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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 798/2023, CRL.M.A. 20034/2023 &
CRL.M.A. 20036/2023

GAUTAM SEHGAL Petitioner
Through: Mr. C. Prakash, Mr.
Abhishek Rana & Mr. T.
Parth, Advocates.

versus

DIVYA SEHGAL Respondent
Through: Dr. A P Singh, Mr. V.P.
Singh, Ms. Geeta
Chauhan, Ms. Richa
Singh, Ms. Pratima Rani
& Mr. Nihal Shekhawat,
Advocates (Through
V.C.).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **03.05.2024**

1. The present petition is filed under Section 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 31.03.2023 (hereafter '**the impugned order**'), passed by the learned Family Court, Central District, Tis Hazari Courts, Delhi, in MT No. 454/2018 titled as '*Divya Sehgal vs. Gautam Sehgal*'.
2. The learned Family Court, by the impugned order, granted interim maintenance of ₹10,000/- per month to the respondent, from the date of the filing of the application till final disposal of the case, along with a lump sum amount of ₹15,000/- towards her litigation expenses.
3. The learned counsel for the petitioner submits that the learned Trial Court has failed to appreciate that the petitioner is only educated upto 12th class and he is earning only ₹20,000/- per

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month by working as a helper in a chemist shop.

4. He submits that the petitioner has taken care of the children since 2013 when the respondent left the matrimonial home and refused to live with the petitioner. He submits that the respondent is not entitled to any maintenance under Section 125(4) of the Code of Criminal Procedure, 1973 as she refused to live with the petitioner without any reason.

5. He submits that the petitioner is bearing all the expenses of both the children, including their educational expenses.

6. He submits that the learned Family Court has failed to appreciate that the respondent has done graduation and has an 18 month diploma in advance software from NIIT. He submits that the respondent is running a tour and travel agency and earning more than ₹1.5 lakh per month.

7. The learned Family Court in the impugned order had noted that the respondent had admitted in her affidavit that she tried to run a business, however she was unsuccessful to run the same due to the pandemic. At this stage, no evidence has been filed which would show that the respondent is running a business and earning ₹1.5 lakh per month or that she is in a position to maintain herself.

8. While the learned Family Court has not assessed the exact income of the petitioner, it has been correctly observed that there is a discrepancy in the submissions where on one hand the petitioner is stating that he is earning merely ₹20,000/- per month and on the other he is contending that his expenditure is ₹35,000/- per month. It was observed that while the petitioner has averred that he is merely a helper in a chemist shop, he belongs to a well off family and the chemist shop is owned by them.



9. It has been noted in a catena of judgments that there is a tendency to downplay the income and not disclose the same 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**).

10. It is also submitted that the respondent is not entitled to maintenance in terms of the provisions of Section 125 (4) of the CrPC. It is stated that the respondent left the society of the petitioner in the year 2013 itself and only instituted the case for maintenance after the petitioner filed the case seeking divorce in the year 2018.

11. It is pertinent to note that the respondent in her application for ad-interim maintenance has pleaded that the petitioner and his family members had beaten her and the petitioner had been sent to the lock-up due to the same. It is averred that the respondent had tried multiple times to go to her matrimonial home, however, she was not allowed to enter the house or meet the children.

12. It is noted that the petitioner had not raised the aforesaid objection at the first instance in his reply to the respondent's application for interim maintenance or ad-interim maintenance. Thus, the said aspect has not been dealt with by the learned Family Court. In the absence of any evidence, at this stage, this Court cannot draw the inference from mere bald assertions of the petitioner that the respondent had refused to live with him without any sufficient reason.

13. 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.

14. It is not disputed that the impugned order is only an order of interim maintenance. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence led by the parties.

15. A sum of ₹10,000/- per month, in the opinion of this Court, is reasonable maintenance at the interim stage.

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

17. The learned Trial Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

18. It is pointed out that the learned Family Court had noted *vide* order dated 25.04.2022 that the respondent will not be entitled to any maintenance for the period from 25.04.2022 till the next date of hearing, that is, 16.07.2022, on account of the delay caused by her in filing her income affidavit. It is submitted that the said order has not been taken into consideration by the learned Family Court while passing the impugned order.

19. It is thus clarified that the petitioner is not required to pay arrears of the awarded maintenance amount of ₹10,000/- per month to the respondent for the aforementioned period.

20. The petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 3, 2024

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