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

+ **CM(M) 604/2023**

RAJESH KUMAR Petitioner

Through: Mr. Ravish Kumar & Mr. Madan
Chandra Karnatak, Advocates

versus

PURNIMA SINGH & ANR. Respondents

Through: Ms. Meera Kaura Patel &
Ms. Ritika Saini, Advocate

+ **CRL.REV.P. 1235/2023**

PURNIMA SINGH & ANR. Petitioners

Through: Ms. Meera Kaura Patel &
Ms. Ritika Saini, Advocate

versus

RAJESH KUMAR Respondent

Through: Mr. Ravish Kumar & Mr. Madan
Chandra Karnatak, Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.02.2024

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1. The present petition is filed under Article 227 of the Constitution of India challenging the order dated 27.01.2023 (hereafter '**the impugned order**'), passed by the learned Principal, Judge (South-East), Family Courts, Saket, New Delhi, in M. No. 87/2020.

2. The learned Family Judge, by the impugned order, has directed the petitioner to continue paying the rent of the shared house (₹3,500/- per month) and also to pay the education



expenses of his daughter/ Respondent No.2, which as per the parties was assessed as ₹2,500/- per month. The learned Family Judge has also directed the petitioner to pay a sum of ₹7,000/- per month to Respondent No. 1 till the final disposal of the petition filed under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC').

3. The learned counsel for the petitioner submits that Respondent No. 1 is a well-educated lady, who has obtained a degree of Masters of Arts.

4. He submits that the impugned order was passed when the petitioner was staying with the respondents, and in such circumstances, the petition under Section 125 CrPC was not maintainable.

5. Section 125 CrPC empowers the Magistrate to pass an order in relation to maintenance of the wife, children and parents, if any person is found to be having sufficient means, neglects or refuses to maintain his wife, children or parents. The provision of grant of maintenance is not dependent upon the person not staying with the wife, children or parents. A person staying with the family members can also neglect them by not providing for the appropriate means for maintenance.

6. There are specific allegations that while the petitioner was staying with the family, he was neglecting them and had threatened to discontinue paying the rent for the shared house hold and was also allegedly not paying any amount to Respondent No. 1.

7. This Court, therefore, finds no merit in the argument that the application under Section 125 of the CrPC was not maintainable as the petitioner was staying with the family.

8. It is an admitted case that the Respondent No. 1 is not
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gainfully employed and the petitioner at the time of passing of the impugned order was not earning less than ₹34,000/- per month.

9. This Court in the case of *Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99* had observed that the court should initially determine the net disposable income of the Husband or the primary earner within the family. If the other spouse is also employed, those earnings should be taken into consideration. This collective income forms the Family Resource Cake, which is then distributed among the family members. The allocation of this "cake" should align with the financial needs of each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members.

10. In view of the above, at this stage, in the opinion of this Court, directions to pay a sum of ₹7,000/- as maintenance to Respondent No.1 along with the rent for the premises where the respondents (wife and child of the petitioner) are staying and the educational expenses of Respondent No.2, in the interim, till the pendency of the proceedings under Section 125 CrPC, does not appear to be unreasonable.

11. The present petition is, therefore, dismissed.

12. The parties are at liberty to take all arguments before the Family Court for the purpose of disposal of the application under Section 125 of the CrPC.

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13. The present petition is filed by the wife, under Section 397 & 401 read with Section 482 of the CrPC, seeking enhancement

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of interim maintenance as awarded by the learned Family Court *vide* order dated 27.01.2023.

14. The learned counsel for the petitioner/ Ms. Poornima Singh submits that the respondent/ Mr. Rajesh Kumar is now getting a salary of more than ₹40,000/- per month.

15. She seeks liberty to withdraw the present petition and file an appropriate application under Section 127 of the CrPC before the learned Family Court seeking alternation in the allowance on the basis of the aforesaid change in circumstances.

16. The present petition is dismissed as withdrawn with the aforesaid liberty.

17. It is made clear that any observation made in this order is only for the purpose of deciding the present petitions and shall not impact the outcome of the final order that may be passed by the learned Family Judge.

18. A copy of the order be kept in both the matters.

AMIT MAHAJAN, J

FEBRUARY 27, 2024
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