



2024:DHC:5555



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

*Reserved on: 16.05.2024
Pronounced on: 29.07.2024*

+ **CRL. M.C. 3182/2024 & CRL.M.A. 12396/2024**

GANGA RAM MAKHIJA @ GULAB Petitioner

Through: Mr. Sumit Sarna, Advocate

versus

JYOTI MAKHIJA Respondent

Through: Mr. Sanjeev Manchanda, Advocate

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by the petitioner seeking setting aside of the impugned judgment dated 12.02.2024, passed by the Ld. Trial Court of Sh. Arvind Bansal, Shahdara, Delhi in Crl. Appeal 112/2023, titled as "Ganga Ram Makhija @ Gulab vs. Jyoti Makhija" and impugned judgment dated 31.03.2023 passed by Ld. MM.
2. *Vide* order dated 25.04.2024 notice was issued in the present matter and the petitioner was directed to deposit an amount of Rs. 25,000/- to the respondent as litigation expenses. The petitioner undertook that he will continue to pay an amount of Rs. 5,000/- per month which had been initially



awarded by the learned MM. In view of the aforesaid, the warrants issued by the Executing Court were stayed.

3. The brief facts which are relevant for the disposal of the present petition are that the petitioner and respondent got married on 09.12.2016. No issue had borne from the wedlock and the parties admittedly separated on 10.11.2017. Thereafter, the respondent filed a complaint U/S 12 of the Protection of Woman from Domestic Violence Act, 2005 (hereinafter referred to as the Act of 2005). By way of an *ad-interim* order the respondent was granted Rs. 5,000/- per month till the application seeking interim maintenance was decided.

4. Thereafter, *vide* judgment dated 31.03.2023, the learned MM (Mahilla Court-01), Shahdara District, Karkardooma Courts, Delhi granted Rs. 20,000/- P.M. to the respondent from the date of filing of the complaint till its disposal. The learned MM also granted an amount of Rs. 11,000/- in favour of the respondent on account of litigation expenses. Feeling aggrieved by the said order, the petitioner herein filed an appeal under Section 29 of the Act of 2005, which came to be dismissed by the learned ASJ-05, Shahdara District, Karkardooma Courts, Delhi *vide* impugned judgment dated 12.02.2024.

5. Against the aforesaid impugned judgment the petitioner has filed the present petition U/S 482 of the Code of Criminal Procedure.

6. The learned counsel for the petitioner/husband submits that the impugned judgments have been passed without considering the facts of the present case and thus are not sustainable in the eyes of the law. He submits that the learned MM failed to consider relevant factors like the duration of marriage of the parties and has taken irrelevant factors into account.



7. He further submits that both the courts have failed to appreciate that the respondent/wife is admittedly 12th pass whereas the petitioner is only 10th pass. In this backdrop, it is submitted that when the petitioner can earn his livelihood despite being less educated, there is nothing which could stop the respondent from earning her livelihood, especially when the respondent is able bodied and has no dependent.

8. He submits that the courts below erroneously concluded that there is an attempt on part of the petitioner to withhold his actual income on account of Rs. 14,00,000/- deposited as security amount with the landlord of the tenanted premises where the petitioner alongwith his mother are residing. He draws attention of the court to the rent agreement dated 02.12.2016 to submit that the said agreement has been executed by the mother of the petitioner namely, Smt. Maya Devi and Sh. Satbir Singh, the landlord, and the petitioner has nothing to do with the said agreement.

9. He further submits that the trial court as well as the appellate court failed to appreciate that a total amount of Rs. 9,37,000/- has been deposited by the respondent in the bank account up till 10.02.2018 and this amount remains unexplained by the respondent. Further, it is submitted that the mother of the petitioner, namely, Maya Devi is dependent on the petitioner and she is not earning.

10. He further submits that the petitioner is suffering from a liver related ailment and this fact has not been taken into account. Lastly, he submits that the respondent is responsible for the failure of marriage as she left the company of the petitioner without any reason and despite various efforts made to mend the matrimonial relations, the respondent clearly refused to join the company of the petitioner.



11. On the other hand, the learned counsel for the respondent has supported the impugned judgments and has objected to the very maintainability of the present petition, in as much as, he submits that there is no illegality in the impugned judgments dated 12.02.2024 and 31.03.2023. He further submits that the petitioner is not paying maintenance regularly as since 07.03.2018 the petitioner has paid only Rs. 1,65,000/- out of the total amount of Rs. 14,80,000/-.

12. He submits that the petitioner is earning at least Rs. 1,00,000/- P.M. from property dealing and from wholesale supply of thread and other items to shopkeepers. He further submits that the petitioner cannot shy away from paying maintenance to his wife as it is his bounden duty.

13. The learned counsel has also controverted the submission of the learned counsel for the petitioner that the respondent has left the matrimonial house out of her own free will. In this regard, it is submitted that the petitioner had thrown out the respondent from the shared matrimonial home in 2017 and in a calculated manner moved to the rental accommodation with the respondent. Thereafter, he left the rented house of the parties and stopped paying any rent or electricity charges.

14. I have heard the learned counsel for the parties and perused the record.

15. Before appreciating the rival contentions of the parties, it is imperative to note that the petitioner has submitted that respondent is not entitled to interim maintenance allegedly due to the fact that the respondent has left the shared household out of her own free will. This fact on the other hand has been disputed by the learned counsel for the respondent. This aspect of the matter cannot be appreciated at this stage of determination of



interim maintenance as it is usually the defence in the cases under the Act of 2005 that no domestic violence occurred in the shared household. Further, this aspect requires leading of evidence by the parties to ascertain the truth. Reference in this regard may be had to the judgment of the Hon'ble Bombay High Court in ***Nakul vs. Padmini***, 2016 SCC Online Bom 10624, the relevant paragraph of which reads as under:

“9. The contentions of the petitioner that the respondent wife has deserted him without any reasonable cause and therefore, she is disentitled to maintenance, cannot be considered in great details at the stage of determination of interim maintenance. However, there is no basis to accept the petitioner's contention that there are admissions in the pleadings of the respondent on the aspect of matter of justification to stay away from the petitioner. On the basis of material on record, at least prima facie, it cannot be stated that the respondent, without any justification whatsoever, has deserted the petitioner and consequently, is disentitled to any maintenance.”

16. For the purpose of adjudicating the present petition this court has gone through the complaint filed by the respondent before the learned MM which is *prima facie* sufficient to show commission of Domestic Violence during the subsistence of the Domestic relationship. At this stage, it is also to be noted that it is the sacrosanct duty of the husband to provide financial support to his wife and this obligation of his cannot be avoided, except on legally permissible grounds. Reference in this regard may be had to the judgment of the Supreme Court in ***Anju Garg vs. Deepak Kumar Garg***, 2022 SCC OnLine SC 1314, a relevant paragraph of reads as under:

“10. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor



children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In Chaturbhuj v. Sita Bai², it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

17. Similarly in ***Shamima Farooqui vs. Shahid Khan***, (2015) 5 SCC 705, the Supreme Court has held as under:

“14.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.”

18. It is also not the case of the petitioner that the respondent is gainfully employed. Rather, it has been pleaded that the respondent can earn much more than the petitioner. However, this contention of the petitioner cannot be accepted as it is trite that capacity to earn is different from actual earning. Merely because the respondent – wife is able bodied and is capable of earning is no reason to deny her the maintenance or compensation. Reference in this regard may be had to the judgment of the Supreme Court



in *Shailja vs. Khodbanaa*, (2018) 12 SCC 199, the relevant paragraph of which reads as under:

“5. That apart, we find that the High Court has proceeded on the basis that Appellant 1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant 1 is capable of earning or whether she is actually earning are two different requirements. Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court.”

19. Likewise, a co-ordinate bench of this Court in *Kanupriya Sharma vs. State & Anr.*, (2019) 261 DLT 349 has held that ‘actual earning’ and ‘qualified and capable of earning’ are two different things.

20. In so far as, the quantum of maintenance/compensation to which the respondent is entitled, it has been held by the Trial Court as well as the Appellate Court that the petitioner has tried to conceal his actual income from the Court. In order to adjudicate this aspect of the matter, this Court has gone through the income affidavits placed at annexure ‘H’, which was filed before the Principal Judge, East District, Karkardooma Courts as well as at Annexure I, which is the copy of income affidavit filed by the petitioner in the execution petition before learned Metropolitan Magistrate in Ex. Crl. No. 202/2021. It is noted that as far as latter income affidavit is concerned, the same is not supported by any documents to show that income as stated in the said affidavit is correct. Whereas the former affidavit though supported by a copy of passbook of account no. 26122061820 [Kotak Mahindra Bank, Krishna Nagar, Delhi] reveals the following:

- a. The bank account statement for the period of 22.08.2017 uptil 01.11.2017 reveals that the petitioner has deposited cash into



his account on 04.09.2017, 18.09.2017 and 03.10.2017 amounting to Rs. 30,000/-, 45,000/- and 45,000/-, respectively.

- b. Thereafter, the said bank account has been used sparsely by the petitioner, however, a sum of Rs. 55,000/- has been paid *via* cheque into a HDFC Bank account on 20.06.2018. The petitioner has not offered any explanation for the said transactions and thus, an adverse inference has to be drawn against the petitioner.
- c. A sum of Rs. 20,000/- has also been deposited in cash by the petitioner into his account on 13.09.2018.
- d. The said transactions when juxtaposed with petitioner's claim in his income affidavit that he is earning an amount of Rs. 15,000/- p.m. and his monthly expenses are Rs. 14,850/- cast a doubt on the actual income of the petitioner. Further, the aforesaid cash deposit of such large amounts has also remained unexplained.
- e. The petitioner has also paid an amount of Rs. 70,000/- and 30,000/- on 22.01.2019 and 24.01.2019, respectively to Max Super Specialty Hospital. Therefore, the said bank account statements contradicts petitioner's income affidavit, wherein he has claimed that he takes medical treatment from Government Hospitals and Dispensaries.
- f. It is also noted that no salary slip has been placed on record by the petitioner to substantiate his claim that he is earning only Rs. 15,000/- P.M., rather it has been stated in his income affidavit that his employer is his relative. Therefore, a self



serving statement as to salary income of Rs. 15,000/- P.M. per month cannot be believed without corroboration.

21. The above contradictions in the income affidavit of the petitioner clearly reveal that he is guilty of concealing his true income. The petitioner has approached the Court with unclean hands and it is trite that a person whose case is based on falsehood is not entitled to any relief. Reference in this regard may be had to the observations of the Hon'ble Supreme Court in ***S.P. Chengalvarya Naidu vs. Jagannath***, 1994 (1) SCC 1, the relevant paragraph of which reads as under:

“5. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

22. In view of the aforesaid discussion, no ground for interference with the impugned judgments is made out. Accordingly, the present petition is dismissed. The parties are left to bear their own costs.

23. The petition, alongwith pending application, if any, stand disposed of.

24. Copy of this order be uploaded on the website.

VIKAS MAHAJAN, J.

JULY 29, 2024/N.S. ASWAL