



2024:DHC:5173



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 01st JULY, 2024IN THE MATTER OF:+ **CRL.REV.P. 806/2024 & CRL.M.A. 18697/2024, CRL.M.A. 18698/2024**

GURPREET SINGH & ORS.

..... Petitioners

Through Petitioner-in-person

versus

PROTECTION OFFICER & ANR.

..... Respondents

Through

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. Petitioners have approached this Court challenging the Order dated 15.04.2024, passed by the learned Additional Sessions Judge dismissing the appeal, being CA No.76/2023, filed by the Petitioners herein under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'the DV Act'*) challenging the Order dated 07.02.2023, passed by the learned Metropolitan Magistrate in Complaint Case No.195/2022, fixing Rs.8,000/- as interim maintenance per month to be paid by the Petitioner No.1/Husband in favour of the Respondent No.2/Wife from the date of filing of the application under Section 23 of the DV Act. Vide the said Order the learned Metropolitan Magistrate has also directed the Petitioner No.1 herein to clear the arrears within six months from the date of the said Order.

Signature Not Verified

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SINGH KIRMOZYIA
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2. Material on record discloses that the marriage of Petitioner No.1 herein and the Respondent No.2 herein was solemnized on 23.02.2020 as per Sikh rites and ceremonies in Delhi and she started living with the Petitioner No.1 herein in her matrimonial house. It is stated that an application under Sections 12, 18, 19, 20, 22 & 23 of the DV Act was filed by the Respondent No.2 alleging domestic violence. It is stated that Domestic Incident Report was called for from the Protection Officer and the same was filed before the Learned Metropolitan Magistrate. It is pertinent to mention that Petitioner No.1 herein neither filed his reply to the application filed by the Respondent No.2 under the DV Act nor has he filed his affidavit of income before the learned Metropolitan Magistrate and, therefore, vide Order dated 05.12.2022, the learned Metropolitan Magistrate closed the right of the Petitioner herein to file a reply. In her income affidavit, Respondent No.2 herein has stated that she is BA Pass and is residing with her parents on rent. She has further stated that the Petitioner No.1 herein is B.Tech and runs a Xerox shop at the ground floor of a property in Faridabad and is also getting rental income by letting of the second floor of the said property. In her income affidavit the Respondent No.2 herein has stated that the total income of the Petitioner No.1 herein from all sources is more than Rs.1,50,000/- per month and, therefore, she prayed that the Petitioner No.1 be directed to pay Rs.30,000/- per month to her for her sustenance. Vide Order dated 07.02.2023, the learned Metropolitan Magistrate directed the Petitioner to pay interim maintenance of Rs.8,000/- per month to the Respondent No.2 herein from the date of filing the application. The learned Metropolitan Magistrate also directed the Petitioner No.1 herein to clear the arrears within six months from the date of the Order. This Order of the



learned Metropolitan Magistrate was challenged by the Petitioner No.1 herein by filing an appeal before the learned ASJ.

3. The learned Additional Sessions Judge vide the impugned Order has observed that apart from not filing a reply before the learned Metropolitan Magistrate, the Petitioner has also levelled unnecessary allegations against the Judiciary. In absence of any material produced by the Petitioner No.1 to show his income, the learned Additional Sessions Judge has affirmed the Order passed by the learned Metropolitan Magistrate. The Petitioner has, thereafter, approached this Court by filing the present Petition.

4. Even in the present Petition the Petitioner No.1 has not placed any income affidavit to show the income earned by him which would be helpful in fixing the interim maintenance. The Petitioner has also not been able to show that the Respondent No.2 has any other source of income and that she is in a position to maintain herself.

5. It is well settled that the issue of interim maintenance is decided on the basis of the pleadings. The Apex Court in Rajnish v. Neha, (2021) 2 SCC 324, has observed that in cases where the wife exaggerates on the income of the husband and the husband is not truthful about his income some amount of guesswork or rough estimation takes place to ascertain the amount of maintenance. In the present case, the Petitioner has chosen not to provide any material to show the income of the Respondent No.2 and has also not placed on record any material to show that the Respondent No.2 is in a position to earn any money. In her affidavit, Respondent No.2 has categorically stated that she has no source of income. It is well settled that the fact that the wife is in a position to earn money cannot negate her claim to maintenance.



6. Section 125 Cr.P.C. or the provision of maintenance under the DV Act is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities. The same applies to the provision of maintenance under the DV Act.

7. In Bhuwan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353, the Supreme Court examined the underlying purpose as well as social context of Section 125 of the Code, and observed as follows:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home forth e reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the



statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

8. In view of the above, this Court cannot find fault with the procedure adopted by the Courts below in taking the material given by the Respondent No.2 as the basis for calculation of interim maintenance. This Court is of the opinion that the amount of Rs.8,000/- per month fixed by the Trial Court as interim maintenance for the Respondent No.2/Wife would barely be sufficient for the Respondent No.2 to maintain herself.

9. In view of the above, no interference with the Order passed by the learned Additional Sessions Judge is, therefore, called for.

10. Accordingly, the Petition is dismissed as devoid of merits, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 01, 2024

Rahul