



2024:DHC:7869



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20th September, 2024

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**CRL.REV.P. 443/2023 & CRL.M.A. 10304/2023,
CRL.M.A. 27809/2024****VIVEK JATIN CHAUDHARY**

.....Petitioner

Through: Ms. Pooja B. Soni, Adv.
(through VC)

versus

DEEPTI TURE

.....Respondent

Through: Mr. Vikas Nagwan,
Ms. Manvi Rajvanshy,
Mr. Gaurav Sharma,
Ms. Tripta Choudhary and
Ms. Pooja Sharma, Adv.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J (Oral)**

1. The present petition is filed challenging the judgment dated 19.05.2022 (hereafter '**impugned order**'), passed by the learned Family Court, North District, Rohini Courts, Delhi, in MT No. 307/2019.

2. The learned Family Court, by the impugned order, awarded an interim maintenance of ₹20,000/- in favour of Respondent No.1 and ₹10,000/- in favour of the children of the parties, from the date of filing of the petition till further orders, in a petition filed by the respondent and the minor son of the parties under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'). The monthly income of the petitioner was assessed to be not less than ₹70,000/- to ₹80,000/- per month. The mother of

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the petitioner was not considered to be his dependant as his affidavit of income and assets was silent on the status of his father.

3. The learned counsel for the petitioner submits that the learned Family Court has erroneously awarded an exuberant amount as interim maintenance.

4. She submits that as per the salary slip of the petitioner, his net income in the year 2020 was around ₹42,000/-, it was ₹54,000/- in the year 2021 and it was around ₹60,000/- in the year 2022. She submits that despite the same, the income of the petitioner was assessed as ₹70,000/- to ₹80,000/-, even though, his income was around ₹30,000/- at the time of filing of the petition.

5. She submits that the income was erroneously assessed by placing reliance on a few salary slips.

6. She submits that the learned Family Court failed to take into consideration that the salary of the petitioner in the years 2019, 2020, 2021 and 2022 while adjudicating the application of interim maintenance.

7. She submits that the petitioner is a salaried person and there was nothing left for the learned Family Court to presume or assess.

8. She further submits that it has not been considered by the learned Family Court that the respondent is a highly educated woman and she was gainfully employed in a multi national company before her marriage. She submits that there is no impediment in the respondent taking up any job and the

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respondent is now employed in Bangalore.

9. The learned counsel for the respondent submits that the monthly salary of the petitioner is higher than it has been assessed. He submits that there has been a material concealment in income.

10. He submits that the respondent has also preferred an application under Section 127 of the CrPC seeking modification of the impugned order and the same is pending consideration.

11. He submits that the child of the parties is staying with the respondent. He submits that the respondent has categorically deposed that she is taking care of the child of the parties and she is not applying for a job as he is minor. He disputes the contention that the respondent is gainfully employed.

12. It is undisputed that the respondent is the wife of the petitioner.

13. Section 125 of the CrPC elucidates conditions under which a wife may be deemed ineligible for maintenance. These conditions include instances where the wife is engaged in adulterous activities, where she, without any justifiable cause, refuse to cohabit with her husband, or where both parties have agreed to live apart through mutual consent. These provisions delineate clear legal parameters that govern the entitlement or disentitlement of maintenance to ensure that the support is granted only under circumstances that warrant such financial assistance.

14. Notably, at this stage, no such ground is pleaded or argued by the petitioner that would disentitle the wife to the maintenance

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except that she allegedly left the matrimonial home for no reason. The respondent has made specific allegations in the petition under Section 125 of the CrPC that the petitioner and his family had harassed her on account of insufficient dowry. It is stated that it was the petitioner who stopped cohabitating with the respondents. Whether the respondent had sufficient reason to live separately from the petitioner or if she wilfully deserted the petitioner will be seen after the parties have led their evidence.

15. It is argued that the respondent is qualified and is employed in Bangalore, however, no evidence has been adduced to this effect by the petitioner at this stage. *Prima facie*, in the absence of cogent proof of the respondent being gainfully employed or earning a sufficient income to maintain herself and the minor child of the parties, the mere fact that the respondent is qualified does not disentitle her from getting an award of interim maintenance.

16. The petitioner has also contested the assessment of his income on the basis of a few salary slips.

17. 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**). The petitioner in the present case is a salaried employee.

18. While this Court finds no infirmity in the assessment of the



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income of the petitioner as on the date of passing of the impugned order, however, it is also argued that the arrears have been awarded on the basis of the income so assessed without taking into consideration the prior salary of the petitioner.

19. The relevant portion of the impugned order is reproduced hereunder:

“So far as respondent is concerned, the present case was filed in May 2019 and as per ITR of the year 2019-20 the gross income of the respondent was Rs. 7,41,963/- as disclosed by the respondent. As per salary slip of the month of January & February 2021 the gross earning of the respondent were Rs. 84,252/- and Rs. 72,906/- and his net income from salary during those months was Rs. 75,945/- and Rs. 54,652/- after certain deductions reflected in the salary slips. As disclosed by the respondent himself, besides the salary, he is also receiving certain perks from the department and is also having income from interest on FDR.

Keeping in view the material available on record and the facts discussed above, this court is of the view that monthly income of the respondent is not less than Rs. 70,000-80,000/-.”

20. It is clear from a bare perusal of the impugned order that the income of the petitioner was primarily assessed on the basis of the salary slips of the petitioner and the last drawn income of the petitioner as per record. *Prima facie*, it appears that the income of the petitioner has increased over time. The variance in the income of the petitioner has not been accounted while passing the order for maintenance, despite noting that he was earning less in the previous years and awarded arrears on the basis of the income drawn by him at that time.

21. It is trite law that maintenance is to be granted by considering the financial status and capacity of the husband. In

the present case, the arrears have been awarded by taking the



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income of the petitioner as ₹70,000/- to ₹80,000/-.

22. In the opinion of this Court, while the interim maintenance of ₹30,000/- is not unreasonable at the interim stage, however, it cannot be ignored that the learned Family Court has not weighed that the petitioner was not earning the same income in the preceding years.

23. In such circumstances, this Court considers it apposite to remand the matter to the learned Family Court to adjudicate the limited aspect of the quantum of arrears of maintenance payable for the previous years by considering the variance in the income of the petitioner.

24. It is not disputed that the impugned order is only in relation to interim maintenance. Needless to say that the final maintenance will be decided by the learned Trial Court after considering the evidence produced by both the parties.

25. The present petition is disposed of in the aforesaid terms.

26. The learned Family Court is directed to pass the final order uninfluenced by the observations made in the impugned order or in this order.

27. It is also made clear that nothing stated in the present order would affect the adjudication of the application filed by the respondent under Section 127 of the CrPC.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024

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