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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 850/2024, CRL.M.A. 19487-490/2024

MR. NITIN KUMAR

.....Petitioner

Through: Mr. Yogendra Singh, Adv.  
versus

SMT. VIBHA CHAUDHARY  
& ANR.

.....Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**18.07.2024**

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1. The present petition is filed impugning the order dated 16.10.2023 (hereafter the '**impugned order**'), passed by the learned Principal Judge, Family Courts, Shahdara, Karkardooma Courts, Delhi in MT No. 536/2021.

2. By way of the impugned order, the learned Family Court in a petition filed by respondent under Section 125 of the CrPC, has directed the petitioner to pay interim maintenance for a sum of ₹25,000/- per month to the respondents, from the date of the filing of the application till the disposal of the maintenance petition.

3. The learned counsel for the petitioner submits that the petitioner's livelihood depends on providing yoga lessons and contends that the learned Family Court has incorrectly assessed his monthly income as ₹50,000/-. Consequently, there was no justifiable basis for awarding ₹25,000/- per month as interim maintenance to the respondents.

4. He submits that Respondent No. 1 has falsely claimed that the petitioner operates a Patanjali Yoga Vidya School in Uttarakhand, allegedly earning ₹18 lakhs per annum. He submits

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that he has not earned any income from the school as no collaboration was established. Additionally, he submits that the petitioner had made efforts to restore conjugal rights with Respondent No. 1 and sought custody of their minor child, Respondent No. 2. However, Respondent No. 1 refused to reconcile or hand over the child's custody.

5. At this stage, the petitioner has not been able to show that Respondent No.1 is working. She is also having custody of the seven-year-old minor child / Respondent No.2.

6. The learned counsel for the petitioner submits that the petitioner has an average monthly income of ₹12,000 from part time jobs and holding yoga sessions.

7. The learned Family Court, in the impugned order, observed that while the petitioner claimed an income of ₹12,000 per month, his bank statements from 01.01.2019 to 31.12.2019 indicated a significantly higher income. The court also took into account photographs suggesting that the petitioner was living a luxurious lifestyle. Conversely, the bank statements of Respondent No. 1 did not show any substantial income, underscoring the financial disparity between the parties.

8. 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**]

9. 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)

10. The petitioner is an able-bodied man. There is nothing placed on record to show as to why the petitioner is unable to pay ₹25,000/- per month to his own wife and minor child. 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)

11. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support the respondents. In such circumstances, in my opinion, the interim monthly maintenance of ₹25,000/- per month to the respondents is reasonable.

12. 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.

13. 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.

14. 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**

**JULY 18, 2024**

**“SS”**

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