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

+ **CRL.REV.P. 169/2023**

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.....Petitioner

Through: Ms. Aditi Shivadhatri,
Capt. Subedita Rani and
Mr. R.R. Bharati, Advs.

versus

VIBHOR TOMAR

.....Respondent

Through: Ms. Priyanka, Adv.
(through VC)
Dr. B. Ramaswamy,
CGSC (through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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18.12.2024

1. The present petition is filed against the judgment dated 11.11.2022 (hereafter '**impugned judgment**') passed by the learned Principal Judge, Family Courts, Karkardooma Courts, Delhi.

2. By the impugned judgment, the learned Family Court, in a petition filed by the petitioner under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**') awarded maintenance of ₹5,000/- per month from 11.12.2013 – 31.12.2015, ₹7,000/- per month from 01.01.2016 – 31.08.2018, ₹12,000/- per month from 01.09.2018 – 31.12.2021, and a sum of ₹13,000/- per month with effect from 01.01.2022.

3. The learned Family Court noted that the burden to show that the petitioner was not entitled to any maintenance lay on the

CRL.REV.P. 169/2023

Page 1 of 6



respondent. It was noted that except for the contentions of the respondent, there was nothing on record to suggest that the petitioner was staying separately of her own volition.

4. It was noted that while the respondent contended that the petitioner was doing a private job, and possessed her own independent source of income, no suggestion was given to the petitioner during her cross examination regarding her alleged income by doing a private job. The learned Family Court took into account the fact that the petitioner is suffering from Recurrent Respiratory Papillomatosis for the last seven years, and had filed documents to substantiate her claims. Consequently, the learned Family Court noted that except the oral assertions of the respondent, no evidence on record suggested that the petitioner possessed her own independent source of income.

5. The learned Family Court considered that the respondent had been working with the Delhi Police as Head Constable. After a perusal of the salary slips of the respondent and the ITR for the Assessment years 2015-2016, 2016-2017, 2017-2018, 2021-2022 and 2022-2023, the average net income of the respondent was assessed to be ₹30,000/- per month from 11.12.2013 – 31.12.2015, ₹50,000/- per month from 01.01.2016 – 31.12.2021, and ₹60,000/- per month from 01.01.2022.

6. It was noted that the respondent had no other liability except to maintain the petitioner and his two daughters. It was noted that the respondent was working with the Delhi Police as Sub Inspector and after his retirement, he is in receipt of pension. Consequently, the maintenance for a sum of ₹13,000/- per month was awarded to the petitioner with effect from 01.01.2022 during her life time or till the time she remarried after divorce, if any,



from the respondent. The petitioner filed the present petition feeling aggrieved with the amount of maintenance and seeks enhancement.

7. The learned counsel for the petitioner submits that she is confining the present petition to the relief that enhancement be made in the maintenance awarded by the learned Family Court. She submits that the maintenance awarded is grossly inadequate and does not take into account, the status of the parties and the respondent's higher financial capacity. She submits that even otherwise the sum of ₹13,000/- per month is static in nature, and does not take into account the increased cost of living with the passage of time. She consequently prays that some provision for enhancement in maintenance be made.

8. The learned counsel for the respondent submits that the impugned judgment merits no interference. She submits that the respondent is also taking care of two minor children, and the maintenance awarded to the petitioner is adequate. She further submits that the petitioner left the company of the respondent of her own will.

9. Section 125 of the Code of Criminal Procedure, 1973 (CrPC) is a provision designed to provide a quick remedy to those who are unable to maintain themselves. The primary objective of this section is to prevent vagrancy and destitution by ensuring that those who are dependent on another for their subsistence, such as a wife, children, or parents, receive financial support when they are unable to maintain themselves. The Supreme Court in **Chaturbhuj v. Sita Bai : (2008) 2 SCC 316** emphasized that the object of maintenance proceedings is not to punish a person for past neglect but to ensure that those entitled to support are not left in distress. This provision embodies the



social responsibility and duty to maintain one's dependents.

10. The Hon'ble Apex Court in the 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 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)

11. In the case of **Chaturbhuj v. Sita Bai (supra)**, the Hon'ble Apex Court in regard to the purpose of Section 125 of the CrPC observed as under:

6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain



themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503] .

12. It is not in dispute the petitioner is the legally wedded wife of the respondent. Insofar as the quantum of maintenance is concerned, the learned Family Court awarded a sum of ₹13,000/- to the petitioner with effect from 01.01.2022 as maintenance while assessing the income of the respondent to be ₹60,000/-. The respondent was working as a Head Constable / ASI with the Delhi Police, and is also in receipt of pension upon his retirement.

13. This Court in ***Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99*** held that the Family Resource Cake which includes the incomes of both the husband and the wife is to be distributed among the family members. The allocation of this “cake” should align with the financial needs of each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members should be taken.

14. Accordingly, the income of the respondent is to be divided in five equal portions, where two portions ought to be allotted to the respondent, and one portion each to the petitioner and the two daughters. In line with the dictum of this Court in ***Annurita Vohra Vs. Sandeep Vohra (supra)***, it is seen that the learned Family Court rightly awarded maintenance for a sum of ₹13,000/- per month to the petitioner. For this reason, insofar as the quantum of maintenance awarded to the petitioner is concerned, this Court does not find any ground to interfere with the impugned judgment and the same cannot be faulted with.

15. However, it is seen that the impugned judgment makes the
CRL.REV.P. 169/2023

Page 5 of 6



maintenance awarded to the petitioner static and does not take into account factors such as inflation with the passage of time. While determining the quantum of maintenance, this Court cannot lose sight of the fact that Section 125 of the CrPC was enacted to ameliorate the financial agony of a destitute wife. Thus, factors such as increased cost of living with the due passage of time cannot be ignored.

16. Consequently, the maintenance amount as determined by the learned Family Court by the impugned judgment is found to be *prima facie* reasonable and does not require any modification. However, keeping in view the spiraling cost of living and the rising level of inflation, the maintenance amount is set to increase by 10% after every two years. Thus, the maintenance amount for the period between 01.01.2022 – 31.12.2023 stands at ₹13,000/- per month as awarded by the learned Family Court. Similarly, the maintenance amount for the period between 01.01.2024 – 31.12.2025 stands at ₹14,300/- and shall so be enhanced by 10% after every two years during the petitioner's life or till the time that the petitioner remarries after divorce. The arrears in maintenance to be cleared by the respondent within a period of four months from date.

17. The petitioner is at liberty to file appropriate application for execution in case the amount of maintenance is not paid as directed.

18. In view of the foregoing discussion, the present petition is partly allowed.

AMIT MAHAJAN, J

DECEMBER 18, 2024