



2024:DHC:7507



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 02nd September, 2024***+ **CRL.REV.P. 239/2023 & CRL.M.A. 6271/2023,**
CRL.M.A. 6272/2023, CRL.M.A. 15421/2023

MURLI MANOHAR SAHAYPetitioner
Through: Mr. Shahid Azad, Adv.
(through VC)

versus

MEGHNA SAHAYRespondent
Through: Mr. Manindra Dubey,
Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN (Oral)

1. The present petition is filed challenging the judgment dated 24.11.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Saket Courts, New Delhi in CA No. 95/2021 titled *Murli Manohar Sahay vs. Meghna Sahay*.

2. By impugned order, the learned ASJ dismissed the petitioner's appeal challenging the order dated 22.09.2021 passed by the learned Metropolitan Magistrate ('**MM**'), Mahila Court, Saket whereby the learned MM had directed the petitioner to pay an interim maintenance for a sum of ₹10,000/- per month to the respondent from the date of filling of the application till the

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CRL.REV.P. 239/2023**Page 1 of 9**



2024:DHC:7507



pendency of the main application.

3. The learned ASJ noted that in the complaint case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**'), specific allegations of economic and physical abuse have been made against the petitioner. It was noted that the averment of the petitioner that no domestic violence of any kind, be it physical, emotional or economic was inflicted on the respondent, is a matter of trial. It was further noted that the learned predecessor ASJ *vide* order dated 23.01.2020 had also observed that the respondent had alleged that she and her minor child were not taken care of by the petitioner. Further, the learned predecessor ASJ also noted that the issue regarding the respondent not having any reasonable cause not to live with the petitioner despite there being a decree of restitution of conjugal rights was a matter of trial, and cannot be made a ground to decline interim maintenance to the respondent.

4. The learned ASJ also took into consideration a TDS certificate of the respondent filed by the petitioner showing that an amount of ₹8.68/- towards total transaction of ₹867.62 from 28.02.2022 to 31.03.2022 was deducted. It was noted that the said document did not *prima facie* establish that the respondent is a working woman earning a handsome amount. It was noted that nothing was placed on record to corroborate the contention of the petitioner that TDS is deducted when the income is above ₹5,00,000/-. The learned ASJ, thus, noting that the petitioner had



2024:DHC:7507



not challenged the assessment of his monthly income as ₹55,000/- by the learned Trial Court, and the calculation of the quantum of interim maintenance by the learned Trial Court, dismissed the appeal filed by the petitioner with cost of ₹10,000/- .

5. The learned counsel for the petitioner submits that the learned ASJ erred in upholding the order of the learned MM granting interim maintenance to the tune of ₹10,000/- per month to the respondent. He submits that there is no material on record to *prima facie* show that any form of domestic violence was meted out to the respondent. He submits that the respondent, without any reason, has herself left the company of the petitioner and refuses to reside with him despite there being a decree of restitution of conjugal rights in favour of the petitioner. He submits that the respondent herself has not given any reason for not working. He submits that the respondent is well educated, and is capable of maintaining herself.

6. *Per contra*, the learned counsel for the respondent submits that the respondent is not presently in a position to earn. He submits that the fact that prior to her marriage, the respondent was in a position to earn, has no bearing on the claim of maintenance at this stage. He submits that the petitioner had failed to take care of the respondent, and is only putting forth the argument of having a decree of restitution of conjugal rights in his favour to evade his liability to pay interim maintenance to the respondent.



7. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. The Hon'ble Apex Court, in the case of *Shamima Farooqui v. Shahid Khan : (2015) 5 SCC 705*, observed as under:

“14. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.”



2024:DHC:7507



(emphasis supplied)

8. 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....***

x-x-x

*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)

9. Furthermore, it is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the petitioner is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Any woman who proves that she has suffered domestic violence at the hands of her spouse/ partner, is entitled for interim relief. In the present case, the learned ASJ, and the learned predecessor ASJ noted that allegations of economic and physical abuse have been levelled against the petitioner.

10. It is pertinent to mention that at the stage of grant of



interim relief the application only ought to *prima facie* disclose that the petitioner committed an act of domestic violence. In that regard, the learned ASJ rightly noted that the contention of the petitioner that no domestic violence of any kind was inflicted upon the respondent was a subject matter of trial.

11. It is trite law that not providing any maintenance to the wife is a form of ‘economic abuse’ under the DV Act, Section 3(iv) defines economic abuse as:

“economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.”

12. A coordinate bench of this court in ***Ajay Kumar v. Uma:*** **2024:DHC:80** further made observation regarding the scope of the word ‘Domestic Violence’, the same has been reproduced below:

“The ‘domestic relationship’ between the petitioner and complainant is not disputed. ‘Domestic violence’ may be by physical harm or injury endangering the health safety, life, limb, or ‘well being’ which



2024:DHC:7507



may be mental or physical of 'aggrieved person'. Further the same includes physical, sexual, verbal, 'emotional' and 'economic' abuse. The object of the Act is to provide for more effective provisions to safeguard the rights of the women who are victims of violence of any kind occurring within the family, and for matters connected therewith or incidentally thereof."

13. Much emphasis has been placed by the petitioner upon the fact that the respondent is not residing with the petitioner despite there being a decree of restitution of conjugal rights in favour of the petitioner. In this regard, it is seen that the learned predecessor ASJ recorded that pursuant to the said order dated 08.03.2019, the respondent had joined the petitioner in Kolkata where the petitioner was residing at that time. However, allegedly on account of ill treatment of the respondent again at the hands of the petitioner, the respondent was forced to come back to her parental home in Delhi. It was further recorded that during her stay in Kolkata, the respondent was admitted in the ICU on account of her illness. It was recorded that since the petitioner did not take care of the respondent, she had no choice but to come back to Delhi.

14. For these reasons, the learned predecessor ASJ, taking into account the railway tickets and the medical bills of the hospital, noted that the respondent had gone to Kolkata and consequent to the deterioration in her medical condition, she was admitted in the ICU. In view of the above, the learned predecessor ASJ rightly noted that the issue regarding the respondent not having any reasonable cause to reside with the petitioner despite there being a decree of conjugal rights in favour of the petitioner, was



2024:DHC:7507



a matter of trial and cannot be a ground to decline interim maintenance to the respondent.

15. It is clear that domestic violence also includes economic abuse. The DV Act has defined economic abuse as deprivation of all or any economic or financial resources to which the aggrieved person is entitled to under any law and also includes household necessities for the aggrieved person and her children.

16. The learned ASJ noted that the petitioner had not disputed the assessment of his monthly income to be ₹55,000/-, and the calculation of quantum of interim maintenance by the learned Trial Court. Considering the facts as noted by the learned Trial Court, the learned ASJ, and the learned predecessor ASJ, this Court is of the opinion that the interim maintenance of ₹10,000/- per month to the respondent is reasonable. It is thus incumbent on the petitioner, who is an able-bodied man, to financially support his wife. Consequently, the payment of ₹10,000/- per month, at in the opinion of this Court, is not unreasonable at the interim stage.

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

18. In view of the above, this Court finds no reason to interfere with the impugned order and the petition is dismissed in the aforesaid terms.



2024:DHC:7507



19. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 24.11.2022 or in this order.

20. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 2, 2024