



2024:DHC:3314



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

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Date of Decision: 25th April, 2024+ **CRL.REV.P. 24/2023, CRL.M.A. 553/2023 & CRL.M.A. 554/2023**

SH. MOHIT SHARMA Petitioner

Through: Mr. R.K. Sharma, Adv.

versus

SMT. POOJA SHARMA Respondent

Through: Mr. Vipin Kumar Yadav,
Adv. (through VC)**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Section 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 impugning an order dated 23.09.2022(hereafter '**impugned order**'), passed by the learned Additional Sessions Judge (hereafter '**Appellate Court**') in Criminal Appeal bearing CA No. 98/2021 titled as "*Pooja Sharma v. Mohit Sharma*".

2. By way of the impugned order the learned Appellate Court had enhanced the interim maintenance from Rs. 7,000/- per month, granted *vide* order dated 04.09.2021 passed by the learned Metropolitan Magistrate (hereafter '**Trial Court**'), to ₹20,000/- per month towards the respondent wife and the minor Child.

3. The learned Counsel for the petitioner submits that the

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By: HARMINDER KAUR
Signing Date: 30.04.2024
12:35:34**CRL.REV.P. 24/2023****Page 1 of 6**



learned Appellate Court has erroneously assessed the income of the petitioner and there was no basis for granting ₹20,000/- per month to the Respondent.

4. It is not in dispute that the respondent is staying in her paternal home and is also having the custody of the four year old minor child.

5. The learned Appellate Court in the impugned order had noted :

*“11....The applicant had shown Face book post of the respondent with Vitara Brezza car and a Rotweiler breed dog. As per the respondent, he had borrowed these items from a friend. However, he failed to specifically mention the particulars of the source or friend from which he_ procured the aforesaid vehicle and dog. Regarding alleged income by the applicant, the respondent had not filed any documentary proof. The facts and circumstances, the contents of affidavit filed by both the parties and documents placed on record point out towards merit in contention of Ld. Counsel for the appellant that the respondent is actually earning more than he had declared in his affidavit. It has been held by Hon'ble High Court of Delhi in the case of **Anupam Gupta Vs Sumit Gupta CM (M) 1718/2004** that, “It is a settled position of law that a wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home. It is the duty of the courts to ensure that it should not be a case that one spouse lives a life of deprivation and poverty. During the pendency of divorce proceedings the parties should be able to maintain themselves and should be sufficiently entitled to be represented in judicial proceedings. If in case the party is unable to do so on account of insufficient income, the other spouse shall be liable to pay the same.”*

12. In the case in hand, it is admitted fact that appellant is also maintaining her minor daughter aged about 4 years and they both are living in parental home of the applicant. The respondent is having no responsibility to maintain anybody other in the family.



Institution of marriage casts the liability upon the husband to maintain his wife and minor children. Further, the contention of the Id. Counsel for respondent is not acceptable that applicant is deliberately not doing any job despite her qualification. Taking care of a minor child of aged about 4 years by a single parent including his/her care of bathing, clothing, schooling, homework, tuition, preparation and serving food, medical care, etc. etc. is a list of endless duties to be done by a single mother since early morning till late night for better well-being and care of her child. Such full time duty of a mother of a kid is often neglected by other party while branding her as non-working. In present scenario, a huge amount required for proper schooling as well as medical care of a child cannot be neglected. Further, applicant also deserve lifestyle of equal status as of her husband or as she would have been living while staying in her matrimonial home. This fact also cannot be ignored that the applicant had undergone a surgery and had incurred all her medical expenses during pregnancy, pre and post surgery while she was at her parental home, which was the moral and social liability of her husband.

13. Keeping in view, the entire facts and circumstances of the present case, the respondent is hereby directed to pay a sum of Rs.20,000/- per month as a monthly maintenance to the applicant as well as her minor girl child from the date of filing of the petition, till disposal on merits. Respondent is directed to clear the arrear of maintenance within six months from today in equal monthly instalments by way of the means mentioned in para no.20 of the impugned order."

6. On being pointedly asked, as to how much maintenance the petitioner is willing to pay qua his wife and the minor child, the learned counsel for the petitioner submits that the petitioner is not in a position to pay anything. He submits that the petitioner is merely earning Rs.12000/- per month, by working at his father's pharmacy shop, and incurs an expenditure of 11000/-.



2024:DHC:3314



7. It is not in dispute that the other expenditure(s) of the petitioner with respect to water, electricity, gas TV cable, and house maintenance are being paid by his parents, which also implies that that there are no dependants on the petitioners apart from Respondent and his minor child.

8. Also, the conduct of the petitioner is not *bona fide* since he had not placed on record the relevant documents showing he actual earnings. He has neither placed on record his salary slip nor clarified the particulars with respect to agricultural land and has concealed the same. The respondent had placed on record a copy of revenue record of Village Tauru and Dist. Tauru showing some agricultural land in the name of family members of the Petitioner but the petitioner did not clarify the actual status and income from the said land. The petitioner has also not placed on record anything to show his family's annual income, since he is stated to be working with his father in a pharmacy shop which is a family business.

9. The petitioner is an able-bodied man having a pharmacy diploma. There is nothing placed on record to show as why the petitioner is unable to ₹20,000/- to his own wife and minor child. The Hon'ble Apex Court, in the case of *Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314*, observed as under:

“10.... The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally

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permissible grounds mentioned in the statute....

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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)

10. It is also common knowledge and has been observed by this Court in many cases that it is a normal tendency of the parties, especially in matrimonial disputes to not disclose their true incomes. The Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning. [Ref:***Bharat Hegde v. Saroj Hegde:2007 SCC OnLine Del 622***]

11. It is also stated that the respondent has incurred medical expenditure of ₹1,00,000/-, towards the delivery procedure of the minor child.

12. The learned Appellate Court noted that the petitioner was paying an EMI of ₹4,459/- per month with respect his Bullet bike, also there are photographs placed on record from the Facebook account of the petitioner showing a Brezza Car and a Rotweiler dog, which the petitioner states to be belonging to his friend but nothing has placed on record in support of this contention. It is also to be noted that the petitioner is an educated man having a diploma in pharmacy. In such circumstances, the learned Appellate Court granting ₹ 20,000/- per month to the wife and minor Child, of four years of age, is not unreasonable.



2024:DHC:3314



13. Moreover, the order passed by the learned Appellate Court is only for the purpose of interim maintenance. A final order will be passed by the learned Trial Court after taking the evidence on record. It is not denied that the amount is directed to be paid to the petitioner's wife and his minor child. The relationship between the parties is admitted.

14. In view of the above, this Court finds no reason to interfere with the impugned order and the petition is, therefore, dismissed.

AMIT MAHAJAN, J

APRIL 25, 2024

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Signing Date: 30.04.2024
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CRL.REV.P. 24/2023

Page 6 of 6