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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 808/2023 & CRL.M.A. 20341/2023

SANDEEP KUMAR GARG

.....Petitioner

Through: Mr. Shashi Bhushan Jha,
Adv.

versus

SULEKHA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.11.2024

1. The present petition is filed impugning the order dated 26.05.2023 (hereafter the '**impugned order**'), passed by the learned Family Courts, Rohini Courts, Delhi in MT No. 383/2021.
2. By the impugned order, the learned Family Court in a petition filed by respondent under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), has directed the petitioner to pay interim maintenance for a sum of ₹10,000/- per month to the respondent, from the date of the filing of the petition.
3. The learned counsel for the petitioner submits that earlier the petitioner was not working on account of his father's ailment who has since passed away, but now he has taken up a job and his monthly salary is to the tune of ₹20,000/- only.
4. The learned Family Court, in the impugned order, observed that while the petitioner claimed an income of ₹20,000/- per month, his bank statements showed several other credit entries in his bank account which *prima facie* indicate that



the petitioner had not disclosed his true income. Conversely, the bank statements of the respondent did not show any substantial income, underscoring the financial disparity between the parties.

5. 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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7. 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 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)

6. It is 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 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**]

7. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. 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)

8. The petitioner is an able-bodied man. There is nothing placed on record to show as to why the petitioner is unable to pay ₹10,000/- per month to his own wife. 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 source of income as his party business has now been closed, the 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)

9. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. In such



circumstances, in my opinion, the interim monthly maintenance of ₹10,000/- per month to the respondent is reasonable.

10. 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.

11. 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.

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

AMIT MAHAJAN, J

NOVEMBER 5, 2024