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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 402/2024 and CRL.M.A. 18830/2024

PRATIK KUMAR

.....Petitioner

Through: Mr. Anubhav Singh, Advocate

versus

NEEMA PANDEY

.....Respondent

Through: Mr. Bijay Kumar and Mr. Ashok
Kumar Nigam, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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04.11.2024

1. By way of present petition, the petitioner/revisionist seeks to assail the order dated 28.11.2023 passed by the Principal Judge, Family Court, North-East District, Karkardooma Court, Delhi in maintenance petition bearing M.T. 04/2022. Vide the impugned order, the petitioner/husband has been directed to pay interim maintenance of Rs.12,500/- per month to each, i.e., respondent No.1/wife and the minor child, totalling to Rs.25,000/- per month.
2. Learned counsel for the petitioner submits that the impugned order is based upon surmises and conjectures and not on correct appreciation of evidence, therefore the impugned order deserves to be set aside. He submits that the learned court failed to note that the petitioner is unemployed and mechanically calculated petitioner's income as Rs. 50,000/- per month. It is further contended that the four transactions dated 13.01.2022, 23.02.2022, 07.03.2022 and 13.04.2022 were wrongly interpreted as the petitioner's income. The said entries were the money borrowed by the petitioner from



his mother, friends and family as he was unemployed. Further, it is stated that the respondent is earning and is not dependent on anyone. Additionally, it is stated that the respondent is not entitled to any maintenance under Section 125(4) CrPC, as within 2-3 weeks of marriage, the petitioner started regularly visiting her parental home and abandoned the petitioner without any just and reasonable cause.

3. Learned counsel for the respondent, while defending the impugned order submits that the respondent is not working presently and is entirely dependent on her family to meet her expenses. He submits that the petitioner has only made unsubstantiated claims that the respondent has an independent source of income. However, he has not led any evidence to show that the respondent is currently employed.

4. I have gone through the impugned order as well as the material placed on record.

5. A perusal of the impugned order would show that the Family Court has assessed the income of the petitioner to be Rs. 50,000/-. Regarding the petitioner's contention that he is unemployed, it was noted that he did not claim dependency on any person in his affidavit and that a jobless person would not typically have such large financial entries unless he is earning. It was also observed that though it has been claimed that the respondent is earning by giving private tuitions, no document has been placed on record by the petitioner that would suggest that the respondent has any independent income. Furthermore, the contention of the petitioner that the respondent is professionally qualified and capable of earning was rejected in view of the



decision of the Supreme Court in Sunita Kachwaha v. Anil Kachwaha¹. As such, it was noted that the respondent has also placed on record statement of her bank account and a perusal of which indicated that there are no significant credit entries which would suggest that the respondent has any regular earning.

6. Accordingly, the Family Court, vide the impugned order, has divided the petitioner's income into four portions and granted interim maintenance of Rs.25,000/- per month to the respondent for herself and the minor child.

7. On a careful perusal of the material placed on record, this Court is of the considered opinion that the Family Court has made a just assessment of the petitioner's income on the basis of material placed before it and further the decision passed by the Family Court is in line with the decision of a Coordinate Bench of this Court in Annurita Vohra v. Sandeep Vohra reported as **110 (2004) DLT 456**, wherein it was held as follows:-

“2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to

¹ (2014) 16 SCC 715



the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members."

8. Considering the fact that the maintenance petition is still pending consideration before the learned Family Court and further considering the aforementioned facts and circumstances, this Court finds no ground to interfere with the impugned order and consequently, the present petition stands dismissed.

9. Needless to observe that in case of any subsequent material coming on record, the parties would be at liberty to seek variance in terms of Section 127 Cr.P.C. or at the time of conclusion of the maintenance proceedings, the Trial Court on the basis of evidence coming on record would be at liberty to grant adjustment either way.

MANOJ KUMAR OHRI, J

NOVEMBER 4, 2024/PU