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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 510/2023, CRL.M.A. 12007/2023 &
CRL.M.A. 6739/2024

AMIT KUMAR Petitioner

Through: Ms. Smriti Verma, Adv.
(through VC)

versus

NEHA CHAUDHARY & ANR. & ORS. Respondents

Through: Mr. Laxman, Adv. for R1
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **03.05.2024**

1. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 19.01.2023 (hereafter '**the impugned order**'), passed by the learned Family Court, Tis Hazari Courts, Delhi, in MT No. 388/2018 titled as '*Neha Chaudhary v. Amit Kumar*'.
2. The learned Family Court, by the impugned order, had granted interim maintenance of ₹15,000/- per month to Respondent Nos. 1 and 2, from the date of the filing of the application till the final disposal of the case. Respondent No.1 is the wife of the petitioner and Respondent No.2 is the minor child of the parties.
3. The learned Family Court had noted that Respondent No.1 was admittedly earning ₹5,000/- per month by giving private tuitions. The income of the petitioner was assessed to be ₹30,000/- to ₹35,000/- per month on the basis of his income tax return for the year 2019-2020, as per which his annual gross income was ₹3,45,220/-. The learned Family Court had considered the escalating cost of living and observed that



sufficient funds were required for a decent living and to meet the educational and other expenses of the minor child of the parties, that is, Respondent No.2.

4. The learned counsel for the petitioner submits that the learned Family Court had erroneously and mechanically assessed the income of the petitioner on the basis of the income tax return for the year 2019-2020.

5. She submits that the learned Family Court assumed that the petitioner still had the same income as he did three years earlier and did not appreciate that small businesses had suffered tremendously during the pandemic.

6. She submits that the petitioner is merely earning ₹15,000/- per month from his small business of recharging mobiles and doing money transfers.

7. She submits that the income tax return of the petitioner for the financial year 2023-2024 is placed on record that shows that his annual income is merely ₹82,320/-.

8. She submits that the petitioner is incapable of paying the awarded maintenance amount and has regularly paid a sum of ₹4,000/- to the respondents to show his *bona fides*.

9. She submits that the petitioner has other financial liabilities as well. She submits that the petitioner had taken a loan of ₹7,00,000/- from the Jamia Co-operative Bank and he has been unable to pay the monthly instalments of ₹17,000/- as well.

10. The learned Family Court has assessed the income of the petitioner as ₹30,000/- to ₹35,000/-. Admittedly, the assessment was based on the income tax return of the petitioner in the year 2019-2020, however, the same is clearly only for the purpose of grant of interim maintenance. It is not the case of the petitioner that he had adduced any evidence before the learned Family



Court to showcase his alleged deteriorated financial condition, which was ignored by the learned Family Court in carrying out the assessment at this stage.

11. It is relevant to note that on one hand it is argued by the petitioner that he earns approximately ₹15,000/- per month and on the other hand it is stated that his income tax return from 2023-2024 indicates that his annual income is ₹82,320/-, that is, ₹6,860 per month. There is clearly a discrepancy in the averments of the petitioner.

12. 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.

13. 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***]

14. While it is contended by the petitioner that Respondent No.1 is earning more than her disclosed income, nothing has been placed on record to endorse this submission. The relationship of the petitioner with the respondents has not been denied.



15. At this stage, no evidence has been filed which would show that Respondent No.1 is in a position to maintain herself and Respondent No. 2 except for bare claims of the petitioner.

16. In so far as the contention of the petitioner having showing his *bona fides* by paying ₹4,000/- is concerned, in the opinion of this Court, the same is immaterial.

17. It is stated that the petitioner has suffered a set back due to the pandemic and has other financial liabilities as well. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife and minor child. 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 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)

18. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent Nos. 1 and 2. In such circumstances, in my opinion, the interim monthly maintenance of ₹15,000/- per month to Respondent Nos. 1 and 2, which was awarded by the learned Family Court, is reasonable.

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

20. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence on record.

21. The learned Trial Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

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

AMIT MAHAJAN, J

MAY 3, 2024