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

+ **CRL.REV.P. 1321/2023 & CRL.M.A. 33491/2023**

RAJU SARKAR

.....Petitioner

Through: Mr. Sanjeev Rawat, Mr.
Yash Preet Singh & Ms.
Arooshi Rawat,
Advocates.

versus

**STATE GOVT. OF NCT OF DELHI
AND ANR.**

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State.
Ms. Jyoti Sheel & Ms.
Madhu Singh, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
06.12.2024

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1. The present petition is filed challenging the order dated 04.08.2023 (hereafter '**impugned order**') passed by the learned Family Court, Saket Courts, New Delhi, pursuant to which in an application filed by Respondent No.2 under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), the learned Family Court directed the petitioner to pay an interim maintenance of ₹5,000/- per month.

2. The learned counsel for the petitioner submits that the petitioner has large dependent family members to be taken care of.

3. He submits that the petitioner's parents and sister apart from the minor child are dependent on the income of the

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petitioner.

4. He submits that Respondent No.2 has left the matrimonial home without any reason and is not entitled to any maintenance.

5. He submits that Respondent No.2 has also not met the minor child in the custody of the petitioner.

6. The learned counsel for Respondent No.2 submits that Respondent No.2 was subjected to cruelty and harassment which led to her leaving the matrimonial home.

7. He submits that no mother would leave the minor child on her own free will.

8. He submits that the family of the petitioner has made the living of Respondent No.2 impossible in the matrimonial home.

9. She further submits that the father of the petitioner is not dependent and is getting pension. The sister of the petitioner is also not dependent and is gainfully employed.

10. The learned Family Court, while passing the impugned order, noting the various entries made in the account of the petitioner assessed the income of the petitioner as ₹25,000/- per month.

11. The learned counsel for the petitioner does not dispute that the said assessment, at this stage, is reasonable. Argument raised, however, is that the petitioner has other dependent family members to be taken care of and, therefore, a sum of ₹5,000/- as interim maintenance to Respondent No.2, is exuberant.

12. The contention of the petitioner is that the parents of the petitioner dependent on him and the sister is also living in their house and is dependent.

13. The said argument has been countered by stating that the father of the petitioner is a pensioner and that the sister is gainfully employed. No specific evidence is placed on record at



this stage to *prima facie* show either the dependency or otherwise. The same would be tested after the evidence is led.

14. The petitioner has not denied Respondent No.2 is a legally wedded wife and, at this stage, she is not staying with him.

15. The petitioner has also not been able to show that Respondent No.2 is gainfully employed and is in a position to maintain herself.

16. In regard to the contention that Respondent No.2 has left the matrimonial home without any reason, Respondent No.2 has specifically pleaded that she was subjected to harassment and cruelty. Thus, Respondent No.2 having left the matrimonial home on being harassed cannot be ruled out and would be tested after parties have led evidence.

17. The object of granting maintenance is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The Hon'ble Apex Court in ***Chaturbhuj v. Sita Bai* : (2008) 2 SCC 316**, has observed as under:

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to



maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].

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*In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. **Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”***

(emphasis supplied)

18. It is trite law that a husband cannot shirk his sacrosanct duty to financially support his wife and 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....***

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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 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)

19. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No.2, who is his legally wedded wife.

20. Even otherwise, the impugned order is only in regard to
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the interim maintenance.

21. The learned Trial Court will consider all the evidences led by the parties during the trial and pass the final order. At this stage, an amount of ₹5,000/- as an interim maintenance is a reasonable amount.

22. 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.

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

24. Pending applications also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 6, 2024

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