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

+ **CONT.CAS(C) 206/2023**

MASTER PRATEEK BISWAS (THROUGH HIS
MOTHER)

..... Petitioner

Through: Mr. Bibhuti Bhushan
Mishra & Ms. Tripti,
Advs.

versus

TAROK BISWAS

..... Respondent

Through:

+ **CRL.M.C. 3325/2019**

TAROK BISWAS & ANR

..... Petitioners

Through: Ms. Karuna Bajaj, Adv.
with petitioner in person

versus

PRIYANKA MATTOO & ANR

..... Respondents

Through: Mr. Dipak Raj & Ms.
Tripti, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

13.02.2024

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CRL.M.C. 3325/2019

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**) challenging the order dated 06.05.2019 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge (hereafter '**Appellate Court**') in Crl. Appeal No. 125/2019 titled as *Priyanka Mattoo Biswas & Anr. v. Tarok Biswas & Ors.*



2. The learned Appellate Court, by impugned order, had partially allowed the appeal filed by the respondents under Section 29 of the Protection of Women From Domestic Violence Act, 2005, seeking enhancement of the interim maintenance awarded *vide* order dated 14.02.2019, by the learned Trial Court, whereby a sum of ₹3,000/- per month for the child / Respondent No. 2 was granted as interim maintenance.

3. The learned Appellate Court, by the impugned order, has enhanced the interim maintenance amount for the child / Respondent No. 2 from ₹3,000/- per month to ₹5,000/- per month. The petitioner is also directed to pay tuition expenses incurred for the child / Respondent No. 2.

4. The learned counsel for the petitioner submits that the petitioner has lost his job from where he was drawing a salary of ₹16,200/- per month, based on which learned Trial Court passed the order dated 14.02.2019.

5. The appeal seeking enhancement was filed by the respondents on the ground that petitioner is drawing more salary than what was disclosed in his income affidavit; the Respondent No.1 is living in a rented premises with the Respondent No.2/ Child, paying a rent of ₹8500/- along with additional expenditure of ₹10,000/- towards water and electricity; and on the ground that Respondent No.1 was unable to bear the school/tuition expenses of the Respondent No.2, since the same were more than the amount of interim maintenance as awarded by the learned Trial Court.

6. The learned Appellate after considering the facts and the material on record, noted that the Respondent No.1 is drawing a salary of about ₹15,000/- per month and paying the rent of ₹8500/-; whereas from the monetary status of the petitioner, it



appears that he is earning more than the ₹16,200/- per month.

7. The learned Appellate court came to the conclusion that admittedly the Respondent No.1 is maintaining the child and is also paying a fee of ₹18,000/- quarterly. The learned Appellate Court came to the conclusion that besides fee there must be other expenses of the child which must be more than around ₹12000/- per month, and therefore had enhanced the interim maintenance from ₹3000/- to ₹5000/- with respect to the Respondent No.2/ child along with tuition fee.

8. The learned Counsel for the petitioner submits that during the pendency of the present proceedings the Petitioner No.1 had cleared all the arrears at the rate of ₹3000/- per month as awarded by the learned Trial Court.

9. The interim maintenance amount of ₹5000/- per month towards the Respondent No.2/child awarded by the learned Appellate Court, at this stage, does not appear to be unreasonable.

10. 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 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. The Court while granting interim maintenance has to ensure that the wife and children are not put to starvation. The Court at the time of fixing interim maintenance is not expected to go into the minute details and the facts which are to be proved during the course of the proceedings.

12. The Court cannot shut its eyes to the fact that the Respondent No.2 is in his initial years of school and cannot support himself. The learned Appellate Court is therefore justified in granting the tuitions expenses. In the present case, however, it is admitted that Respondent No.1 is also working, and in the opinion of this court the Petitioner No.1 cannot solely be burdened with the fee expenses.

13. It has come on record that Respondent No.1 is paying the quarterly fee of ₹18,000/- for Respondent No.2's education. Considering the fact that Respondent No.1 is also drawing almost an equivalent amount of salary, this Court is of the opinion that the tuition fee / school fee ought to be shared equally by the petitioner and Respondent No. 1.

14. In view of the above, the impugned order is modified to the extent that the petitioner is liable to pay a sum of ₹3,000/- per month as tuition fee / school fee of Respondent No. 2 / child along with the interim maintenance as awarded by the learned Appellate Court. Any variation in the school fee should be brought to the knowledge of the learned Trial Court, who shall be at liberty to pass an appropriate order for modification of the present arrangement.

15. It is made clear that the observations made in the present case are only for the purpose of considering the present petition for interim maintenance and should not influence the outcome of



the trial.

16. The petition is disposed of in aforesaid terms.

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17. The present petition is filed under Section 2(B) and Section 12 of the Contempt of Courts Act, 1971 read with Article 226 of the Constitution of India for initiating contempt proceedings against the respondent / contemnor for not complying with the order dated 13.07.2022.

18. This Court by order dated 13.07.2022, had directed the respondent – Tarok Biswas to clear arrears at the rate of ₹3,000/- per month in three equal installments commencing from August to October, 2022.

19. In view of the above order passed in CRL.M.C. 3325/2019, the learned Counsel for the petitioner seeks liberty to withdraw the present petition with liberty to file an execution petition in case of any arrears.

20. The petition is dismissed as withdrawn with aforesaid liberty.

21. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

FEBRUARY 13, 2024

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