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

+ **CRL.REV.P. 721/2023 & CRL.M.A. 21478/2024**

SANJIB RAI

.....Petitioner

Through: Mr. S.S. Sisodia, Mr.
Saurav Kr. Singh along
with Mr. Moksh Kataria &
Ms. Muskan, Advs.

versus

GOVT OF NCT OF DELHI ANR & ANR.

.....Respondents

Through: Mr. Rajkumar, APP for the
State along with Ms.
Kanika Sondhi, Mr.
Omnish Sharma, Mr.
Phenrongni Newmai, Ms.
Sanya S. Yusuf, Ms. Shruti
Dhingra, Mr. Sharon
Banga & Mr. Shubham
Bahl, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

24.07.2024

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1. With the consent of the learned counsel for the petitioner, the matter is finally heard today.
2. The present revision petition is filed under Section 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 31.05.2023 (hereafter '**the impugned order**'), passed by the learned Family Court, in Mt. Case No. 188/2019.
3. The learned Family Court, by the impugned order, has directed the petitioner to pay a sum of ₹25,000/- per month as interim maintenance, from the date of filing of the application under Section 125 of the CrPC.
4. The learned Family Court observed that the petitioner is



employed with the Indian Air Force and he is getting a gross salary of ₹80,000/- per month. The learned Family Court noted that it is not disputed that the minor daughter of the parties is living with Respondent No.2 (wife of the petitioner). It was also noted that while the petitioner had argued that he was paying ₹23,500/- towards a loan he had taken for renovation of his ancestral property, he had failed to place on record any material to show the renovation work and had not provided any details as to when the loan was taken either. The learned Family Court observed that the loan installments could not be deducted from the net salary of the petitioner as the loan seemed to have been taken to voluntarily reduce the petitioner's in hand salary to pay less maintenance. On the basis of the same, the learned Family Court assessed the in hand salary of the petitioner to be ₹50,000/-. The learned Family Court then applied the formula of distribution as laid down by a Coordinate Bench of this Court in the case of ***Annurida Vohra v. Sandeep Vohra : 2004 SCC OnLine Del 192***, and held that the respondent and the minor daughter of the parties are both entitled to ₹12,500/- as maintenance.

5. The learned counsel for the petitioner submits that the learned Family Court has erroneously awarded interim maintenance of ₹25,000/- without considering that the petitioner has other dependents and he gets around ₹23,000/- per month after deductions.

6. He submits that as per the Income Tax Returns of the petitioner, he is earning an amount of ₹30,000/- approximately as income.

7. He submits that the petitioner was already paying ₹10,000/- per month to Respondent No.2 as directed by the learned Family Court *vide* order dated 01.09.2022. He submits that the said



amount is sufficient to maintain the minor child of the parties.

8. He submits that the Respondent No.2 is not entitled to any maintenance under Section 125(4) of the Code of Criminal Procedure, 1973 as she refused to live with the petitioner without any reason.

9. He submits that the learned Family Court has failed to appreciate that Respondent No.2 gives tuitions to students and earns an amount of ₹25,000/- to ₹30,000/- per month approximately and she is thus not entitled to any maintenance.

10. I have heard the counsel for the parties and perused the record.

11. It is contended by the learned counsel for the petitioner that the learned Family Court has erroneously assessed the net income of the petitioner and awarded an interim maintenance that is higher than his disposable income.

12. In the present case, the learned Family Court has extensively discussed the aspect of the loan taken by the petitioner. It was observed that the loan was taken for renovation of an ancestral property which has five shareholders. Further, it was noted that the petitioner was silent on the aspect of when the loan was taken and he had placed no documents on record to show that the renovation work had been undertaken. Keeping the said factors in mind, the learned Family Court observed that the loan seemed to be a ploy to reduce the petitioner's in hand income.

13. It has been noted in a catena of judgments that there is a tendency to downplay the income and not disclose the same 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).



14. The petitioner has not sought to clarify the aforesaid aspects regarding the loan before this Court either. No material has been placed on record to controvert the *prima facie* finding of the learned Family Court that the loan was voluntarily taken by him to reduce his take home salary. Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of appropriate amount cannot be ruled out at this stage.

15. 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***).

16. It is also submitted that Respondent No.2 is not entitled to maintenance in terms of the provisions of Section 125 (4) of the CrPC. It is stated that Respondent No.2 has been living separately from the petitioner and his family members since the year 2016.

17. It is pertinent to note that Respondent No.2 in her application under Section 125 of the CrPC has pleaded that the petitioner used to beat her mercilessly. It is averred that the petitioner used to harass Respondent No.2 even after she became pregnant and he had sent Respondent No.2 to Delhi before her delivery. It is further averred that after the birth of the minor child, Respondent No.2 went to visit the petitioner in Chandigarh where he was posted, however, the petitioner was transferred to Bangalore. It is averred that Respondent No.2 was ousted from her matrimonial home by the petitioner and his family members.

18. It is noted that the petitioner had not raised the aforesaid objection before the learned Family Court in his reply to the application for grant of interim maintenance. Thus, the said aspect has not been dealt with by the learned Family Court. In the absence of any evidence, at this stage, this Court cannot draw the inference



that Respondent No.2 had refused to live with the petitioner without any sufficient reason.

19. It is also argued that Respondent No.2 is a well-educated lady who is earning a sufficient income to maintain herself through teaching tuitions. The income affidavit of Respondent No.2 indicates that she has no income. Apart from the mere bald assertions of the petitioner, no evidence has been placed on record to establish that Respondent No.2 can maintain herself.

20. 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.

21. It is not disputed that the impugned order is only an order of interim maintenance. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence on record.

22. A husband cannot shirk his sacrosanct duty to financially support his wife and minor child. The Hon'ble Apex Court, in the case of **Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314**, observed 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...***

x-x-x

*13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. **The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child....**”*

(emphasis supplied)



23. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No.2 and his minor child. In such circumstances, the maintenance of ₹25,000/- per month, that is, ₹12,500/- to Respondent No.2 and the minor daughter of the parties respectively, in the opinion of this Court, is reasonable at the interim stage.

24. The learned Family Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or in the present order.

25. In view of the above, this Court finds no reason to interfere with the impugned order.

26. The petition is dismissed.

27. Date already fixed, that is, 17.09.2024, stands cancelled.

AMIT MAHAJAN, J

JULY 24, 2024

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