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

+ CRL.M.C. 576/2019

MALVI MISRA

.....Petitioner

Through: Mr. Sanjeev Sahay, Mr.
Archit Rajput & Mr.
Kamal Deep Singh, Advs.

versus

MANOJ SHARMA

.....Respondent

Through: Mr. Tanveer Ahmed Mir
& Mohd. Imran Ahmad,
Advs.

+ CRL.REV.P. 1115/2018, CRL.M.A. 49356/2018 &
CRL.M.A. 1346/2021

MANOJ SHARMA

.....Petitioner

Through: Mr. Tanveer Ahmed Mir
& Mohd. Imran Ahmad,
Advs.

versus

MALVI MISHRA

.....Respondent

Through: Mr. Sanjeev Sahay, Mr.
Archit Rajput & Mr.
Kamal Deep Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

28.11.2024

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1. The present petitions are filed assailing the order dated 12.11.2018 (hereafter '**impugned order dated 12.11.2018**') passed by the learned Special Judge, Saket Courts, in Criminal Appeal No. 216/2018, modifying the order dated 03.04.2018 (hereafter '**impugned order dated 03.04.2018**') passed by the learned Metropolitan Magistrate ('MM'), Saket Courts, New Delhi in CT Case No. 84/1/2015. By the impugned order dated 12.11.2018 the petitioner– Manoj Sharma was directed to pay interim maintenance of ₹40,000/- per month to the respondent
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wife/Malvi Mishra.

2. The petitioner in CRL. M.C. 576/2019, who is the wife, seeks enhancement of interim maintenance. The respondent, who is the husband, in the aforesaid petition is the petitioner in CRL. REV. P. 1115/2018, and seeks setting aside of the enhanced maintenance of ₹40,000/- per month granted by the learned Special Judge, arguing that there has been no substantial change in circumstances to justify the increase and that the financial burden imposed is unsustainable.

3. The dispute pertains to interim maintenance awarded under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter '**DV Act**') by the learned MM, by the impugned order dated 03.04.2018, whereby the learned MM *prima facie* assessed the monthly income of the respondent/ husband to be not less ₹1,00,000/- per month based on his salary statements, income affidavit, bank account statements and noted that the plea of the petitioner – Manoj Sharma that he had lost his job does not negate his capacity to work and held that it is the duty of the petitioner/husband to provide maintenance for his wife and that he had access to sufficient resources, to meet her interim financial needs. The petitioner/husband was directed to pay ₹20,000/- per month as interim maintenance from the date of the order.

4. Dissatisfied with this award, the petitioner/wife filed an appeal seeking enhancement, leading to the impugned order dated 12.11.2018 passed by the learned Special Judge. The learned Special Judge, in the impugned order dated 12.11.2018, enhanced the interim maintenance to ₹40,000/- per month based on the husband's undisputed income assessment of over ₹1,50,000/- per month at the time, ensuring the wife could
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maintain a standard of living comparable to the one she enjoyed during the marriage.

5. The learned counsel for petitioner/husband submits that the impugned order dated 03.04.2018 passed by the learned MM is a well-reasoned order which was passed whilst appreciating the evidence placed before it. He submits that the learned Special Judge without there being any perversity or illegality substituted its own view and modified the interim maintenance.

6. He submits that the learned Special Judge failed to appreciate that it was only on account of series of complaints filed by the petitioner/wife, that the petitioner/husband lost his livelihood and the said complaints also hindered his future earning capacity as well.

7. He submits that the petitioner/wife is not entitled to the interim relief in the nature of enhanced interim maintenance considering her earning capacity and the fact that she only shared the matrimonial home for a period of 7 days.

8. *Per Contra*, the learned counsel for the petitioner/wife submits that the petitioner/husband has never been unemployed and has concealed his income before the learned Trial Court. He submits that the capacity of the wife to earn is not a sufficient ground to reduce the maintenance awarded by the impugned order dated 12.11.2018.

9. He submits that the petitioner/wife is medically and physically incapacitated to work due to the cruelty cause by the husband and she had been suffering from depression.

10. Concededly, the impugned order is only an order in regard to the award of interim maintenance. The purpose of interim maintenance is to ensure the financial sustenance of the dependent spouse while balancing the earning capacity of the

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abled party. Maintenance is not merely for survival but is aimed at ensuring a dignified existence, consistent with the standard of living enjoyed during the subsistence of the marriage.

11. It is common knowledge and has been observed by this Court in many cases that it is a normal tendency of the parties, especially in matrimonial disputes not to disclose their true income. The Courts in such circumstances are 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**].

12. 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 respondent 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, both the learned Trial Court has explicitly recorded that prima facie it appears from the complaint that the respondent was subjected to domestic violence.

13. The learned MM, in the impugned order dated 03.04.2018, assessed the income of the petitioner/husband to be not less than ₹1,00,000/- per month, which was admittedly not challenged by him, and awarded maintenance of ₹20,000/- per month to the respondent/wife. This order was subsequently challenged by the wife before the learned Special Judge, who, by the impugned order dated 12.11.2018, modified and enhanced the interim maintenance to ₹40,000/- per month. The enhancement was based on a reassessment of the husband's income, which was
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found to have increased to ₹1,20,000/- to ₹1,25,000/- per month. The learned Special Judge also considered the principle that the wife is entitled to a standard of living commensurate with that of her husband and the wife's inability to work due to her medical and psychological condition, which was attributed to the alleged domestic violence. This enhancement was deemed necessary to balance the financial capacity of the husband with the needs of the wife while adhering to established judicial principles in accordance with the principles laid down in ***Annurita Vohra v. Sandeep Vohra* : 2004 (74) DRJ 99.**

14. Considering the facts as noted by the learned Special Judge, this Court is of the opinion that the interim maintenance of 40,000/- per month is reasonable. The income of the petitioner husband is *prima facie* assessed to be more than ₹1,20,000 - ₹1,25,000/- per month on the basis of his salary statements and his earning capacity. The claims of unemployment and diminished income due to the wife's alleged actions are a matter of trial, and the husband's duty to provide for his wife persists regardless of any purported grievances.

15. At the same time petitioner wife has not been able to show at this stage that the husband is earning more.

16. It is trite that mere potential to earn, is not sufficient to deny the claim of interim maintenance. Therefore, it is incumbent on the petitioner/respondent, who is an able-bodied man to financially support his wife.

17. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the petitioners, 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. The learned Trial Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

19. In view of the above, this Court finds no reason to interfere with the impugned order, and the petitions are dismissed in the aforesaid terms.

20. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 28, 2024