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

Date of decision: 22.02.2024

+ **CRL.REV.P. 138/2022 & CRL.M.A. 4543/2022**

AJEY KUMAR MISHRA Petitioner
Through: Ms.Anubha Dhulia and
Mr.Sushil Kumar Singh, Advs.

versus

SANGEETA MISHRA & ANR. Respondents
Through: Mr.R.K. Chanda, Adv. for R-1
& R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the order dated 15.12.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Judge, Family Courts, East District, Karkardooma Courts, Delhi (hereinafter referred to as 'Family Court') in MT No.1389/2018, titled as ***Mrs.Sangeeta Mishra & Ors. v. Mr.Ajeey Kumar Mishra***, whereby the learned Family Court has directed the petitioner herein to pay *interim* maintenance of a sum of Rs.10,000/- per month to respondent no.1 herein and a sum of Rs.12,000/- per month to the respondent no.2 herein from the date of filing of the application for maintenance by the respondents herein. Future maintenance was directed to be paid regularly from January, 2022 at the said rate.



2. The learned counsel for the petitioner submits that the petitioner had filed his affidavit of income disclosing that he was earning only Rs.24,000/- per month. He later filed another affidavit of income in terms of the judgment of the Supreme Court in ***Rajnish v. Neha & Ors.***, (2021) 2 SCC 324, in which he had stated that his income was only Rs.14,000/- per month. However, the learned Family Court, without any reason and only based on the conjectures and surmises, determined the income of the petitioner as Rs.70,000/- per month, and based thereon, directed the petitioner to pay the above-mentioned maintenance amount to the respondents herein.
3. She further submits that the respondent no.1 is herself employed and her income has not been taken into consideration by the learned Family Court while passing the Impugned Order.
4. On the other hand, the learned counsel for the respondents submits that the petitioner is a musician by profession, and performs all over the country. He submits that the petitioner is also running a music academy and, therefore, is earning more than Rs.1,00,000/- per month. He submits that the learned Family Court has, in fact, assessed the income of the petitioner at a lesser value as Rs.70,000/- per month while determining the maintenance payable to the respondents.
5. He submits that the respondent no.2, who is the son of the petitioner and respondent no.1, is studying in a boarding school and his tuition fee itself is more than Rs.2,30,000/- annually, as is also taken note of in the Impugned Order itself.
6. He, however, admits that now the respondent no.1 has taken employment with Vanasthali Public School, however, he submits that



the said employment is only temporary in nature.

7. I have considered the submissions made by the learned counsels for the parties.

8. The learned Family Court, in the Impugned Order, while determining the income of the petitioner has observed as under:

“8. In the present case, it is admitted by the respondent that he is earning Rs.24000/- per month. The petitioner has placed on record various photographs to show that the respondent is giving Indian Classical music classes to the students and he also used to perform at the stages. The photographs filed by the petitioners also show that Dhrupad Music Academy is being run at Shakarpur and there is another photograph which shows that the respondent is running Dhrupad Music Academy at Laxman Singh Complex-II, Room No.8(A), Munirka, New Delhi. These photographs show that the respondent used to perform at the stages.”

9. The petitioner, presently, is not in a position to deny that he is running a music academy and also performs across the country. The learned counsel for the petitioner submits that from these activities, however, the petitioner earns only Rs.14,000/- per month as has been reflected in the affidavit of income filed by the petitioner before the learned Family Court. I am unable to accept the said submission.

10. It is unfortunate that, in such litigations, the parties do not come out with their true income. Effort is always made to conceal the true income by the husband in order to avoid payment of maintenance to the wife and the child. On the other hand, effort is made by the wife to claim exorbitant amount as the income of the husband. It is, therefore,



based on the evidence produced before it, that the Court has to make an assessment of the income of the husband for determining the maintenance payable to the wife and the child. Some amount of guesswork is necessarily involved in such an exercise.

11. In **Jayant Bhargava v. Priya Bhargava**, 2011 SCC OnLine Del 1651, this Court had stated that it was the duty of the Courts to ensure that it should not be that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation and poverty. Further, this Court also noticed that there was a tendency of spouses in proceedings for maintenance to not truthfully disclose their income, and that in such cases, some guesswork on the part of the Court would be permissible. I may quote from the judgment as under:

“14. Further it has been noticed by the Courts that the tendency of the spouses in proceedings for maintenance is to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible.

15. The Supreme Court of India in the case of Jasbir Kaur (Smt.) (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision”.

16. Although there cannot be an exhaustive list of factors, which are to be considered in



guessing the income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse, when the sources of income are either not disclosed or not correctly disclosed, the Court can take into consideration amongst others the following factors:

- (i) Life style of the spouse;*
- (ii) The amount spent at the time of marriage and the manner in which marriage was performed;*
- (iii) Destination of honeymoon;*
- (iv) Ownership of motor vehicles;*
- (V) Household facilities;*
- (Vi) Facility of driver, cook and other help;*
- (vii) Credit cards;*
- (viii) Bank account details;*
- (ix) Club Membership;*
- (x) Amount of Insurance Premium paid;*
- (xi) Property or properties purchased;*
- (xii) Rental income;*
- (xiii) Amount of rent paid;*
- (xiv) Amount spent on travel/holiday;*
- (xv) Locality of residence;*
- (xvi) Number of mobile phones;*
- (xvii) Qualification of spouse;*
- (xviii) School(s) where the child or children are studying when parties were residing together;*
- (xix) Amount spent on fees and other expenses incurred;*
- (xx) Amount spend on extra-curricular activities of children when parties were residing together;*
- (xxi) Capacity to repay loan.*

17. These are some of the factors, which may be considered by any court in guesstimating or having a rough idea or to guess the income of a spouse. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of her husband. In this



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case, the stand taken by the respondent with respect to his earning is unbelievable.”

12. Reference in this regard may also be had to the judgment of the Supreme Court in **Rajneesh v. Neha & Anr.**, (2021) 2 SCC 324, and of this Court in **Vikas Khurana v. Preeti Khurana**, 2019 SCC OnLine Del 6738.

13. In view of the above judgements and the fact that the petitioner is running a music academy and is also performing on stage across the country, in my view, the income of the petitioner has rightly been determined for the *interim* as Rs.70,000/- per month by the learned Family Court. No fault can be found in the same.

14. However, the learned Family Court, while determining the maintenance payable to the respondents, has also observed that the respondent no.1 is not presently working anywhere. The said circumstance is now, admittedly, changed. This new development and effect thereof on the claim of maintenance of the respondents shall have to be considered by the learned Family Court on an appropriate application being moved by the petitioner seeking modification of the *interim* order.

15. This Court, in its Order dated 27.05.2022, had recorded the submissions of the learned counsel for the petitioner that he will be paying Rs.8,000/- per month to the respondents as *interim* maintenance. The Court clarified that it has neither modified nor varied the Impugned Order passed by the learned Family Court.

16. Keeping in view the above circumstances, the petition is disposed of directing that the petitioner shall clear all the arrears of



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maintenance at the rate as prescribed by the learned Family Court in the Impugned Order, within a period of eight weeks from today.

17. The petitioner shall be at liberty to file an application before the learned Family Court seeking modification of the Impugned Order determining *interim* maintenance based on the changed circumstance that the respondent no.1 has now admittedly started to work and earn a living. The learned Family Court shall pass appropriate orders on such application.

18. If such an application is filed by the petitioner within a period of three weeks from today, until the adjudication thereof, the petitioner shall pay *interim* maintenance of Rs.12,000/- per month to the respondents, to be adjusted in accordance with the orders that may be passed by the learned Family Court.

19. The petition is disposed of in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

FEBRUARY 22, 2024/ns/ss

[Click here to check corrigendum, if any](#)