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

+ **CRL.REV.P. 1107/2023, CRL.M.A. 28531/2023 & CRL.M.A. 28534/2023**

JITENDRA KUMAR SAHU .....Petitioner

Through: Ms. Mansi Sharma, Adv.

versus

NEELAM .....Respondent

Through: Adv. Juhi Arora  
(DHCLSC) through V.C.

**CORAM:**

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

**ORDER**

**27.09.2024**

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1. The present petition is filed challenging the order dated 10.03.2023 (hereafter the '**impugned order**'), passed by the learned Principal Judge, Family Courts, Central District, Tis Hazari Courts, Delhi, in MT No. 244/2020.

2. The learned Family Court, by the impugned order, 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 ₹8,500/- per month to the respondent and the two minor children of the parties, 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 learned Family Court has erroneously awarded an exuberant amount as interim maintenance on the basis of surmises and conjectures.

4. She submits that the learned Family Court has failed to appreciate that the petitioner is earning less than ₹7,000/- per



month and he is incapable of paying the awarded maintenance amount.

5. She submits that the learned Family Court has erroneously relied on the minimum wages as applicable to Delhi while assessing the income of the petitioner without appreciating that the petitioner is now working as a labourer in Lucknow, Uttar Pradesh. She submits that the minimum wages in Uttar Pradesh is about ₹10,089/- per month.

6. She submits that the learned Family Court has also failed to appreciate that the earning capacity of the petitioner has been severely reduced due to his medical ailments.

7. She submits that the respondent is also employed in a private job and she is earning ₹10,000/- per month.

8. She submits that the bank account statement of the respondent shows multiple credit entries running in thousands that shows her capability to earn. She submits that due to the same, the learned Metropolitan Magistrate had granted interim maintenance of ₹3,500/- only to the minor children of the parties in the petition preferred by the respondent under the Protection of Women from Domestic Violence Act, 2005.

9. The learned counsel for the respondent submits that the petitioner is gainfully employed and he is downplaying his income to avoid paying appropriate maintenance.

10. She submits that it is incorrect to suggest that the respondent is employed.

11. The learned Family Court, in the impugned order, observed that the minor children of the parties are both going to school and took into consideration the educational and other expenses that would need to be incurred on their behalf to ensure a decent living.



12. 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**].

13. It has been argued that the petitioner is staying in Uttar Pradesh and thus the reliance on minimum wages index for an unskilled person in Delhi could not have been relied upon. It has also been argued that the petitioner was not earning the said amount even when he was staying in Delhi. While the reasoning for the petitioner leaving Delhi and his current income would be finally assessed during the course of trial, it cannot be ignored that the respondent is also taking care of the two minor kids of the parties.

14. It is pointed out that the petitioner was earlier working in Delhi as a contractual labourer. The reasons of the petitioner shifting to Uttar Pradesh and his income will be conclusively assessed after the parties have led their evidence.

15. At this stage, the assessment of the petitioner's income and awarded maintenance of ₹8,500/- does not seem to be exuberant or unreasonable.

16. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife and minor children. 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)

17. Although it is argued that the respondent is employed in a private job, however, at this stage, the petitioner has not been able to show that the respondent is working. She is also having custody of the minor children of the parties.

18. Insofar as the incapacity of the petitioner to pay the awarded maintenance amount is concerned, as noted above, the petitioner is an able-bodied man and it is incumbent on him to financially support the respondent and the minor children.

19. 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.



20. The learned Family Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

21. 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.

22. Needless to say, Petitioner No.1 would be entitled for adjustment if any amount is being paid by him as maintenance under any other proceedings.

**AMIT MAHAJAN, J**

**SEPTEMBER 27, 2024**