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

+ CRL.REV.P. 225/2024 & CRL.M.A. 5195/2024

BHARTI ANAND

.....Petitioner

Through: Mr. Rajesh Vig, Advocate
(Through V.C.).

versus

SUSHANT ANAND AND ANR

.....Respondents

Through: Respondent-in-Person
(Through V.C.).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

25.07.2024

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1. The present petition is filed under Section 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 19.10.2023 passed by the learned ASJ-02, Tis Hazari Court, Delhi (hereafter '**impugned order**') in CA No. 207/2022 titled *Bharti Anand v. Sushant Anand*.

2. The petitioner's appeal under Section 29 of the Domestic Violence Act, 2005, challenging the order dated 04.08.2022, passed by the learned Metropolitan Magistrate ('MM'), Tis Hazari Court, Delhi was dismissed by the impugned order.

3. The learned MM, by order dated 04.08.2022, awarded an interim maintenance for a sum of ₹5000/- per month to the petitioner, while noting that a *prima facie* case of domestic violence was made out against Respondent No. 1.

4. The learned ASJ-02, *vide* the impugned order, dismissed the appeal filed by the petitioner for enhancement of interim

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maintenance, specifically stating that the salary of the Respondent No. 1 is around ₹20,155/- per month.

5. The learned counsel for the petitioner submits that the amount of ₹5000/-, which includes rent and other ancillary expenses, is too meagre and does not take into account the real living standard of the Respondent No. 1 or the reasonable needs of the petitioner. He further submits that the Trial Court has erroneously assessed the income of the Respondent No. 1 to be ₹20,000/-, and that Respondent No. 1's high expenditure is reflective of his high income.

6. *Per contra*, Respondent No. 1, who appeared through Video Conferencing, opposes the present petition, and submits that he is presently working as a lecturer in GNA University in Punjab. He submits that his present salary is ₹16,500/-, which is not sufficient for his own maintenance, and he also has other financial liabilities.

7. The learned ASJ, upon a perusal of the income affidavit of Respondent No. 1, noted that Respondent No. 1 is getting a salary of ₹20,155 per month. It was also noted that he had placed on record his salary slips and bank account statements.

8. While the affidavit of assets shows the monthly income of the Respondent No. 1 to be ₹16,300, and the learned ASJ has assessed the income of the Respondent No. 1 to be ₹20,155/-, however, the tendency to downplay one's income when embroiled in a matrimonial dispute is not uncommon. For this reason, in a catena of judgments, it has been held that even income tax returns do not necessarily provide an accurate reflection of the actual income. [Ref: **Kiran Tomar v. State of U.P. : 2022 SCC OnLine SC 1539**]. The Courts, in such



instances, is 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**]

9. In the present case, the Respondent No. 1 is a skilled person, possessing a degree of Bachelors of Arts in 3D animation, and employed as a lecturer in GNA University, which is admittedly, a private University. In such circumstances, it does not seem plausible that his monthly salary is only ₹20,155/-. It would be reasonable to presume that the salary in any case would have increased further from the date of passing of the order by the learned MM.

10. Be that as it may, even considering that the salary of Respondent No. 1 is approximately, ₹20,000/-, a sum of ₹5000/- is too meagre for the sustenance of the wife considering that it also includes rent and other ancillary expenses. It is also pertinent to note that Respondent No. 1 has no dependents. It is well settled that a husband cannot shirk his sacrosanct duty to financially support his wife. 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)

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11. In such circumstances, in my opinion, the interim monthly maintenance of ₹5000/-, including rent and other ancillary expenses, does not appear to be reasonable. The interim maintenance is, therefore, enhanced to ₹10,000/-.

12. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the parties, along with the allegations and counter allegations, would be the subject matter of trial, and would have to be decided after the parties have led their evidence.

13. The present petition is allowed in the aforesaid terms. However, balancing the equities, I am of the opinion, that the enhanced interim maintenance of ₹10,000/- per month is directed to be payable from 01.01.2024.

14. The learned Trial Court is directed that the final order be passed in the case being uninfluenced by the observation made in the present order.

AMIT MAHAJAN, J

JULY 25, 2024

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