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

+ **CRL.REV.P. 1030/2023 & CRL.M.A. 26551/2023,**
CRL.M.A. 26552/2023, CRL.M.A. 26553/2023,
CRL.M.A. 1820/2024, CRL.M.A. 1871/2024

RAHUL ROHTAGI Petitioner
Through: Petitioner in person.

versus

SHALINI AGGARWAL AND ANR Respondents
Through: Mr. B. P. Aggarwal and
Mr. Rajinder Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
07.05.2024

1. The present petition is filed under Sections 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 19(4) of the Family Courts Act, 1984 and Article 227 of the Constitution of India seeking setting aside the order dated 24.08.2023 (hereafter '**the impugned order**'), in MT No. 857/2019, passed by the learned Family Court, Shahdara, Karkardooma Courts, Delhi.
2. The learned Family Court, by the impugned order, had granted interim maintenance of ₹15,000/- towards his minor child.
3. The petitioner submits that while the learned Family Court awarded a monthly maintenance of ₹15,000/- to Respondent No.2, this Court by an interim order dated 03.10.2023, subsequently, reduced this amount to ₹10,000/-. He further argues that he is an advocate and earns a variable income and the



learned Family Court has erroneously concluded the fixed income to be ₹50,000/- per month.

4. It is relevant to note that the learned Family Court has aptly taken into consideration that both the petitioner and Respondent No.1 are practicing advocates and have regular source of earning as well as capacity to earn. It is due to these reasons that the learned Trial Court awarded no maintenance to Respondent No.1.

5. Maintenance has only been awarded in favour of Respondent Nos. 2, who is the minor child of the petitioner and Respondent No. 1 and is presently in custody of Respondent No.1.

6. A father cannot shirk his sacrosanct duty to financially support his minor children. 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)

7. Thus, it is incumbent on the petitioner, who is an able-bodied man and is a practicing lawyer, to financially support



Respondent No.2. In such circumstances, in my opinion, the interim monthly maintenance of ₹15,000/- per month to Respondent Nos. 2 which was awarded by the learned Family Court on the basis of the bank statement of the petitioner, is reasonable. The learned Family also took note of the Income Tax Returns filed by the petitioner to ascertain that the petitioner must be earning not less than ₹50,000/- per month.

8. It is not disputed that the impugned order is only an order of interim maintenance. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence on record.

9. 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.

10. 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

MAY 7, 2024