



2024:DHC:9199



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 26th November, 2024

+ **CRL.REV.P. 409/2023 & CRL.M.A. 9557/2023,**
CRL.M.A. 9558/2023

SH. SHOBHIT SHARMA

.....Petitioner

Through: Mr. Vineet Aggarwal, Mr.
Kunal, Mr. Jatin Kumar,
Mr. Suresh Chand
Aggarwal, Ms. Sanya
Narang and Ms. Bhavya
Aggarwal, Advs. with the
petitioner in person.

versus

SMT. SHWETA DOGRA

.....Respondent

Through: Mr. Partap Singh, Adv.

+ **CRL.REV.P. 914/2023 & CRL.M.A. 23699/2023**

SHWETA DOGRA

.....Petitioner

Through: Mr. Partap Singh, Adv.

versus

SHOBHIT SHARMA

.....Respondent

Through: Mr. Vineet Aggarwal, Mr.
Kunal, Mr. Jatin Kumar,
Mr. Suresh Chand
Aggarwal, Ms. Sanya
Narang and Ms. Bhavya
Aggarwal, Advs. with the
respondent in person.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petitions are filed against the order dated

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07.10.2022 (hereafter '**impugned order**') passed by the learned Judge, Family Court, Dwarka, New Delhi in MT No. 353/2019 titled *Shweta Dogra v. Shobhit Sharma*.

2. By the impugned order, the learned Family Court assessed the monthly income of the petitioner/husband to be ₹50,000/- per month and awarded interim maintenance to the tune of ₹16,000/- per month to the petitioner/wife.

3. The learned counsel for the petitioner/husband submits that the learned Family Court erred in assessing the monthly income of the petitioner/husband. He submits that the said assessment of monthly income of a sum of ₹50,000/- per month is based on guesswork. He submits that the learned Family Court has failed to take into consideration that the petitioner/wife has concealed her income, and awarded interim maintenance to the tune of ₹16,000/- per month to the petitioner/wife.

4. He submits that the petitioner/wife has her own independent source of income, and contends that the payment of interim maintenance to the tune of ₹16,000/- per month to the petitioner/wife is not feasible.

5. The petitioner/wife essentially seeks enhancement of the interim maintenance. The learned counsel for the petitioner/wife submits that the petitioner/husband along with his father and brother are wholesale dealers of all India Level of iron and steel wire Mess. He submits that the petitioner/husband has two shops in Chawari Bazar, two godowns in Badli, Delhi, an ancestral House No. 682, Mukherjee Nagar, Delhi. Petitioner/husband and his family also fetch a rent of ₹40,000/- per month.

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6. He relies on certain photographs to contend that the petitioner/husband is actively involved in the business of his father, and prays that the interim maintenance awarded to the petitioner/wife be enhanced.

7. The learned Family Court noted that the petitioner/wife was working as a physical instructor in Queens Marry School from 2015 till December 2016 on the basis of her certificates and experience in the field of NCC and Taekwando. It was noted that the petitioner/wife subsequently could not carry on because of an accident. The learned Family Court noted that though the petitioner/husband claimed to be working on a commission basis and earning only around ₹25,000/-, however, the same primarily was not appealing considering that as per the petitioner/husband himself, he had been working on a commission basis for different traders including his father.

8. The learned Family Court noted that the photographs on record, highlighting the presence of the petitioner/husband in the shop of his father, manifested the active involvement of the petitioner/husband in the said shop. The learned Family Court took into consideration the fact that the parties had started living separately since 01.12.2016, and that the ITRs filed by the petitioner/husband were from the year 2018. It was noted that the ITRs would not be material for inferring the income of the petitioner/husband and the same appeared to be an afterthought since the parties had started living separately.

9. In the light of the aforesaid, the learned Family Court assessed the income of the petitioner/husband to be not less than

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₹50,000/- per month and awarded interim maintenance to the tune of ₹16,000/- per month to the petitioner/wife.

10. It has been noted in a catena of judgments that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute and that income tax returns do not necessarily provide an accurate reflection of the actual income in such cases (Ref. ***Kiran Tomar v. State of U.P. : 2022 SCC OnLine SC 1539***). Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of an appropriate amount to the respondents cannot be ruled out at this stage.

11. 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*

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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."

(emphasis supplied)

12. Similarly, the Hon'ble Apex Court in the 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)

13. In the present case, the learned Family Court went on to assess the income of the petitioner/husband as ₹50,000/-. In the opinion of this Court, the assessment of the learned Family Court appears to be on the lower end. From a perusal of the material on record, it is *prima facie* apparent that the petitioner/husband is



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engaged in his father's shop. The learned Family Court noted that the petitioner/wife is unable to maintain herself presently. It was noted that the petitioner/wife was earlier working as a physical instructor in Queens Marry School, however, she could not continue with the same owing to her accident.

14. It was noted that while the petitioner/husband claimed to be working on a commission basis, earning around ₹25,000/- per month, the same was not appealing considering that the petitioner/husband himself claims that he has been working on a commission basis for different traders including his father. It was further noted that the photographs placed on record by the petitioner/wife showed the presence of petitioner/husband in the shop of his father which showed the active involvement of the petitioner/husband in the said shop. It was also noted that the photographs of the petitioner/husband driving the vehicle, and the presence in the shop of the father in the facts of the case was no mere coincidence but in furtherance of the involvement of the petitioner/husband in the said shop.

15. It is also 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 to not 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**).

16. A *prima facie* guess work, at this stage, can be made on the basis of the material placed on record and some amount of

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common knowledge. The petitioner/ husband appears to be actively involved in the family business. It is not disputed that the family of the petitioner owns certain shops and also an ancestral house.

17. The petitioner/ husband claims to be staying separately. Husbands embroiled in matrimonial disputes often claim to have been ousted by family. At this stage, it cannot be ruled out that the same has been claimed in order to show extra expense and would be tested after the evidence is led by the parties.

18. Certain photographs have also been filed indicating that the petitioner is driving an expensive car. Whether the petitioner/ husband owns the said car or has been driving someone else's car, is not clear at this stage.

19. Considering the totality of circumstances, the assessment of the petitioner/husband's income as ₹50,000/- per month is on a lower side. The income of the husband therefore can reasonably be assessed as Rs. 75,000/- per month.

20. The wife is entitled not only to a mere survival but is also entitled to lead a similar life as she would have led in the house of her husband. The interim maintenance of ₹16,000/- per month is not reasonable and is enhanced to ₹25,000/- per month.

21. 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.

22. The learned Family Court is directed to pass the final order

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uninfluenced by the observations made in this order.

23. In view of the aforesaid, CRL.REV.P. 409/2023 filed by the petitioner/husband is dismissed, and CRL.REV.P. 914/2023 filed by the petitioner/wife is allowed and the husband, Mr. Shobhit Sharma is directed to pay a sum of ₹25,000/- per month from the date of filing of the application under Section 125 of the CrPC.

24. Pending applications also stand disposed of.

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

AMIT MAHAJAN, J

NOVEMBER 26, 2024