



2024:DHC:7509



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 05th September, 2024***+ CRL.REV.P. 476/2023 & CRL.M.A. 11226/2023
SH RAJAN GUPTAPetitionerThrough: Ms. Meena Mehrani Gupta
& Ms. Vishaka Gupta,
Advs.

versus

SMT VIMAL KIRTIRespondent

Through: Dr. Pankaj Garg & Ms.
Saumya Jain, Advs.
(through VC)
Respondent in person**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN (Oral)**

1. The present petition is filed against the order dated 20.12.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), North West District, Rohini Courts, Delhi in CA No. 58/2021 titled *Sh. Rajan Gupta v. Smt. Vimal Kirti*.

2. The petitioner has also challenged the order dated 19.02.2021 whereby the learned Metropolitan Magistrate ('**MM**'), North West District, Rohini Courts, Delhi allowed the application filed by the respondent under Section 23 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') and had awarded interim maintenance for a sum of ₹53,000/- per month to the respondent (₹25,000/- to the respondent, ₹6,000 to each of the three children, and ₹10,000/-

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towards the payment of rent).

3. The learned MM, in the order dated 19.02.2021, had noted that it appeared *prima facie* from the averments of physical, emotional, mental, and economic abuse made in the petition, the DIR filed by the protection officer, and the fact that the parties were not residing together, that the respondent had suffered domestic violence at the hands of the petitioner. The learned Trial Court considering the lifestyle of the petitioner, the substantial payment made per month towards EMIs and other expenses, and the financial and social status of the parties, had awarded an interim maintenance for a sum of ₹53,000/- (₹25,000/- to the respondent, ₹6,000 to each of the three children, and ₹10,000/- towards the payment of rent).

4. By impugned order dated 20.12.2022, the learned ASJ dismissed the appeal filed by the petitioner under Section 29 of the DV Act against the order dated 19.02.2021. It was noted that while the petitioner had claimed his income to be ₹20,000/- to ₹25,000/-, he had failed to explain his disproportionate expenditure towards the payment of EMIs that went up to ₹89,000/-. It was noted that from the lifestyle maintained by the petitioner, and the number of vehicles possessed by him, it would be safe to conclude that the income of the petitioner is more than ₹1 lakh. The learned ASJ, thus, found the claim of the petitioner that his monthly income was merely ₹20,000/- to ₹25,000/- to be meritless. The learned ASJ noting that the respondent was living separately who was responsible for the expenditure of 3 children, and that no document had been produced to show any substantial

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income of the respondent, observed that the payment of interim maintenance to the tune of ₹53,000/- per month was reasonable.

5. The learned counsel for the petitioner submits that interim maintenance for a sum of ₹25,000/- to the respondent is unreasonable. She submits that the respondent had concealed her income, and had failed to place her income affidavit on record. She submits that the learned ASJ failed to consider the bank statement of the respondent which clearly reflected that certain fixed amount was regularly credited in the account of the respondent every month, clearly depicting that the respondent was employed. She submits that the respondent is well qualified and can maintain herself. She submits that the petitioner is willing to pay a sum of ₹18,000/- per month towards the expenses of the three children. She however submits that the interim maintenance to the tune of ₹25,000/- to the respondent is unreasonable considering that she is well qualified, and is in a position to maintain herself.

6. The learned counsel for the respondent submits that the petitioner has already preferred an application before the learned Trial Court seeking modification of the order granting interim maintenance to the respondent. He submits that continuing with the present petition, once the petitioner has already sought alternative remedy, is not permissible. He submits that even otherwise, the amount of interim maintenance for a sum of ₹43,000/- and ₹10,000/- towards payment of rent is reasonable.

7. He submits that the learned ASJ upheld the order passed by the learned MM only after taking into consideration that no

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document had been placed on record to show any substantial income of the respondent, and that she was living separately, and was also responsible for the expenditure of 3 children. He submits that the learned ASJ had also duly considered the lifestyle and expenditure of the petitioner while upholding the order of the learned Trial Court. Consequently, he submits that the interim maintenance for a sum of ₹53,000/- is reasonable and prays that the petition be dismissed.

8. Since the present revision petition has been filed under Section 397 of the CrPC, challenging the concurrent findings of both lower courts, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned judgment.

9. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappraise evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law (Ref. *Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke* : (2015) 3 SCC 123). It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Court in the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* : (1999) 2 SCC 452 discussed the scope of revisional jurisdiction and held as under:

"5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second



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appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....”

(emphasis supplied)

10. It is 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***).

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

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entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live 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. Furthermore, it is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the petitioner is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Any woman who proves that she has suffered domestic violence at the hands of her spouse/ partner, is entitled for interim relief. In the present case, the learned Trial Court has explicitly recorded that *prima facie* it appears from the complaint, and the DIR report that the respondent was subjected to domestic violence.

13. The learned MM, while assessing the monthly income of the petitioner, perused his bank account statement and noted that various amounts were continuously credited in his bank account, including deposit of ₹10.85 lakhs on 29.07.2019, ₹2 lakhs on 11.02.2020, to name a few. It was also noted that the petitioner made substantial payment towards EMIs adding up to ₹89,000/-



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per month. It was noted that the petitioner also owned multiple vehicles including a Creta Car, and a Royal enfield motorcycle. It was further noted that though the petitioner claimed to have disposed the vehicles owing to financial crises, he failed to file any document to corroborate his contention. Given the lifestyle of the petitioner, and the disproportionate monthly payment towards EMIs, the learned MM and the learned ASJ, rightly assessed the income of the petitioner to be at least ₹1 lakh.

14. Considering the facts as noted by the learned MM, and the learned ASJ, this Court is of the opinion that the interim maintenance of ₹25,000/- per month to the respondent who is taking care of three children, and is not shown to be gainfully employed is a reasonable amount. It is not unusual for a mother taking care of three children to be not professionally engaged. Raising and providing for the interests of three children is a challenging task which demands substantial effort and dedication. Husband who has shirked his duty to raise his children, at this stage, cannot be allowed to contend that the wife is well-qualified and can maintain herself.

15. It is incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. Consequently, the interim maintenance for a sum of ₹53,000/- (₹25,000/- to the respondent, ₹6,000 to each of the three children, and ₹10,000/- towards the payment of rent), in the opinion of this Court, is not unreasonable at the interim stage.

16. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the petitioner, along

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with the allegations and counter allegations, would be the subject matter of the trial, and would have to be decided after the parties have led their evidence.

17. In view of the above, this Court finds no reason to interfere with the impugned orders and the petition is dismissed in the aforesaid terms.

18. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 20.12.2022 or in this order.

19. Pending application(s), if any, also stands disposed of.

AMIT MAHAJAN, J

SEPTEMBER 5, 2024

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