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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1214/2023**
AMAN GULIAPetitioner

Through: Mr. Anuj Arora,
Advocate.

versus

ANKITA ALIAS POONAM
AND ORS.

.....Respondents

Through: Mr. Nitish Ojha, Advocate
for R-2 (Through V.C.).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
06.12.2024

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1. The present petition is filed impugning the order dated 15.09.2023 (hereafter '**impugned order**') passed by the learned Family Court, Saket Court, Delhi in MT No. 103/2020.

2. By the impugned order, the learned Family Court in a petition filed by the respondents under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), assessed the income of the petitioner to be ₹25,000/- per month and directed the petitioner to pay interim maintenance for a sum of ₹15,000/- per month to the respondents, from the date of filing of the petition under Section 125 of the CrPC till disposal of the petition. Respondents are the petitioner's wife and two minor children.

3. The learned counsel for the petitioner submits that the interim maintenance fixed by the learned Family Court is on an erroneous presumption. He submits that the petitioner is earning a monthly salary of ₹12,000/-. Consequently, he submits that the payment of interim maintenance of ₹15,000/- per month to the respondents is not feasible.

4. He submits that Respondent No. 1, the wife, is gainfully employed and runs a general store named "Anvi General Store"

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in Lado Sarai, New Delhi, along with her elder sister. He argued that Respondent No. 1 is capable of supporting herself financially and does not require maintenance.

5. *Per contra*, the learned counsel for the respondents submits that Respondent No. 1 has no source of income to maintain herself and Respondent Nos. 2 and 3, her minor children.

6. The learned Family Court assessed the petitioner's income based on the bank statements and the financial documents placed on record. It noted that the average monthly deposits in the petitioner's account approximated ₹25,000/-, which was considered as his monthly income. The petitioner's argument that a substantial portion of the deposits constituted contributions from his father to pay for a car loan was not supported by credible evidence or corroborating documents.

7. Further, the Court observed discrepancies in the petitioner's claims regarding his employment. While the petitioner claimed to earn ₹12,000/- per month as a casual driver, the Family Court highlighted inconsistencies in the termination letter and the petitioner's own admissions. The termination letter reflected that his dismissal was due to his own misconduct, and the petitioner failed to demonstrate any earnest effort to seek alternative employment.

8. The petitioner relies upon certain photographs to contend that the wife runs a general store. The same in the opinion of this Court is not a sufficient proof at this stage to show that the wife is gainfully employed, without any other supporting documents. Contention in that regard would be tested during the course of trial after the parties have led their evidence.

9. Even otherwise, wife allegedly running a general store



does not absolve petitioner of his legal obligation to provide maintenance. Even if it is assumed that Respondent No. 1 has some form of income, the law is well-settled that a wife's earnings do not necessarily disentitle her from claiming maintenance particularly in light of the needs of the minor children under her care.

10. 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)

11. Similarly, the Hon'ble Apex Court in the 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....***

x-x-x

*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)

12. It is thus incumbent on the petitioner, who is an able-bodied man, to financially support the respondents. In such circumstances, in the opinion of this Court, the interim maintenance of ₹15,000/- per month to the respondents is not unreasonable.

13. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the parties, along with the allegations and counter allegations, would be the subject matter of trial, and would have to be decided after the parties have led their evidence.

14. The learned Family Court is directed to pass the final order uninfluenced by the observations made in this order.

15. 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

DECEMBER 6, 2024