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

+ **CRL.REV.P. 208/2023**

SUNIL KUMAR

..... Petitioner

Through: Mr. Anil Basoya, Adv. &
adv Akash Gahlot through
V.C.

versus

PRAGATI @MADHU AND ANR. Respondents

Through: Dr. Anu Solanki, Adv. for
R-1 along with father of
R-1.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.05.2024

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1. The present petition is filed under Section 19(4) of the Family Court Act, 1984 impugning the order dated 02.12.2022, passed by the learned Family Court, Saket Courts, Delhi in M. No. 155/2021 titled as '*Pragati @ Madhu & Anr. v. Sunil Kumar*' under Section 125 of the Code of Criminal Procedure, 1973 (**CrPC**).

2. The learned Family Court by the impugned order has directed the petitioner to pay a monthly maintenance of ₹50,000/- to the respondents, who are the wife and the minor child of the petitioner. The impugned order has been passed *ex-parte*. The learned Family Court noted that the averments made by the respondents have gone uncontroverted and unchallenged and hence, there is no reason to disbelieve the testimony of the respondents.

3. The learned counsel for the petitioner submits that the

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notice under Section 125 of the CrPC was not served. He submits that he had no reason to not appear since the parties have been litigating in various courts. He submits that prior to the impugned order, the learned Family Court in complaint case No. 1248/2021 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) after considering the arguments advanced by the parties and taking note of the salary slips of the petitioner, had awarded interim maintenance of ₹4,900/- per month. He submits that the order dated 10.10.2022 was not brought to the notice of the learned Family Court which led to passing of the impugned order.

4. It is not in dispute that the impugned order has been passed *ex-parte*. It is also not in dispute that the concerned Metropolitan Magistrate has already passed an order under Section 12 of the DV Act and has granted a monthly maintenance of ₹4,900/- per month to the respondents. The said order was passed after considering the affidavits filed by the parties and hearing the arguments. The said order has not been challenged.

5. The learned counsel for the petitioner submits that the petitioner should be given an opportunity to address arguments before the learned Family Court in relation to proceedings under Section 125 of the CrPC. He further submits that the petitioner has been directed to pay an interim maintenance of ₹7,500/- per month by this Court pursuant to the order dated 28.02.2023 and petitioner would continue paying the same till the application filed by the respondent under Section 125 of the CrPC is decided.

6. The petitioner has taken this Court through the salary slips which indicate that the monthly salary of the petitioner in January - February, 2022 was ₹16,000/- per month. The same was also taken note by the learned Metropolitan Magistrate while
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deciding the application under Section 12 of the DV Act.

7. In view of the above, this Court is *prima facie* of the opinion that the ad-interim monthly maintenance of ₹7,500/- is reasonable till such time the application for interim maintenance is decided by the learned Family Court under Section 125 of the CrPC.

8. The matter was admittedly heard *ex-parte*. Since the case relates to matrimonial dispute and the *ad interim* maintenance is being directed to be paid, this Court is of the opinion that the matter ought to be remanded back for consideration afresh.

9. In view of the above, the present petition is allowed and the impugned order is set aside and the petitioner is directed to continue paying ₹7,500/- per month to the respondents till order on maintenance / interim maintenance is passed by the learned Family Court. The petitioner is also directed to clear arrears from the date of filing of the petition under Section 125 of the CrPC, calculating the same at the rate of ₹7,500/- per month.

10. The learned Trial Court is directed to pass an order uninfluenced by any observations that may have been made by this Court in the present petition.

11. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 21, 2024

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