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

+ **CRL.M.C. 4028/2024**

IQBAL AHMED

..... Petitioner

Through: Mr. Vikas Gupta, Mr. Sohil
Sharma, Mr. Tanveer Gaur,
Mr. Lakshay Bhardwaj, Mr.
Paramjeet, Mr. Prateek
Sharma, Mr. Gaurav
Kaushik, Advs.

versus

MS. SHEHNAZ

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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17.05.2024

**CRL.M.A. 15326/2024 (exemption from filing certified copies of
Annexure A, Annexure B, Annexure C and Annexure D)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 22.12.2023, passed by the learned Additional Sessions Judge ('ASJ'), South District, Saket Courts, Delhi, in Crl. Appeal No.209/2023. The petitioner has also challenged the order dated 23.09.2022, passed by the learned Trial Court, in Ct Case No.2042/2020.

4. The learned ASJ, by the impugned order dated 22.12.2023,

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has dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the order dated 23.09.2022, whereby the learned Trial Court, considering the social status, assets and liabilities of the parties, had directed the petitioner to pay an amount of ₹4,000/- per month as interim maintenance to the respondent from the date of filing of the case till its disposal. It was also noted that the appeal was filed beyond the period of limitation. The learned ASJ found no merit in the contention of the petitioner that he faced financial constraints and was not aware about the legal proceedings by observing that the petitioner was regularly appearing in Court. It was also observed that the delay could not be accounted to the previous counsel or mistaken advice by noting that advice could vary between counsels. It was thus observed that the petitioner had failed to justify that he had sufficient reason for preferring the appeal belatedly.

5. The learned Trial Court, in the impugned order dated 23.09.2022, had noted that it appeared *prima facie* from the averments in the application that the respondent had suffered domestic violence at the hand of the petitioner.

6. The learned counsel for the petitioner submits that the learned Trial Court erroneously and mechanically granted an interim maintenance of ₹4,000/- to the respondent without appreciating that the petitioner is earning merely ₹6,000/- per month as a Lab Technician and he is also responsible for payment of EMI on a loan availed by him.

7. He further submits that the income of the petitioner has been speculated by the Courts below to be higher than his salary slips as the amount of ₹6,000/- is much below the statutory minimum wages. He submits that the petitioner is a resident of Raya, Uttar



Pradesh and the opportunities over there are too low to earn a proper livelihood.

8. He submits that the petitioner never asked the respondent to leave the matrimonial home and the parties separated as the respondent was unable to adapt to the lifestyle in the petitioner's village, that is, Raya, in Uttar Pradesh.

9. He submits that the respondent is more educated and qualified than the petitioner and she left the matrimonial home of her own will.

10. He submits that the proceedings initiated by the respondent are not maintainable as she was not subjected to domestic violence by the petitioner.

11. He submits that the learned ASJ dismissed the appeal in part on account of delay without appreciating that the delay was on account of mistaken advice of previous counsel.

12. This Court does not deem it necessary to address the argument of the petitioner *qua* delay in filing appeal before the learned ASJ as a well-reasoned order is passed after considering the arguments on merits as well.

13. The main thrust of the petitioner's arguments is that he lives in a remote village in the State of Uttar Pradesh and earns merely ₹6,000/- per month as a Lab Technician. He has also adduced an income certificate to this effect. *Prima facie*, this Court is in agreement with the observations of the Courts below that the salary slips of the petitioner seem unreliable as they are way lower than the estimated minimum wage of even an unskilled person.

14. 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 even income tax returns do not necessarily provide an accurate reflection of the actual income in



such cases (Ref. *Kiran T...* v. *State of U.P.* : 2022 SCC OnLine SC 1539). Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of an appropriate amount to the respondents cannot be ruled out at this stage.

15. 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. 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. While it is contended by the petitioner that the respondent is more qualified by him, at this stage, no evidence has been filed which would show that the respondent is in a position to maintain herself.

17. Furthermore, it is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the respondent is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Any woman who proves that she has suffered domestic violence at the hands of her spouse/ partner, is entitled for interim relief. In the present case, both the learned Trial Court has explicitly recorded that *prima facie* it appears from the complaint that the respondent was subjected to domestic violence.

18. It is incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. Even otherwise, the petitioner is an able-bodied man and a maintenance of ₹4,000/- per month, in the opinion of this Court, is not unreasonable at the

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interim stage.

19. 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.

20. It is not disputed that the impugned order dated 23.09.2022 is only an order of interim maintenance. The learned Trial Court would pass a final order in regard to maintenance after considering the evidence on record.

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

22. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the impugned order dated 22.12.2023 or in this order.

AMIT MAHAJAN, J

MAY 17, 2024