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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 772/2023 & CRL.M.A. 19498/2023
NARESH KUMARPetitioner
Through: Mr. Rahul Thakur,
Advocate (Through V.C.).

versus

MS. RENU KUMARI & ORS. & ORS.Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **06.11.2024**

1. The present petition is filed challenging the order dated 17.02.2023 (hereafter the '**impugned order**'), passed by the learned Principal Judge, Family Court, North-East District, Karkardooma Courts, Delhi in MT No. 500/2021.
2. By impugned order, the learned Family Court, in a petition filed by the respondents under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), has directed the petitioner to pay interim maintenance of a sum of ₹5,000/- per month for the period from 22.11.2021 till 21.12.2022 and sum of ₹7,000/- per month from 22.12.2022 till the disposal of the maintenance petition.
3. Respondent No.1 is the wife of the petitioner and Respondent No.3 is his biological daughter. Respondent No.2 is the daughter of Respondent No.1 from her first marriage.
4. The learned Family Court noted that the petitioner had specifically pleaded that Respondent No.2 has been treated like



his own daughter and the petitioner has also sought permission to meet both the minor children, including, Respondent No.2.

5. The learned counsel for the petitioner submits that the learned Family Court has mechanically awarded an exuberant amount as interim maintenance to the respondents.

6. He submits that the petitioner is an e-battery rikshaw puller and his aggregate income is ₹8,000/- to ₹9,000/- per month. He submits that the petitioner is incapable of paying the awarded maintenance to the respondents.

7. He submits that Respondent No.1 has deserted the petitioner without any sufficient reason and she has refused to join the petitioner in their matrimonial household despite his best efforts. He submits that Respondent No.1 is thus not entitled to any maintenance.

8. He further submits that Respondent No.1 is a trained beautician and she earns ₹15,000/- per month from her profession whereby she is able to maintain herself and Respondent Nos. 2 and 3 without any difficulty.

9. The learned Family Court, in the impugned order, took note of the contention of the petitioner that he was earning ₹13,000/- per month. Considering the same, the learned Family Court awarded the maintenance of ₹5,000/- per month for the period of 22.11.2021 till 21.12.2022 and ₹7,000/- per month from 22.12.2022 onwards.

10. Before this Court, it has now been argued by the learned counsel for the petitioner that the petitioner is earning merely ₹8,000/- to ₹9,000/- per month instead.

11. It is common knowledge and has been observed by the Courts in many cases that it is a normal tendency of the parties, especially in matrimonial disputes to not disclose their true



incomes. 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].

12. It is relevant to note that the minimum wages for an unskilled employee in Delhi for the concerned period is more than the estimated income of the petitioner. In such circumstances, in the opinion of this Court, the learned Family Court has reasonably assessed the income of the petitioner.

13. The petitioner has not disputed his obligation to pay maintenance to the minor children. It has only been argued that Respondent No.1 is working and she is capable of maintaining herself and the children. However, as noted by the learned Family Court, no material has been placed on record to substantiate the said averment. The learned Family Court has also rightly appreciated that with two small children to be taken care of, Respondent No.2 would hardly have any spare time to take up a regular vocation.

14. It is also argued that Respondent No.1 left the matrimonial company of the petitioner without any reason and she is thus not entitled to any maintenance. It is the case of Respondent No.1 that the petitioner and his family members used to treat her in a cruel manner and that she was ousted from the matrimonial house. It is rightly noted by the learned Family Court, the rival contentions of the parties in this regard would require to be substantiated in the course of trial. Interim maintenance to the respondents cannot be denied on this basis at this stage.

15. The petitioner is an able-bodied man. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife and minor children. 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)

16. Thus, it is incumbent on the petitioner to financially support the respondents. In such circumstances, in my opinion, the interim monthly maintenance is not unreasonable.

17. It is not disputed that the impugned order is only an order of interim maintenance. 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.

18. 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 this order.

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

20. The present petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

NOVEMBER 6, 2024

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