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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 541/2023 & CRL.M.A. 12978/2023**

TANUJ SHARMAPetitioner
Through: Ms. Ananya Sachdeva,
Advocate (Through V.C.).

versus

TRIPTI SHARMARespondent
Through: Ms. Vandana Anand, Mr.
Vishal Anand & Mr.
Kapil Dua, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
19.09.2024

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1. The present petition is filed against the order dated 05.01.2023 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**') Dwarka Courts in CA No. 382/2022 titled *Tanuj Sharma vs. Tripti Sharma*.
2. By impugned order, the learned ASJ dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') on the ground of delay. It was noted that the petitioner had preferred an appeal against the order dated 01.09.2022 passed by the learned Metropolitan Magistrate after a delay of 28 days, and the petitioner failed to explain the cause of the delay. The learned ASJ, while dismissing the appeal preferred by the petitioner, specifically noted that no sufficient cause had been shown by the applicant for not filing the appeal within the statutory period.
3. Aggrieved by the said order, the petitioner has filed the



present petition. It is the case of the petitioner that the delay in filing the appeal was erroneously considered as 28 days. The learned counsel for the petitioner submits that appeal was initially filed on 19.10.2022, and the same was lying defective. He submits that the same finally came up for listing on 31.10.2022, and the delay was merely 18 days and not 28 days, as erroneously appreciated by the learned ASJ. He submits that the sufficient reasons had been provided explaining the delay of 18 days in filing the appeal.

4. Petitioner is essentially aggrieved by the order dated 01.09.2022 passed by the learned Metropolitan Magistrate ('MM'), Dwarka Courts, New Delhi awarding interim maintenance to the tune of ₹20,000/- per month in favour of the respondent and the minor child.

5. The learned counsel for the petitioner submits that the learned MM has erroneously awarded interim maintenance for a sum of ₹20,000/- per month in the favour of the respondent and their child. He submits that the petitioner has other liabilities and the payment of awarded interim maintenance for a sum of ₹20,000/- per month is not feasible.

6. The learned MM took into consideration the income of both the parties. It was noted that the respondent was working as a Senior Quality analyst and was earning a sum of ₹31,560/- per month. The learned MM also considered the bank statement of the respondent, the LIC form 16, and the rent agreement. It was noted that the respondent was staying in a rented accommodation, and was also managing the expenses of the minor child.

7. As regards the petitioner, the learned MM perused the ITRs placed on record by the petitioner. Further, it was noted

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that in the Assessment Year 2019-2020, the income from salary was shown to be ₹4,23,680/-. It was further noted that admittedly the petitioner had been promoted, and made team leader and was earning approximately ₹48,000/- per month. The learned MM after considering the income of both the parties, the fact that the respondent was single handedly maintaining the minor child, and the right of the respondent to enjoy the same standard of living as she was enjoying at the time of her marriage, awarded an interim maintenance to the tune of ₹20,000/- per month in favour of the respondent and the minor child.

8. 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).

9. 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 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)

10. 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 respondent 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.

11. In the present case, the learned MM noted that the respondent had made various allegations that *prima facie* demonstrated that the respondent was an aggrieved person. It is trite that the maintenance under the DV Act is not tethered on the ability of the wife to maintain herself. Merely because the respondent is earning does not disentitle her from grant of interim maintenance. Raising and providing for the interests of a



child is a challenging task which demands substantial effort and dedication.

12. It is thus incumbent on the petitioner, who is an able-bodied man, to financially support the respondent and the minor child. Even otherwise, the petitioner is an able-bodied man and a maintenance of ₹20,000/- per month, in the opinion of this Court, is not unreasonable at the interim stage.

13. 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.

14. It is not disputed that the order dated 01.09.2022 is only an order of interim maintenance. The learned Trial Court would pass a final order in regard to maintenance after considering the evidence on record.

15. 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.

16. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 01.09.2022 or in this order.

AMIT MAHAJAN, J

SEPTEMBER 19, 2024

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