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

% *Date of Decision: 20th September, 2024*

+ **CRL.REV.P. 792/2023 & CRL.M.A. 19934/2023,**
CRL.M.A. 19935/2023

MANISH MAHTOPetitioner
Through: Mr. Rahul Mehra, Adv.
(through VC)

Versus

SUMAN & ANR.Respondents
Through: Mr. R. K. Singh, Adv.
(through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed challenging the judgment dated 24.05.2023 (hereafter '**the impugned judgment**'), passed by the learned Family Court, North District, Rohini Courts, Delhi, in MT No. 107/2018 filed by the respondents under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**').
2. The learned Family Court by the impugned judgment awarded maintenance of ₹5,000/- in favour of Respondent No.1 (wife of the petitioner) and ₹2,000/- in favour of Respondent No.2 (minor son of the parties). It was also directed that the respondents would be entitled to enhancement of maintenance at the rate of 10% after completion of every two years.



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3. The learned Family Court noted that the relation between the parties was admitted and observed that the claim of Respondent No.1 that she is unemployed and unable to support herself remained unrebutted as the petitioner had failed to show anything contrary to the same.

4. The learned Family Court had assessed the notional income of the petitioner as ₹16,000/- by considering him to be an unskilled labourer and taking an average of the minimum wage as on the date of filing of the petition (₹14,000/-) and the date of judgment (₹17,234/-).

5. This Court had put to the parties if they are ready to make efforts for amicable settlement. The learned counsel for the respondents, on instructions, submits that due to the conduct of the petitioner, the respondents are not interested in mediation.

6. The learned counsel for the petitioner submits that the learned Trial Court erroneously awarded an exuberant maintenance to the respondents without appreciating the actual living status of the parties and their economic position.

7. He submits that the petitioner was earlier working as a daily labourer, construction worker or housekeeping staff depending on the work he was able to secure and he earned merely ₹8,000/- to ₹10,000/- per month. He submits that due to same, the petitioner returned back to his native place in Bihar where he earns ₹5,000/- to ₹6,000/- currently as a farm labourer.

8. He submits that the defence of the petitioner was struck off on the ground of non-compliance of the order of interim maintenance without appreciating that the petitioner could not



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pay the awarded interim maintenance as he had no means to pay the same.

9. He submits that Respondent No.1 had wilfully deserted the petitioner as he was not earning as per her expectations and she was thus not entitled to grant of any maintenance in terms of Section 125 (4) of the CrPC.

10. He submits that the allegations levelled by the respondents regarding cruelty are vague and not specific. He submits that the petitioner tried to convince Respondent No.1 to return to the matrimonial home, however, she refused.

11. The learned counsel for the respondents submits that the learned Trial Court had rightly assessed the facts and circumstances in the impugned judgment and there is no irregularity in the same to warrant interference. He submits that the maintenance awarded is reasonable and on the lower end.

12. He submits that Respondent No.1 is also taking care of Respondent No.2. He submits that Respondent No.1 had not deserted the petitioner and she had been ousted from the matrimonial home along with Respondent No.2.

13. He submits that the petitioner used to mercilessly beat Respondent No.1 in his inebriated state and he had even thrown Respondent No.2 on the floor on one occasion. He submits that Respondent No.1 had also preferred a complaint to the Crime Against Women Cell on 27.12.2017 against the petitioner and his family members in regard to the cruelty and harassment caused by them on account of dowry demands.

14. The question before this Court is whether the learned Trial



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Court correctly concluded that Respondent No.1 was justified in living separately from the petitioner, and if so, whether the quantum of maintenance is exuberant.

15. At the outset, it is well settled that the object of granting maintenance is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Hon'ble Apex Court in ***Chaturbhuj v. Sita Bai : (2008) 2 SCC 316***, has observed as under:

*“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. **The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.** The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].*

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*In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. **Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she***



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can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”

(emphasis supplied)

16. However, 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.

17. It is argued that Respondent No.1 had deserted the petitioner. Respondent No.1 had exhibited the documents showing that her necklace, nose ring and *tika* have been mortgaged. She had also exhibited photographs of the injuries sustained by her at the hands of the petitioner as well as the complaint made by her to the ACP, CAW Cell, Rohini Sector-3 against the petitioner and his family members due to cruelty and harassment. It is stated that the complaint was made on 27.12.2017 while the petition for maintenance was preferred by



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the respondents on 28.02.2018. The learned Trial Court has rightly appreciated that the allegations of physical violence and cruelty against the petitioner remained virtually uncontroverted as the petitioner had failed to cross examine Respondent No.1 and lead his evidence and in such circumstances, Respondent No.1 was justified in living separately from the petitioner.

18. It has been argued that the income of the petitioner has been wrongly assessed to be ₹16,000/- even though he is a mere farm labourer. It is also argued that the petitioner has returned to his native village in Bihar and he is barely managing to sustain himself and his parents. It is argued that the petitioner is earning merely ₹5,000/- to ₹6,000/-. It is argued that even earlier the petitioner was earning only ₹8,000/- to ₹10,000/- per month.

19. The petitioner was admittedly working as a contractual labourer in Delhi earlier. It is not specified as to when the petitioner went back to his native place. The same is also disputed by the respondents.

20. 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. 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***). In the opinion of this Court, the learned Trial Court has reasonably assessed the income to be ₹16,000/- by assessing his income on the basis of the minimum wage of unskilled workers in Delhi.

21. The learned Trial Court had also rightly rejected the



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contention of the respondents that the petitioner was running a store and he had agricultural land in his native place as they had failed to adduce any supporting documents to that effect. The learned Trial Court had also pointedly noted that while the petitioner was claiming that he had an income of ₹6,000/- per month, however, he had claimed his expenses to be ₹11,200/-. Moreover, there is nothing on record except for the bald averments of the petitioner to show that his parents are dependent on him or that he is incurring any expenses on their behalf.

22. It cannot be denied that if the parties were residing together, the petitioner would have incurred some expenses to maintain the respondents. The maintenance amount has to be such that suits the financial capacity of the parties and also protects wife and minor children from destitution.

23. On a perusal of the overall facts of the case, in the opinion of this Court, the learned Trial Court has adequately appreciated the facts and awarded the total maintenance of ₹7,000/- per month to the respondents. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife and children. 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 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)

24. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support the respondents, who are his legally wedded wife and minor son.

25. Insofar as the argument regarding the defence of the petitioner being struck off, it is relevant to note that the order striking of the petitioner's defence remains unchallenged. The petitioner also did not cross-examine Respondent No.1 despite adequate opportunity.

26. It is not argued that Respondent No.1 has sufficient means to maintain herself and Respondent No.2. The learned Trial Court had also noted that the respondents are staying with the parents of Respondent No.1, who are also bearing their expenses.

27. In view of the aforesaid discussion, it is incumbent on the petitioner, who is an able-bodied man, to financially support the respondents. This Court finds no infirmity in the impugned judgment.

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

29. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024