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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 839/2023 & CRL.M.A. 21479/2023
ABHISHEK KUMARPetitioner
Through: Mr. Neeraj Kumar,
Advocate (Through V.C.).

versus

ANSHURespondent
Through: Mr. Rajeev Pratap Singh,
Mr. Abhishek Gupta, Mr.
Gaurav Chauhan & Mr.
Umesh Gupta, Advocates
alongwith Respondent-in-
Person/Anshu.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
06.12.2024

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1. The present petition is filed impugning the order dated 25.02.2023 (hereafter the '**impugned order**'), passed by the learned Family Court, Tis Hazari Courts, Delhi in MT No. 357/2021.
2. By way of 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 ₹5,500/- per month to the respondent on the basis of the pay slip of the petitioner, from the date of the filing of the application.
3. The learned counsel for the petitioner submits that the petitioner's marriage with the respondent is invalid as per Hindu rites and ceremonies.
4. He contends that the respondent is living in adultery and, as such, is disqualified from claiming maintenance under Section

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125(4) of the CrPC. He has placed on record photographs purportedly showing the respondent in the company of another person, which, according to him, establish adulterous conduct on her part. Consequently, the petitioner submits that there was no justifiable basis for awarding ₹5,500/- per month as interim maintenance to the respondent.

5. The learned Family Court, by the impugned order, noted that the wife was not gainfully employed and considered the petitioner's obligation to support his wife, based on his admitted financial capacity, and determined the interim maintenance at ₹5,500/- per month.

6. It is a settled principle of law that the grant of interim maintenance is based on the need to ensure sustenance of the wife and is not contingent on establishing final liability at this stage. Allegations of adultery and the evidence adduced in support thereof are matters requiring a thorough trial and cannot be conclusively determined at the interim stage.

7. Section 125(4) of the CrPC provides that a wife living in adultery or without sufficient cause away from her husband is not entitled to maintenance. However, it is settled law such allegations are matters to be examined during the trial, and until proven, the wife's entitlement to maintenance remains intact. Mere photographs or evidence of the respondent being in the company of another individual cannot be treated as definitive proof of adulterous conduct.

8. The petitioner has also contended that the marriage between the parties is invalid. However, the object behind Section 125 of the CrPC is to prevent destitution and ensure the right to sustenance of the wife, and the entitlement to maintenance is not exclusively contingent upon the strict validity



of a marriage. The Hon'ble Supreme Court has consistently held that even if the marriage is taken to be invalid, as long as the husband and wife have cohabited as such, the husband cannot evade his obligation to provide financial support.

9. In the present case, even if the petitioner's claim regarding the invalidity of marriage is taken at its highest, it is not disputed that the petitioner and the respondent cohabited as husband and wife. Therefore, the petitioner's contention regarding the validity of marriage is not sufficient to absolve him of his obligation to pay interim maintenance under Section 125 of the CrPC.

10. 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 ₹5,500/- per month to the respondent is reasonable.

11. 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.

12. 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.

13. 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

DECEMBER 6, 2024