2024:DHC:6145

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

% *Date of Decision: 06th August, 2024*

\+ CRL.REV.P. 702/2023 & CRL.M.A. 17086/2023

NARESH KUMAR .....Petitioner

Through: Ms. Deeksha Anand, Mr. Divesh Gautam & Mr. Parmanand, Advocates for Revisionist.

versus

BABITA & ORS. .....Respondents

Through: Mr. Saumay Kapoor & Mr. Nihit Singhal, Advocates (Through V.C.).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present petition is filed challenging the judgment dated 17.03.2023 (hereafter '**impugned order**'), passed by the learned Principal Judge, Family Court, East District, Karkardooma Courts, Delhi in MT Petition (Old) No. 417/2018 and New No. 296/2020 titled *Babita & Ors. v. Naresh Kumar.*

2. The learned Family Court, by impugned order decided the petition filed by Respondent No. 1 under Section 125 of the CrPC, and observed as under:

> *"15. ....The petitioner no. 1 is not earning at present and petitioners No. 2 & 3 are school going. The respondent is directed to pay Rs. 8,000/- per month as maintenance to petitioner no. 1 from the date of filing of*

present petition till her life time or till she gets remarried after divorce, if any from the respondent or able to maintain herself. The respondent is also directed to pay a sum of Rs. 8,000/- per month as maintenance to the petitioner no. 2 from the date of filing present petition till the date of majority. The respondent is also directed to pay a sum of Rs. 8,000/- per month as maintenance to the petitioner no. 3 from the date of filing present petition till the date of her marriage or she is able to maintain herself. Accordingly, the present petition is disposed off."

3. The learned Family Court assessed the petitioner's income to be ₹1,00,000/- per month. It was observed that the petitioner was running an automobile business under the name and style of NRK Automobiles. The learned Family Court took into consideration the petitioner's ITR. It was noted that, for the assessment year 2014-2015, the net assessable income of the petitioner was ₹3,36,413/-. For the subsequent period, that is, 2015-2016, the gross total income of the petitioner was ₹3,91,880/-, and subsequently, for the assessment year 2018-2019, the gross total income of the petitioner was noted to be ₹1,58,336/-.

4. The learned Family Court also observed that the petitioner has an agricultural land measuring 7 Bighas at Aligarh. It was observed that a will was executed by the petitioner's deceased father in the favour of the petitioner's mother.

5. The learned counsel for the petitioner submits that the learned Family Court has erroneously assessed the petitioner's income to be ₹1,00,000/- per month. She submits that while the petitioner did own a motorcycle repairing shop in the name and style of NRK automobiles and was earning around ₹24,000 - ₹30,000, the same has ceased to be operational since the year

2021.

6. She submits that the petitioner after winding up his business in Delhi has now shifted to his hometown, Aligarh, and is presently doing labour work and earning a sum of ₹8,000/- per month. She submits that the learned Family Court has incorrectly considered the agricultural land to be that of the petitioner's when the title of the same is in the favour of the petitioner's mother, and not the petitioner. She submits that Respondent No. 1, being more qualified than the petitioner, is capable to earn and support herself, and used to also run her own boutique in the name of "Coloured Fashion Boutique." Consequently, she submits that the payment of maintenance to the tune of ₹24,000/- per month is onerous and not feasible for the petitioner.

7. The learned counsel for the respondents submits that Respondent No. 1 is not working presently, and is completely dependent on her family for meeting her expenses. He submits that the petitioner has only made bare claims that Respondent No. 1 has her own independent source of income, however, has not led any evidence to show that Respondent No. 1 is presently working anywhere.

8. He further submits that while the petitioner allegedly claims that his automobile business had been shut down in 2021, the petitioner has not provided any evidence to support the said contention.

9. It is undisputed that Respondent No. 1 is the wife and Respondent No. 2 and 3 are the children of the petitioner. Section 125 of the CrPC elucidates conditions under which a wife may be

deemed ineligible for maintenance. These conditions include instances where the wife is engaged in adulterous activities, where she, without any justifiable cause, refuse to cohabit with her husband, or where both parties have agreed to live apart through mutual consent. These provisions delineate clear legal parameters that govern the entitlement or disentitlement of maintenance to ensure that the support is granted only under circumstances that warrant such financial assistance.

10. Notably, no such ground is pleaded or argued by the petitioner that would disentitle the wife to the maintenance.

11. Before delving into the question of correctness of awarding maintenance for a sum of ₹24,000/- per month to the respondents, this Court firstly deems it fit to clarify the total assessable monthly income of the petitioner. The learned Family Court, in the impugned order, has assessed the monthly income of the petitioner to be ₹1,00,000.

12. In line with the dictum of ***Annurita Vohra v. Sandeep Vohra*** **: 2004 (74) DRJ 99**, the learned Family Court has allotted two shares to the petitioner being the earning member, and one share each to Respondent Nos. 1-3 and one share to the petitioner's mother. However, given that it has awarded a sum of ₹8,000 to each of the respondents, it seems that the learned Family Court has calculated the share of each of the dependents to be ₹8,000/-. Consequently, the share of the petitioner, being the earning member would amount to ₹16,000/-. In that light, while the learned Family Court records the assessable monthly income of the petitioner to be ₹1,00,000/-, it has actually

assessed the income to be ₹48,000/-. The question, thus, is whether the learned Family Court has rightly assessed the income of the petitioner to be around ₹48,000/-.

13. It has been noted in a catena of judgments that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute and that income tax returns do not necessarily provide an accurate reflection of the actual income in such cases [Ref: ***Kiran Tomar v. State of U.P.*** **: 2022 SCC OnLine SC 1539**. It is also 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. Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of an appropriate amount to the respondents cannot be ruled out.

14. 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**]

15. The learned Family Court noted that the petitioner was admittedly running an automobile business in the name and style of NRK Automobile. It was also noted that while the petitioner claimed that the said business had been shut down, no evidence was led to show that NRK Automobiles was no longer operational. The learned Family Court also took note that while the petitioner had placed his ITR on record, after the initiation of litigation between the parties, the petitioner started showing lower income in his ITR. The learned Family Court also took into

consideration that the petitioner had an agricultural land measuring 7 Bighas, for which a will was executed by the petitioner's deceased father in favour of the petitioner's mother.

16. Given the tendency of parties to downplay their income, and the fact that the petitioner had not led any evidence to show that NRK Automobiles had ceased to be operational, the learned Family Court rightly assessed the income of the petitioner to be around ₹48,000/-. The petitioner himself claims that he was earning ₹24,000 - ₹30,000, prior to the alleged shutting down of the business. In the absence of evidence to indicate the contrary, the assessment of the learned Family Court is plausible and cannot be faulted with.

17. The learned counsel for the petitioner also submits that Respondent No. 1 had her own independent source of income, and was more qualified and capable to earn than the petitioner. However, the learned Family Court has rightly observed that the petitioner had not led any evidence to show that Respondent No. 1 was working anywhere at the time of the pendency of the proceedings. Further, merely because a woman is capable to earn, or is more qualified does not mean that she is not entitled to receive maintenance.

18. The contentions of the petitioner that he is not earning, or that his business is not operational cannot be a ground to deny maintenance. As observed by the Hon'ble Apex Court in ***Shamima Farooqui v. Shahid Khan*** **: (2015) 5 SCC 705,** the right of the wife to receive maintenance under Section 125 of the CrPC, unless disqualified, is absolute. Thus, it is incumbent on

the petitioner, who is an able-bodied man, to financially support Respondent Nos. 1, 2 and 3.

19. In such circumstances, in my opinion, the maintenance awarded by the learned Family Court, is not unreasonable.

20. It is, however, pertinent to mention that the petitioner has placed on record, his income certificate dated 24.05.2023, to contend that he is presently earning only ₹8,000/- per month. Since the petitioner is contending a change in circumstance, the appropriate remedy lies under Section 127 of the CrPC.

21. In view of the above, this Court finds no reason to interfere with the impugned order and the present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 6, 2024
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