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

+ **CRL.M.C. 2999/2019 & CRL.M.A. 12069/2019**

SANDEEP

..... Petitioner

Through: Mr. S.N. Jha, Mr.
Mohammad Badeea & Mr.
Uzzaman, Advs.

versus

MEENAKSHI & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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25.01.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') impugning the orders dated 04.07.2018 and 10.05.2019, in M No. 229/2017, passed by the learned Family Court, South East, Saket, New Delhi.
2. The learned Family Court, by the impugned order dated 04.07.2018, awarded an interim maintenance of ₹9,000/- per month for Respondent No.2 (minor son of the petitioner and Respondent No.1). The learned Family Court noted the contention of Respondent No.1 that she spends ₹9,000/- per month on the education of Respondent No.2.
3. The learned Family Court also considered that the petitioner was employed as a deputy manager, and the petitioner's income as per his income affidavit was ₹31,200/- per month. The learned Family Court further took into account the fact that Respondent No.1 was earning ₹13,000/- per month, and noted that no presumption could be raised that she was unable to maintain herself in the said amount.



4. The learned Family Court, by the other impugned order dated 10.05.2019, closed the right of the petitioner to cross examine Respondent No.1. The relevant portion of the said order is reproduced hereunder:

“Petitioner is present for cross examination but the counsel for the respondent is not ready to cross examine the witness. Today is the last and final opportunity for PE.

It is an old case of 2013. In view of the above, the cross examination of the respondent is recorded as Nil, Opportunity given.”

5. The learned counsel for the petitioner submits that the petitioner has been jobless since 10.03.2019. He submits that the petitioner has had difficulty in finding a job to sustain his family and himself, and is not in a position to pay the maintenance amount to Respondent No.2.

6. He submits that the learned Family Court by the impugned order dated 04.07.2018 has erroneously burdened only the petitioner with the pecuniary expenses of Respondent No.2. He states that Respondent No.1 is employed, and is capable of maintaining Respondent No.2.

7. He further submits that the learned Family Court has not considered the Settlement Agreement dated 16.04.2012 and Compromise Deed dated 30.05.2012 whereby the parties had amicably settled their disputes and agreed to reside together. He states that FIR no. 10/2012 under Sections 498A/406/34 of the Indian Penal Code, 1860, registered at PS Nanak Pura, and all consequential proceedings arising therefrom, were also quashed by this Court by order dated 28.05.2013, on the basis of the Compromise Deed dated 30.05.2012.

8. The learned counsel for the respondents, at the outset, emphasised that the maintenance has been awarded by the



learned Family Court to Respondent No. 2 only. She submits that the petitioner, in his income affidavit filed before the learned Family Court, had himself stated that he was ready to pay ₹7,000/- to Respondent No.2. She further submits that the petitioner had last paid maintenance to Respondent No.2 on 10.12.2018.

9. She submits that the learned Family Court had indicated by order dated 26.04.2019, that a last opportunity was being granted to the respondents to lead evidence, failing which PE shall be closed. She further submits that the petitioner's right to cross-examine Respondent No.1 was closed by the learned Family Court, by the impugned order dated 10.05.2019, only after duly affording the opportunity to the petitioner to cross examine Respondent No.1.

10. It is not disputed that the parties have been living separately since 18.07.2013. The case for maintenance was instituted by the respondents after the Compromise Deed dated 31.05.2012 was signed by the petitioner and Respondent No.1. However, the same, in my opinion, has no bearing on the present case as it relates to settlement of previous disputes between the parties, that is, FIR No.10/2012 lodged by the respondent against the petitioner and his family members under Sections 498A/406/34 of the Indian Penal Code, 1860 at PS CAW Nanak Pura, Delhi, and the earlier petition filed by the respondent under Section 125 of the CrPC.

11. The learned Family Court has rightly observed that the petitioner and Respondent No.1 are both responsible for maintaining Respondent No.2. It is relevant to note that ₹9,000/- per month is merely the educational expense of Respondent No.2, and that Respondent No.1 is taking care of the day-to-day



expenses of Respondent No.2. Thus, it cannot be said that the petitioner alone has been burdened with the pecuniary expenses of Respondent No.2.

12. It is not the petitioner's case that the learned Trial Court has erred in assessing the expenses of Respondent No.2. Furthermore, no evidence has been adduced by the petitioner to contest that Respondent No.1 is not spending ₹9,000/- per month towards the education of Respondent No.2.

13. The petitioner has also not produced any documents to establish that he has lost his job on 10.03.2019. Even otherwise, a father cannot shirk his sacrosanct duty to financially support his 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....

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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)

14. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No.2. In such circumstances, the interim monthly maintenance of ₹9000/- per month as awarded by the impugned order dated 04.07.2018, in my opinion, is reasonable.



15. In so far as the impugned order dated 10.05.2019 is concerned, the learned Family Court, in its order dated 26.04.2019, had specifically indicated the said date to be the last opportunity for PE. Despite the same, the learned counsel for the petitioner was not ready to cross examine Respondent No.1 and no further explanation is provided for the same.

16. The object of Section 125 of the CrPC is to provide speedy relief by way of maintenance to the aggrieved wives and children who are unable to maintain themselves. The proceedings under Section 125 of the CrPC, being summary in nature, cannot be delayed in a routine manner merely because a party seeks further opportunities to cross-examine a witness, as the same would defeat the spirit of the provision. Such an indulgence can only be granted, at the discretion of the Court, when the same is duly substantiated by adequate reasons.

17. In the present case, the petitioner has neither pleaded why he wishes to cross-examine Respondent No.1 nor has he provided any reason to establish as to how he is prejudiced by the impugned order dated 10.05.2019. A bare perusal of the said order also shows that the learned Family Court has observed that the matter has been pending since 2013.

18. In view of the said facts, I find no infirmity with the impugned order dated 10.05.2019.

19. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JANUARY 25, 2024/‘ssh’