by the learned Trial Court were reflective of the combined rent received by him from his tenant. This Court, in absence of relevant documents in this regard, cannot decide the genuineness of the same at this stage. Further, the petitioner avers that he has a liability i.e. a loan of Rs.8,20,000/-, which now stands at Rs.10,00,000/- taken by her deceased mother, and the same is to be repaid by him. However, as rightly observed by the learned Trial Court, no documents whatsoever had been placed on record in regard to any such loan, and in absence of same, the Courts cannot accept existence of such a liability to be true.

19. The fact remains that the respondent had initiated proceedings against the petitioner under the DV Act on ground of emotional, psychological and physical cruelty. The custody of the children remains with the respondent, who resides on the ground floor of her matrimonial house. Though respondent has passed 12th standard, is more educated than petitioner, and can work and earn for herself also, the fact that she has to look after the minor son and minor daughter cannot be entirely ignored, considering which, it would probably a difficult task for her to get employed somewhere. Admittedly, the petitioner had been working as a school van driver, which as per his case, got affected due to closure of schools during the Covid-19 pandemic and also because his van was more than 15 years old. Such temporary cessation of employment, however, does not mean that the

petitioner is incapable of finding another employment of similar nature, as he has worked as a driver for many years in past. Moreover, the petitioner owns a five-storey house, out of which he resides on second floor whereas the respondent resides on ground floor with the minor son and daughter. The petitioner earns a rental income from tenant residing on fourth floor of the premises. The first and third floor have been vacant after the tenants living therein had left, before which rental income was generated from those floors as well. The same, however, does not mean that the said floors cannot be put on rent at all by the petitioner. The allegations that tenants are unable to live in the premises due to constant brawls by the respondent cannot come to the rescue of petitioner.

20. Be that as it may, the fact that the petitioner is not employed would not *per se* absolve him from his responsibility to maintain the respondent/wife and two minor children. He owns a five storey house, and fortunately, he is not suffering from any physical or mental disability which would prevent him from engaging in any work. Further, admittedly, he had been previously working as a school van driver. In view of the legal propositions as discussed above, petitioner being an able bodied man, cannot shy away from his responsibilities towards his wife and his minor children by sitting idle and doing nothing. In absence of any cogent evidence pertaining to income of the petitioner, and material available on record including credit entries in his bank accounts, the learned Trial Court rightly assessed the income of the petitioner for the purposes of grant of interim maintenance.

21. The petitioner cannot shrink his social responsibility and lawful duty as father to maintain his minor children. Needless to say, the present order is only an interim order and all the contentions and documents are yet to be tested on the touch-stone of cross-examination and evidence to be led by each party and the amount remains adjustable after final order to be passed by the learned Trial Court.

22. Thus, in view of the foregoing discussion, this Court finds no reasons to interfere with the impugned orders dated 09.02.2022 and 05.08.2022 passed by learned Trial Court and learned Appellate Court respectively. Accordingly, the present petition, along with pending application, stands dismissed

23. However, before parting, this Court also observes that respondent herein has completed her education till 12th standard. Though she has a non-delegable task of looking after and taking care of the needs of her minor children, she can definitely explore options of engaging herself in some work, convenient at her end, so as to earn and lead a better life as well as ensure better facilities for her children.

24. This Court also clarifies that aforesaid observations have been made only to decide the present petition, and the same be not construed as opinion on the merits of the case.

SWARANA KANTA SHARMA, J

JANUARY 17, 2023/zp