



2024:DHC:6562



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 29th August, 2024*

+ CRL.REV.P. 562/2024 & CRL.M.A. 12583/2024

NASIR

.....Petitioner

Through: Mr. Harshith Pottangi,
Adv.

versus

STATE GOVT. OF NCT OF
DELHI AND ORS.

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Anjani Kumar
Rai, Ms. Akanksha V.
Ingole, Mr. Dilip Kumar
& Mr. Nitesh Kumar
Naveen, Advs.
SI Gayatri & SI Mamta,
PS- Dabri
Mr. Harshith Pottangi, Mr.
Priyam Kaushik & Ms.
Aashi Arora, Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order dated 15.02.2024 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Dwarka Courts, Delhi, in Crl. Appeal No.666/2023.

2. The learned ASJ, by the impugned order dated 15.02.2024, has dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the order dated 02.06.2022. It was also noted that the

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appeal was filed beyond the period of limitation. The learned ASJ found no merit in the contention of the petitioner that he faced financial constraints and was not aware about the legal proceedings by observing that the petitioner was regularly appearing in Court. The learned ASJ further found the defence of the petitioner that his father was unwell, to be unmerited without any medical document placed on record. It was thus observed that the petitioner had failed to justify that he had sufficient reason for preferring the appeal belatedly.

3. The learned Trial Court, in the order dated 02.06.2022, had noted that it appeared *prima facie* from the averments in the application that the respondent had suffered domestic violence at the hand of the petitioner and after taking into account the minimum wage received by an unskilled labour that is at least ₹18,000/- per month, had directed the petitioner to pay an amount of ₹4,500/- each per month as interim maintenance to Respondent No.1 and Respondent No.2 (child of the petitioner and Respondent No.1) from the date of filing of the interim application till its disposal.

4. The learned counsel for the petitioner submits that the learned Trial Court erroneously and mechanically granted an interim maintenance of ₹9,000/- to the respondents without appreciating that the petitioner is earning merely ₹10,000/- per month and has to take care of his old age father, his spouse and a child from the second marriage.

5. He submits that the learned ASJ dismissed the appeal in part on account of delay without appreciating that the delay was on



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account of mistaken advice of previous counsel.

6. This Court does not deem it necessary to address the argument of the petitioner *qua* delay in filing appeal before the learned ASJ as a well-reasoned order is passed after considering the arguments on merits as well.

7. The main thrust of the petitioner's arguments is that he earns merely ₹10,000/- per month. This Court is in agreement with the observations of the learned Trial Court that the argument of the petitioner seem unreliable as his earning is way lower than the estimated minimum wage of even an unskilled person.

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

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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. In the present case, the learned Trial Court has explicitly recorded that *prima facie* it appears from the complaint



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that the respondent was subjected to domestic violence.

11. It is incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. Even otherwise, the petitioner is an able-bodied man and a maintenance of ₹9,000/- per month (₹4,500 each to Respondent No.1 and Respondent No.2), in the opinion of this Court, is not unreasonable at the interim stage.

12. 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.

13. It is not disputed that the order dated 02.06.2022 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.

14. 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.

15. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 02.06.2022 or in this order.

AMIT MAHAJAN, J

AUGUST 29, 2024
“SS”

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