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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 797/2023

YOGESH KUMAR SHARMA

.....Petitioner

Through: Mr. Jatin Rajpoot, Mr.
Ashutosh Kumar & Mr.
Rajesh Jha, Advs.

versus

SHOBHA SHARMA & ORS.

.....Respondents

Through: Mr. Aditya Sharda, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

05.07.2024

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1. The present petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure ('CrPC') read with Section 19(4) of the Family Court against the judgment dated 17.05.2023 (hereafter '**impugned order**'), passed by the Principal Judge, Family Court in CC No. 1140/2016, titled as '*Smt. Shobha & Ors. v. Shri Yogesh Kumar Sharma*'.
2. The learned Family Court, by the impugned order decided the petition filed by Respondent No.1 under Section 125 of the CrPC, and passed the following directions :

“(i) The respondent shall pay an amount of Rs.4000/- per month to petitioner No.1 as maintenance from the date of filing of the present petition i.e. 11.07.2014 till 31.12.2018.

(ii) The respondent shall pay an amount of Rs.4000/- per month each to petitioner Nos. 1 and 2 (total Rs.8000/- per month) as maintenance from the date of filing of the present petition i.e. 11.07.2014 till 31.12.2018.

(iii) The respondent shall pay an amount of Rs.5000/- per month to petitioner No.1 as maintenance with effect from 01.01.2019 till 31.12.2022.

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(iv) The respondent shall pay an amount of Rs. 5000/- per month each to petitioner Nos.1 and 2 (total Rs.10,000/- per month) as maintenance with effect from 01.01.2019 till 31.12.2022.

(v) The respondent shall pay an amount of Rs.6000/- per month to petitioner No. 1 as maintenance with effect from 01.01.2023 and continue to do so till her life time or till she gets remarried after divorce, if any, from the respondent.

(vi) The respondent shall pay an amount of Rs.6000/- per month each to petitioner Nos.1 and 2 (total Rs.12,000/- per month) as maintenance with effect from 01.01.2023 till the date of their marriage or till the date they start earning on their own and they are able to look after themselves financially.

(vii) The respondent shall also pay an amount of Rs. 1,000/- as litigation expenses to the petitioner for this case.

(viii) Any amount paid as maintenance to the petitioners in the present proceeding or the proceeding under The Protection of Women from Domestic Violence Act or in any other proceeding shall be adjusted against the amounts of maintenance payable under this judgment.

(ix) The respondent shall deposit the above amounts in the bank account of petitioner No.1. Petitioner No.1 shall supply particulars of her bank account to the respondent. Arrears be paid within four months from the date of this judgment.”

3. The learned Family Court had noted that the petitioner’s net average income from the date of filing of the petition, that is, 11.07.2014 till 31.12.2018 was ₹28,000/- per month. For the subsequent period, from 01.01.2019 till 31.12.2022, the net average income of the petitioner was assessed at ₹33,000/- per month, and the net average income for the period 01.01.2023 up to the date of the impugned order was assessed at ₹38,000/- per month.

4. The learned Family Court had considered the escalating cost of living and observed that adequate financial resources were essential to ensure a decent standard of living and to cover



the educational and other needs of the minor children of the parties - Respondent Nos.2 and 3.

5. The learned counsel for the petitioner submits that the learned Family Court had erroneously and mechanically assessed the income of the petitioner and passed the impugned order. He submits that Respondent No.1 is a qualified diploma holder in Neuropathy and running a clinic in the name of Geetanjali Prakartik Chikitsa & Yoga, Laxmi Nagar, Najafgarh Road, Delhi, and possesses the capacity to earn, and thus should not be entitled to maintenance.

6. He submits that the learned Family Court has overlooked the fact that at the time of filing of the complaint under Section 125 of the CrPC, the petitioner was employed as a home guard and was earning a meagre sum of ₹10,000 – 12,000/- per month. He further submits that the petitioner was working as a field employee and was earning a sum of ₹10,500/- per month when the impugned order was passed.

7. It is not disputed that Respondent No.1 is the wife and Respondent Nos.2 and 3 are the children of the petitioner. 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.

8. Notably, no such ground is pleaded or argued by the

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petitioner that would disentitle her wife to the maintenance.

9. The learned Family Court had categorically recorded in the impugned order that the petitioner neither disclosed his true income nor the nature of his business and therefore was inclined to draw adverse inference about the income of the petitioner based on the material available on record.

10. It is not the case of the petitioner that he had adduced any evidence before the learned Family Court to showcase his alleged financial status, which was ignored by the learned Family Court in carrying out the assessment at that stage.

11. 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 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**). Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of an appropriate amount to the respondents cannot be ruled out.

12. 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**]

13. At this stage, no evidence has been filed which would show that Respondent No.1 is in a position to maintain herself and Respondent Nos. 2 and 3 except for bare claims of the petitioner.

14. It is trite law that a husband cannot shirk his sacrosanct

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duty to financially support his wife and minor child. 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)

15. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent Nos. 1, 2 and 3. In such circumstances, in my opinion, the maintenance awarded by the learned Family Court, is not unreasonable.



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

AMIT MAHAJAN, J

JULY 5, 2024