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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1260/2023, CRL. M.A. 31968/2023 &**
CRL.M.A. 19092/2024

ANIL KUMAR

.....Petitioner

Through: Mr. Johri Mal, Adv.
(through VC)

versus

KANCHAL PAL & ANR.

.....Respondents

Through: Ms. Roshni Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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06.08.2024

1. The present petition is filed impugning the order dated 26.09.2023 (hereafter '**impugned order**') passed by the learned Principal Judge, Family Courts, North District, Rohini Court, Delhi in MT No. 117/2022 titled *Kanchan Pal & Ors. v. Anil Kumar*.

2. By impugned order, the learned Family Court in a petition filed by the respondents under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), has directed the petitioner to pay interim maintenance for a sum of ₹12,000/- per month to the respondents, from the date of filing of the petition under Section 125 of the CrPC till further orders/during the pendency of the petition.

3. The learned counsel for the petitioner submits that the learned Family Court has incorrectly assessed the petitioner's salary to be ₹23,600/- per month, which was his gross salary and not his net salary.

4. The petitioner has also filed a copy of the termination

CRL.REV.P. 1260/2023

Page 1 of 4



letter in order to contend that he, at present, is not gainfully employed. Consequently, the learned counsel for the petitioner submits that the payment of interim maintenance of ₹12,000/- per month to the respondents is not feasible.

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

6. The learned Family Court, in the impugned order, perused the salary statement of the petitioner for the month of August, 2023. It was also noted that the petitioner himself admitted his monthly income to be around ₹23,600/-.

7. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife. 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)

8. 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....***

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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)

9. While the petitioner has placed his termination letter on record to contend that at present he is not gainfully employed, from a bare perusal of the termination letter, it is apparent that the petitioner has not been attending the office regularly. The petitioner was not arriving on time and was not doing his job properly. It is apparent that the employment of the petitioner has been terminated because of his own wrongs.

10. The petitioner cannot take advantage of his wrongs and argue that he should not be directed to pay maintenance. As observed by the Hon'ble Apex Court in **Shamima Farooqui v.**



Shahid Khan (supra), the right of the wife to receive maintenance under Section 125 of the CrPC, unless disqualified, is absolute. 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 ₹12,000/- per month to the respondents is reasonable.

11. 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.

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

13. The learned counsel for the respondents, on instructions, fairly submits that she will not press for execution of the maintenance amount for a period of three weeks from today.

14. 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

AUGUST 6, 2024

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