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

\+ **<u>CRL.REV.P. 1258/2023 & CRL.M.A. 31878/2023</u>**

SURINDER KUMAR JAIN ..... Petitioner
Through: Mr. S. L. Sagar, Adv.

versus

SEEMA JAIN & ORS. ..... Respondents
Through: Ms. Vrinda Bhandari & Mr. Madhav Aggarwal, Advs. for respondent Seema Jain (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **16.04.2024**

1. The present petition is filed under Sections 397/401 of the Code of Criminal Procedure, 1973 ('**CrPC**') impugning the order dated 21.08.2023 (hereafter '**the impugned order**'), in MT No. 660/2022, passed by the learned Family Court, Shahdara, Karkardooma Courts, Delhi.

2. The learned Family Court, by the impugned order, had granted interim maintenance of ₹7,500/- per month to Respondent Nos. 2 and 3 each, from the date of the filing of the application till the final disposal of the case. The learned Family Court had observed that while the petitioner had stated that he was earning ₹200/- per day, but his bank statement proved that his regular income was more than he admitted. It was also noted that while Respondent No.1 had admitted that she was earning ₹6000- ₹7000/- per month, however, her bank statement reflected that she had no regular source of income like the petitioner. Ultimately, the learned Family Court had noted that the petitioner

was liable to maintain both his children, that is, Respondent Nos. 2 and 3.

3. The learned counsel for the petitioner submits that the learned Trial Court did not give any reason in the judgement for awarding a maintenance of ₹7,500/- to Respondent Nos. 2 and 3 respectively.

4. She submits that Respondent No.1 in her pleadings before the learned Trial Court had admitted that she had sold a property and that she was maintaining herself and Respondent Nos. 2 and 3 from her share of the sale proceeds. She submits that the said property was the exclusive property of Respondent No.1 as the same was purchased by the petitioner in her name.

5. She submits that the respondents had attempted to kill the petitioner due to which he had left the shared household. She further submits that the belongings of the respondent and the readymade materials used by him to earn his livelihood are in possession of Respondent No.1.

6. While the learned Family Court has not assessed the exact income of the petitioner, this Court in a catena of judgments has noted that some guesswork on the part of the Court is permissible when determining maintenance under Section 125 of the CrPC.

7. It is relevant to note that the learned Trial Court has aptly taken into consideration that Respondent No.1 is working as a beautician and that she has certain income from a property. It is due to these reasons that the learned Trial Court awarded no maintenance to her.

8. Maintenance has only been awarded in favour of Respondent Nos. 2 and 3, who are the minor children of the petitioner, whose custody is with Respondent No.1. The relationship of the petitioner with Respondent Nos. 2 and 3 has

not been denied.

9. At this stage, no evidence has been filed which would show that Respondent No.1 is in a position to maintain Respondent Nos. 2 and 3 except for bare claims of the respondents having huge savings and Respondent No.1 having the sale proceeds from the property.

10. The contention regarding the sale proceeds has been sought to be substantiated by the pleadings of Respondent No.1. However, it is relevant to note that it is contested by Respondent No.1 in her pleadings that the property in question belonged to her family and that she had given them their share of the sale proceeds.

11. It is also submitted that the said property was the exclusive property of Respondent No.1 and that the same was purchased by the petitioner in her name, however, the same has not been substantiated by any evidence.

12. 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. A maintenance of ₹7,500/- per month to Respondent Nos. 2 and 3 respectively, in the opinion of this Court, is reasonable at the interim stage.

14. Even otherwise, 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****….*
>
> *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)

15. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No.2. In such circumstances, in my opinion, the interim monthly maintenance of ₹7,500/- per month to Respondent Nos. 2 and 3 respectively, which was awarded by the learned Family Court on the basis of the bank statement of the petitioner, is reasonable.

16. 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.

17. 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.

18. 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

APRIL 16, 2024/*KDK*