



2024:DHC:3263



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

Date of decision: 24.04.2024

+ **CRL.REV.P. 1281/2019 & CRL.M.A. 42217/2019,
CRL.M.A. 10387/2022**

DR. ALOK KUMAR TIWARI Petitioner

Through: Mr.H.K. Chaturvedi, Ms.Anjali
Chaturvedi, Mr.Sagar
Chaturvedi, Ms.Megha
Chaturvedi and Mr.Ramaditya
Jadon, Advs.

versus

SMT. MAMTA Respondent

Through: Mr.Pawan Sharma and Mr.Om
Prakash, Advs.

+ **CRL.REV.P. 99/2020 & CRL.M.A. 2340/2020, CRL.M.A.
29924/2023**

MAMTA Petitioner

Through: Mr.Pawan Sharma and Mr.Om
Prakash, Advs.

versus

DR. ALOK KUMAR TIWARI Respondent

Through: Mr.H.K. Chaturvedi, Ms.Anjali
Chaturvedi, Mr.Sagar
Chaturvedi, Ms.Megha
Chaturvedi and Mr.Ramaditya
Jadon, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

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NAVIN CHAWLA, J. (ORAL)

1. These cross petitions have been filed by the parties under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the judgment dated 28.08.2019 (hereinafter referred to as 'Impugned Judgement') passed by the learned Principal Judge, Family Court, Patiala House Courts, Delhi (hereinafter referred to as the 'Family Court') in MT No. 307/2018 titled as ***Mamta v. Dr.Alok Kumar Tiwari***, on an application filed under Section 125 of the Cr.P.C. by the wife, that is , Smt.Mamta, against the husband, that is, Dr. Alok Kumar Tiwari.

2. The parties shall, in the present order, be now referred to as the wife and the husband, respectively.

3. By the Impugned Judgement, the learned Family Court has directed the husband to pay maintenance of Rs.20,000/- per month to the wife with effect from the date of the filing of the said petition till her lifetime or till she remarries.

Submissions of the learned counsel for the wife

4. The learned counsel for the wife submits that the learned Family Court, in its Impugned Judgement, has erred in determining the income of the husband as only Rs.1,60,000/- per month. He submits that the salary slips that were placed on record before the learned Family Court, showed the husband to be earning a gross salary of a sum of Rs.2,20,000/- per month. The learned Family court, in the Impugned Order, has observed



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that the services of the husband had not been terminated by the employer but he had voluntarily left the job to practice on call basis for different hospital. He is a qualified plastic surgeon and therefore, the learned Family Court drew a presumption of the income of the husband to be Rs.1,60,000/- per month. He submits that the income of the husband cannot be less than Rs.2,20,000/-, which he was earning in his employment. He submits that, therefore, the determination of the maintenance by the learned Family Court is incorrect.

5. He further submits that the learned Family Court has determined the maintenance of the wife on the premise that she is working as a nurse on a contractual basis and is earning a salary of Rs.50,288/- per month. He submits that the contract of the wife has since expired/terminated and she is no longer in employment. He submits that even otherwise, the maintenance determined by the learned Family Court is insufficient keeping in view the standard of living of the parties.

Submissions of the learned counsel for the husband

6. On the other hand, the learned counsel for the husband also challenges the maintenance fixed by the learned Family Court by the Impugned Judgement, contending that the wife was admittedly working as a nurse on contractual basis and earning a handsome salary of Rs.50,288/- per month.

7. He submits that the purpose of Section 125 Cr.P.C. is to ensure that the wife is provided a life of dignity and is properly



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maintained. He submits that where the wife herself is earning handsomely, she is not entitled to any maintenance.

8. He further submits that as far as the income of the husband is concerned, the learned Family Court has erred in drawing a presumption that the income of husband would be Rs.1,60,000/- per month. He submits that in such determination, the learned Family Court has failed to take into account the affidavit of expenditure that was filed by the husband before the learned Family Court.

Analysis and Conclusion

9. I have considered the submissions made by the learned counsels for the parties.

10. A few facts that emerged from submissions and from the Impugned Judgement are as follow:-

- a) The husband was earlier working with Park Medicenters and Institutions Pvt. Ltd., Gurugram, earning a gross salary of Rs.2,20,000/- per month. He voluntarily left the said job to do independent freelancing work;
- b) The wife was also working as a nurse, though on a contractual basis, and earning a salary of Rs.50,288/-.

11. The learned family court, therefore, balanced the rights and interest of both the parties by determining the maintenance to be paid by the husband to the wife as Rs.20,000/-.

12. In **Jayant Bhargava v. Priya Bhargava**, 2011 SCC OnLine Del 1651, this Court had stated that it was the duty of



the Courts to ensure that it should not be that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation and poverty. Further, this Court also noticed that there was a tendency of spouses in proceedings for maintenance to not truthfully disclose their income, and that in such cases, some guesswork on the part of the Court would be permissible. I may quote from the judgment as under:

“14. Further it has been noticed by the Courts that the tendency of the spouses in proceedings for maintenance is to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible.

15. The Supreme Court of India in the case of Jasbir Kaur (Smt.) (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision”.

16. Although there cannot be an exhaustive list of factors, which are to be considered in guessing the income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse, when the sources of income are either not disclosed or not correctly disclosed, the Court can take into consideration amongst others the following factors:

(i) Life style of the spouse;



- (ii) *The amount spent at the time of marriage and the manner in which marriage was performed;*
- (iii) *Destination of honeymoon;*
- (iv) *Ownership of motor vehicles;*
- (V) *Household facilities;*
- (Vi) *Facility of driver, cook and other help;*
- (vii) *Credit cards;*
- (viii) *Bank account details;*
- (ix) *Club Membership;*
- (x) *Amount of Insurance Premium paid;*
- (xi) *Property or properties purchased;*
- (xii) *Rental income;*
- (xiii) *Amount of rent paid;*
- (xiv) *Amount spent on travel/holiday;*
- (xv) *Locality of residence;*
- (xvi) *Number of mobile phones;*
- (xvii) *Qualification of spouse;*
- (xviii) *School(s) where the child or children are studying when parties were residing together;*
- (xix) *Amount spent on fees and other expenses incurred;*
- (xx) *Amount spend on extra-curricular activities of children when parties were residing together;*
- (xxi) *Capacity to repay loan.*

17. These are some of the factors, which may be considered by any court in guesstimating or having a rough idea or to guess the income of a spouse. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of her husband. In this case, the stand taken by the respondent with respect to his earning is unbelievable.”

13. Reference in this regard may also be made on the judgment of the Supreme Court in ***Rajnesh v. Neha & Anr.***,



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(2021) 2 SCC 324, and of this Court in *Vikas Khurana v. Preeti Khurana*, 2019 SCC OnLine Del 6738.

14. In view of the above judgements and considering the peculiar facts of the present case, no fault can be found with the determination of maintenance by the learned Family Court.

15. As far as the plea of the learned counsel for the wife that the wife is no longer working as her contract has come to an end, this would be a plea on basis of which the wife would be entitled to move an application under Section 127 of the Cr.P.C. before the learned Family Court. Any such application moved by the wife shall be adjudicated upon by the learned Family Court remaining uninfluenced by the order passed today.

16. The petitions are, accordingly, disposed of. The pending applications are also stand disposed of being rendered infructuous.

NAVIN CHAWLA, J

APRIL 24, 2024/ns/ss

Click here to check corrigendum, if any