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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 833/2024 & CRL.M.A. 19249/2024

RAHUL

.....Petitioner

Through: Mr. Shakti Mann,
Advocate.

versus

SAPNA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.07.2024

1. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 19.03.2024 passed by the learned Family Court in MT No.26/2022 titled as '*Sapna v. Rahul*' (hereafter '**the impugned order**').

2. By way of the impugned Order the learned Family Court has directed the petitioner to pay a sum of ₹5000/-, to the Respondent as interim maintenance.

3. The learned Family Court initially by order dated 27.07.2023 had awarded a sum of ₹7000/- as interim maintenance towards the Respondent and the minor child while assessing the income of the Petitioner at ₹20,000/- per month.

4. Thereafter the petitioner had filed two applications- one for recalling of the order dated 03.05.2023, by which the defence of the petitioner was struck off and second application for recalling of the order dated 27.07.2023, by which the petitioner was directed to pay ₹7000/- as maintenance to his wife and

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minor child.

5. The learned Family Court by the impugned order had dismissed the application seeking recall of the order dated 03.05.2023, on the ground that sufficient time was given to the petitioner to file his written statement and no sufficient ground explaining the delay was stated in the application. The learned Family Court in the impugned order noted that there was an error in the order dated 27.07.2023 to the effect that it had granted a sum ₹7000/- to the Respondent as maintenance towards herself and the minor child, since it was inadvertently recorded in the order dated 27.07.2023 that the Respondent is maintaining the minor child.

6. The learned Family Court by the impugned order rectified the said error to the effect that since the income of the petitioner was assessed at ₹20,000/- per month, which was also admitted, has to be divided in four equal shares and the Respondent is only entitled for one share and the rest have to be given to the Petitioner and the minor child.

7. The learned Counsel for the petitioner submits that the Respondent is not entitled to get any maintenance, since she had eloped with some person. He submits that on 22.10.2021, while the petitioner was out for work, the petitioner's neighbour called informing him that the Respondent has left his house with heavy bags leaving the child alone.

8. He submits that the Respondent took all the jewellery articles along with cash present in the house and when the petitioner tried to find the Respondent and reconcile by sending the notice for restitution dated 31.05.2022, the respondent blocked the petitioner's mobile number and sent the reply to the



legal notice dated 10.09.2023 denying the allegations made in the legal notice sent by the petitioner.

9. He further submits that the respondent is also earning by working as a maid and therefore the petitioner is not liable to pay any maintenance to the Respondent.

10. On being pointedly asked, as to how much maintenance the petitioner is willing to pay to his wife, the learned counsel for the petitioner submits that the petitioner is not in a position to pay anything. He submits that the petitioner is merely earning ₹16,000/- per month, by working as a driver, and incurs an expenditure towards his rented accommodation and also the minor child who is in custody of the petitioner.

11. It is not in dispute that the petitioner has no dependants apart from Respondent and the minor child. Also, the conduct of the petitioner is not *bona fide* since he had not placed on record the relevant documents showing his actual earnings. The petitioner has not placed on record his salary slip or bank account statements.

12. The petitioner is an able-bodied man. There is nothing placed on record to show as why the petitioner is unable to pay ₹5,000/- 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 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)

13. 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 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]

14. The learned Family Court noted that the petitioner has no dependants apart from the Respondent and the minor child, and took the income of the petitioner at ₹20,000/- per month. In such circumstances the learned Family Court granting ₹5000/- per month as interim maintenance, as one fourth share to the Respondent, is not unreasonable.

15. Moreover, the order passed by the learned Family Court is only for the purpose of interim maintenance. A final order will be passed by the learned Family Court after taking the evidence on record. It is not denied that the amount is directed to be paid to the petitioner's wife and the relationship between the parties is admitted.

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

AMIT MAHAJAN, J

JULY 5, 2024

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