



\$~48

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5969/2022, CRL.M.A. 23416/2022 &**
CRL.M.A. 23418/2022

CHANDER CHHABRA & ANR.Petitioners

Through: Mr. C.K. Bhatt, Advocate.

versus

JYOTI CHHABRARespondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

07.10.2024

%

1. The present petition is filed challenging the judgment dated 13.03.2020 (hereafter '**impugned judgment**'), passed by the learned Appellate Court, in CA No. 594/2019.

2. The learned Metropolitan Magistrate, South East District, Saket Courts, Delhi, by the order dated 09.10.2019, in CC No. 631173/2016, had awarded an interim maintenance for a sum of ₹4,000/- per month to the respondent from the date of the order till the disposal of the case.

3. The respondent's appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') challenging the order dated 09.10.2019 was allowed by the impugned judgment and the interim maintenance was increased to ₹7,000/- per month.

4. The learned Appellate Court observed that the interim maintenance of ₹4,000/- was not enough and enhanced the interim maintenance by observing that the petitioner had himself admitted to having an income of ₹15,000/- per month.

5. The learned counsel for the petitioners submits that the impugned judgment is based on conjectures and the learned Appellate Court has erroneously awarded an exuberant amount

CRL.M.C. 5969/2022

Page 1 of 4



as interim maintenance to the respondent.

6. He submits that Petitioner No.2 (mother of Petitioner No.1) is dependent on Petitioner No.1.

7. He submits that the respondent is clearly skilled and she has sufficient means to maintain herself. He further submits that the learned Appellate Court did not take into account that the respondent has admitted to earning an income of ₹20,000/- per month from her beauty parlour prior to the marriage of the parties.

8. He submits that the bank statements of the respondent also show that she is earning. He further submits that there are also certain discrepancies in the affidavits filed by the respondent.

9. He submits that it was erroneously observed that the rent agreement placed on record by Petitioner No.1 could be a ploy to pay less maintenance as the father of Petitioner No.1 owned a house.

10. The learned Trial Court had awarded an interim maintenance of ₹4,000/- to the respondent after noting that a *prima facie* case of domestic violence was made out against Petitioner No.1. The same was enhanced *vide* the impugned judgment to ₹7,000/- per month.

11. Concurrent findings have been given that specific allegations are made that the respondent was subjected to domestic violence. It has also been noted that the relationship between the parties has not been disputed. Both the learned Appellate Court and the learned Trial Court have also assumed the income of the petitioner to be at least ₹15,000/-.

12. Although it is argued that the petitioner is no longer earning ₹15,000/- per month, however, this Court cannot ignore that the amount is lower than the minimum wage in Delhi for an



unskilled worker and cannot be said to be exuberant.

13. It is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the respondent is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Any woman who proves that she has suffered domestic violence at the hands of her spouse/partner, is entitled for interim relief.

14. Unlike Section 125 of the Code of Criminal Procedure Code, 1973, maintenance under the DV Act is not tethered on the inability of the wife/ victim to maintain herself. Moreover, while it is argued that the respondent is running a beauty parlour and she is capable of maintaining herself, the learned Appellate Court has rightly noted that the same is a bald assertion. No material has been adduced to show that she is earning any amount and can maintain herself at this stage.

15. In the present case, both the learned Trial Court and the learned Appellate Court have explicitly recorded that *prima facie* it appears from the complaint that the respondent was subjected to domestic violence.

16. Insofar as the mother of Petitioner No.1 is concerned, it is seen that the father expired way back in the year 2017. Petitioner No.1 has also annexed a newspaper advertisement to show that his parents had disowned Petitioner No.1 in the year 2015 itself. At this stage, Petitioner No.1 has adduced no material to show that he is incurring any expenses on behalf of his mother or that she is dependent on him. It is also not explained as to why he is then allegedly staying in a rented premises either when his father used to own a house.



17. It has been noted in a catena of judgments that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute. Thus, the possibility of Petitioner No.1 undermining his income to avoid paying maintenance of an appropriate amount to the respondent cannot be ruled out at this stage.

18. It is incumbent on Petitioner No.1, who is an able-bodied man, to financially support the respondent. Even otherwise, a maintenance of ₹7,000/- per month, in the opinion of this Court, is not unreasonable at the interim stage. The learned Appellate Court has rightly appreciated that the cost of living in a metro city is high and the purpose of awarding maintenance is to ensure that the wife does not slip into vagrancy.

19. It is not disputed that the impugned judgment 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 Trial Court would pass a final order in regard to maintenance after considering the evidence on record.

21. In view of the above, this Court finds no reason to interfere with the impugned judgment and the petition is dismissed in the aforesaid terms.

22. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the impugned judgment or in this order.

AMIT MAHAJAN, J

OCTOBER 7, 2024/ 'Aman'

CRL.M.C. 5969/2022

Page 4 of 4