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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 339/2022 & CRL.M.A. 10792/2022**

RAM NIWAZ CHAUDHARY

.....Petitioner

Through: Mr. Rajnish Kumar and Mr. Divaya
Prakash, Advocates.

versus

PUSHPA DEVI & ORS.

.....Respondents

Through: Mr. Amit Kumar Jha, Mrs. Mona Jha
& Ms. Akansha Chandela, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

02.09.2024

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1. The Petitioner has approached this Court challenging the Order dated 07.03.2020 passed by the Ld. Principal Judge, Family Courts, District West, Tis Hazari Courts, Delhi whereby the petition under Section 127 Cr.P.C filed by the Respondent No.1/wife for enhancement of maintenance has been disposed of by directing the Petitioner/Husband herein to pay a sum of Rs.3,000/- per month to the Respondent No.1/wife from January, 2010 to December, 2011, Rs.5,000/- per month from January, 2012 till December, 2016 and Rs.7,000/- from January, 2017 onwards and in case of default in payment of maintenance, a sum of Rs.1,000/- was imposed upon the Petitioner for each month default.

2. The facts of the case reveal that the marriage of the Petitioner and Respondent No.1 was solemnized on 11.06.1981 and out of the said wedlock two children were born who are Respondent Nos.2 and 3 herein.



Disputes arose between the Petitioner and Respondent No.1/wife and the Respondent No.1/wife came to Delhi. Talaqnama was executed between them on 13.07.1995. On 29.10.1997, a maintenance petition under Section 125 Cr.P.C was filed by the Respondent No.1/wife before Competent Court. An ex-parte Order was passed on by the learned Magistrate on 18.08.1998 directing the Petitioner herein to pay maintenance of Rs.500/- to Respondent No.1/wife and Rs.350/ and Rs.250/- to Respondent Nos.2 and 3. It is pertinent to mention that a petition for declaration of divorce had been filed and an ex-parte decree of divorce was granted on 28.08.1998.

3. Material on record indicates that the Respondent No.1/wife, thereafter, had filed a petition under Section 127 Cr.P.C for enhancement of maintenance amount on 04.03.2010 before the Trial Court. Before the Trial Court, the Respondent No.1/wife stated that the Petitioner herein had got an appointment as a teacher in Kanya Prathamik Vidhayala, Itadhi, District Buxar, Bihar and he is earning Rs.15,000/- per month. It was stated that he is also running tuition classes and earning more than Rs.10,000/- per month and apart from this he is also having agricultural land and has an income of Rs.60,000-70,000/- per month as agricultural income from there and he is also an insurance agent from which he is earning Rs.10,000/- per month. These facts were denied by the Petitioner by stating that he is working as a teacher on contract basis in a school as per scheme of “Shiksha Mitra” and is earning Rs.5,500/- per month and he has re-married. It was also stated by the Petitioner that the Respondent No.1/wife has also re-married. The Petitioner also took a plea that Respondent Nos.2 and 3 are now major and, therefore, they are not entitled to receive any maintenance from the Petitioner.



4. The Trial Court, after looking into the evidence, came to a conclusion that there is no material to show that the Respondent No.1/wife has got married again and this argument of the Petitioner is only based on a photograph which has not been verified. It was also observed that during the cross-examination, the Petitioner herein has admitted that he is earning a sum of Rs.4,000/- to Rs.5,000/- per year from the agricultural land and that he was an LIC agent before 2006 but he has ceased to work as an LIC agent. The Trial Court, after perusal of the salary certificates given by the Petitioner, observed that as per the salary certificates given by the Petitioner from March, 2012 to 2013, the Petitioner was getting salary of Rs.20,892/- to 21,743/- per month. Similarly, as per the salary certificates for the year 2017 to 2018, his salary was ranging from Rs.32,089/- to 41,445/- per month. The Trial Court also observed that the income tax returns filed by the Petitioner for the assessment year 2016- 2017, reveals that his gross total annual income is shown as Rs.3,92,576/-, and for the assessment year 2017-18, his gross total income is shown as Rs.4,27,348/- and in the year 2018-19, his gross income is shown as Rs.5,11,304/- per month.

5. The Trial Court, after observing the aforesaid, held that the Petitioner was earning a sum of Rs.20,882/- in the year 2012, and hence, in the year 2010, when the petition under Section 127 Cr.P.C was filed, his salary cannot be less than Rs.14,000/- per month. Though the learned Counsel appearing for the Petitioner states that this calculation is only based on conjectures, this Court is of the opinion that in the absence of any material on record to show the exact income of the Petitioner, the inference drawn by the Trial Court is reasonable and does not require any interference by this Court while exercising its revisional jurisdiction. It was upto the Petitioner



to provide material to show his salary which was purely within his knowledge and the burden of proving his salary was on him. The Trial Court, after taking into account the material before it, disposed of the petition filed under Section 127 Cr.P.C for enhancement of the maintenance *vide* the Impugned Order dated 07.03.2020 and directed the Petitioner herein to pay a sum of Rs.3,000/- per month to the Respondent No.1/wife from January, 2010 to December, 2011, Rs.5,000/- per month from January, 2012 till December, 2016 and Rs.7,000/- from January, 2017 onwards and in case of default in payment of maintenance, a sum of Rs.1,000/- was imposed upon the Petitioner for each month default. The said amount of maintenance has been arrived at by the Trial Court after taking into account the salary certificates produced before it and from the fact that the Petitioner owns an agricultural land and earning money from there and he was also an LIC agent and earning some money.

6. Section 125 Cr.P.C. is a tool for social justice enacted to ensure that women and children who have been forced to leave matrimonial home and to live separate are protected from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of her children, if any. The statutory provision entails that the husband is obligated to maintain his wife and children and not shirk away from his moral and familial responsibilities.

7. In view of the above, this Court is of the opinion that the amount of maintenance arrived at by the Trial Court is not excessive and has not been calculated on the basis of NIL evidence. This Court is, therefore, not



inclined to interfere with the Impugned Order passed by the Trial Court.

8. It was the moral and legal obligation of the Petitioner to maintain his wife and children which in this case, the Petitioner has failed to do so and, therefore, this Court does not find any reason to interfere with the decision of the Trial Court to impose a penalty of Rs.1,000/- upon the Petitioner in case of default in payment of maintenance for each month default.

9. Resultantly, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 2, 2024

S. Zakir