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

+ **CRL.M.C. 2673/2019**

PINKI @ RITU SINGH & ANRPetitioners
Through: Ms. Hemlata Rawat, Mr.
Brijesh Mehta & Ms.
Tanuja Rawat, Advocates.

versus

RAJNIKANT & ORSRespondents
Through: Ms. Mohini Chauhan,
Advocate for R-1
(Through V.C.).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
01.10.2024

1. The present petition is filed against the order dated 18.02.2019 (hereafter '**impugned order**') passed by the learned District and Sessions Judge, North East District, Karkardooma Courts, Delhi in C.A. No. 40/2018 titled *Pinki @ Ritu Singh & Another vs. Rajnikant & Others*.

2. By impugned order, the learned Appellate Court, in an appeal filed by the petitioners under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**'), modified the order dated 09.07.2018 passed by the learned Metropolitan Magistrate ('**MM**'), Karkardooma Courts, Delhi whereby the learned MM directed Respondent No. 1 to pay interim maintenance for a sum of ₹1,000/- per month to Petitioner No. 2.

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3. The learned Appellate Court, by the impugned order, assessed the income of Respondent No. 1 to be ₹14,000/- per month. It was noted that one child was in the care and custody of Respondent No. 1, and one child, that is Petitioner No. 2, was in the care and custody of Petitioner No. 1. The learned Appellate Court, noting that Respondent No. 1 only had to maintain Petitioner No. 1 and his two daughters, directed Respondent No. 1 to pay interim maintenance for a sum of ₹4,000/- per month to the petitioners (i.e. ₹2,000/- per month to Petitioner No. 1, and ₹2,000/- per month to Petitioner No. 2) from the date of the order of the learned Trial Court till the time the petitioners were legally entitled to receive the same.

4. The learned counsel for the petitioners submits that the learned Appellate Court erred in awarding an interim maintenance for a sum of ₹4,000/- per month to the petitioners. She submits that the learned Appellate Court incorrectly assessed the income of Respondent No. 1 to be ₹14,000/- per month by considering him to be a daily wage worker who was earning an amount in accordance with the Minimum Wages Act. She submits that Respondent No. 1 is earning more than ₹50,000/- per month. She submits that Petitioner No. 1 is not professionally engaged, and has no independent source of income. She submits that Petitioner No. 1 is completely dependent upon her parents for her expenses, and prays that the interim maintenance be enhanced.

5. She further submits that the learned Appellate Court erroneously directed the interim maintenance to be paid from the date of the order of the learned Trial Court, that is, from 09.07.2018, and not from the date of the filing of the complaint, and prays that the payment of interim maintenance be made from



the date of filing of the complaint.

6. *Per contra*, the learned counsel for the respondents submits that the learned Appellate Court erred in awarding a sum of ₹4,000/- per month to the petitioners. She submits that Respondent No. 1 is a daily wage earner, and the payment of ₹4,000/- per month to the petitioners is not feasible.

7. 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).

8. 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)

9. 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. The learned MM noted that Petitioner No. 1 had levelled allegations that she was subjected to domestic violence at the hands of the respondents. The learned MM, however, declined payment of any interim maintenance to Petitioner No. 1 on the ground that Petitioner No. 1 had not disclosed any mental or physical infirmity to explain why she was not able to maintain herself. The learned MM noted that Petitioner No. 1 being more educated and professionally qualified had better chances of employability, and is not entitled to any interim maintenance from Respondent No. 1.

10. It is trite that maintenance under the DV Act is not tethered on the ability of the wife to maintain herself. For this reason, in the absence of cogent proof indicating that Petitioner No. 1 is professionally engaged and is earning sufficient income to maintain herself, merely because Petitioner No. 1 is more educated or professionally qualified, cannot be a ground to



disentitle her from getting an award of interim maintenance. In this regard, the learned Appellate Court noted that Respondent No. 1 had claimed that Petitioner No. 1 was earning approximately ₹16,000/- per month by doing a private job in a Diagnostic Centre in Delhi, and that she had a DMLT Diploma. It was however noted that Respondent No. 1 had failed to adduce any documentary evidence to substantiate his contention. It was noted that while there was a possibility that Petitioner No. 1 had a DMLT Diploma, the same at this stage appears doubtful considering the letter dated 16.10.2018 issued by the Institute of Professional Studies and Research, wherein it had been stated that a balance amount of ₹40,700/- was still unpaid towards fee, and that Petitioner No. 1 had to clear the remaining balance. In view of the aforesaid, the learned Appellate Court rightly noted that merely making bald contentions that Petitioner No. 1 is earning, and is capable to maintain herself, does not disentitle her from getting an award of interim maintenance.

11. The learned Appellate Court noted that while Petitioner No. 1 had asserted that Respondent No. 1 was earning about ₹50,000/- per month, nothing had been placed on record to corroborate the same. The learned Appellate Court also took into account the contention of Respondent No. 1 that he was a daily wage earner, and noted that even if Respondent No. 1 were to be believed to be a daily wage earner, even then, contrary to the contention of Respondent No. 1 that he was earning merely ₹6,000/- per month, his salary must be commensurate to the Minimum Wages Act, and assessed his income to be ₹14,000/- per month. It was noted that Respondent No. 1 had no other dependants except his wife and two children, and awarded an interim maintenance for a sum of ₹4,000/- per month (₹2,000/-



per month to Petitioner No. 1, and ₹2,000/- per month to Petitioner No. 2) to the petitioners. Considering the two children, and Petitioner No. 1 as dependants, the awarded amount is in conformity with the dictum of ***Annurita Vohra vs. Sandeep Vohra : 2004 (74) DRJ 99***. To that extent, this Court does not find any infirmity in the impugned order.

12. The learned counsel for the petitioner however contends that the learned Appellate Court, by the impugned order, has erroneously directed Respondent No. 1 to pay interim maintenance from the date of the order of the learned Trial Court, that is, from 09.07.2018, and not from the date of the filing of the complaint. This Court finds merit in the contention of the petitioners. The Hon'ble Apex Court in ***Rajnesh vs. Neha and Another : (2021) 2 SCC 324*** observed as under:

“113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

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131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B — IV above.”

(emphasis supplied)

13. In line with the dictum of the Hon'ble Apex Court in ***Rajnesh vs. Neha (supra)***, the award of interim maintenance to the petitioners is made effective from the date of filing of the complaint under Section 12 of the DV Act, that is, from 26.02.2016. Consequently, to the extent that the impugned order awards interim maintenance to the petitioners from the date of order of the learned Trial Court, the same is set aside. However, this Court finds no ground to disturb the quantum of interim

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maintenance awarded to the petitioners by the learned Appellate Court.

14. It is not disputed that the order dated 18.02.2019 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. 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.

16. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 18.02.2019 or in this order.

17. The present petition is, therefore, partly allowed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 1, 2024

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