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

+ CRL.REV.P.(MAT.) 43/2024

SARFRAZ ANSARI

.....Petitioner

Through: Mr. Anil Kumar Gupta,
Advocate.

versus

MRS. SHABNAM KHAN AND ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.12.2024

CRL.M.A. 36616/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.A. 36615/2024 (for restoration of the present petition)

3. For the reasons stated in the application, the same is allowed.
4. CRL.REV.P.(MAT.) 43/2024 is restored to its original number and is taken up for hearing.
5. The application stands disposed of.

CRL.REV.P.(MAT.) 43/2024

6. The petitioner challenges the impugned order dated 18.05.2024 (hereafter '**impugned order**'), passed by the Family Court, Shahdara District, Karkardooma Courts, Delhi, in MT Case No. 117/2020.
7. By the impugned order, the learned Family Court directed the petitioner to pay interim maintenance of ₹15,000/- per month to Respondent No.2, who is the minor son of the petitioner and Respondent No.1, from the date of application till the pendency



of the case. The learned Family Court has taken note of the fact that Respondent No.1 is an advocate and she is working with RCC (Rape Crisis Cell) run by Delhi Commission for Women ('DCW'). It was noted that Respondent No.1 has admitted to earning a net income of ₹37,800/- per month. In view of the same, it was held that Respondent No.1 is capable of maintaining herself.

8. The learned counsel for the petitioner submits that the learned Family Court has erroneously awarded ₹15,000/- as interim maintenance to Respondent No.2 and the petitioner is not in a position to pay the same.

9. He submits that the income of the petitioner has been wrongly assessed and the petitioner is merely earning ₹10,000/- to ₹15,000/- per month.

10. He submits that Respondent No.1 is capable of maintaining herself and Respondent No.2 as she is earning a handsome amount. He submits that while the learned Family Court has rightly refused to grant any maintenance to Respondent No.1, however, an exuberant amount has been awarded in favour of Respondent No.2.

11. He submits that the sum of ₹15,000/- per month for the minor child, who is merely six years old and studying in first class, is excessive.

12. Maintenance has only been awarded in favour of Respondent Nos. 2, who is the minor child of the petitioner and Respondent No. 1, and is presently in custody of Respondent No.1.

13. The relationship between the parties is not disputed by the petitioner.

14. It has been argued that the income of the petitioner has



been erroneously assessed. While it was contended before the learned Trial Court that the petitioner is earning merely ₹15,000/- to ₹20,000/- per month, it is now claimed that the petitioner is only earning an amount of Rs. 10,000/- to Rs. 15,000/- per month. The petitioner is stated to be an advocate by profession who has no other dependants.

15. The learned Family Court noted that the petitioner had filed no ITR as he claimed to have no taxable income. It was noted that contrary to the same, there are entries in the bank account of the petitioner that disclose that he has not disclosed his income truly. The relevant portion of the impugned order is as under:

“Contrary to it, bank statement of the respondent with Axis Bank has proved material entries like entries dated 22.07.2022 for Rs. 16,000/-, Rs. 19,200/- on 10.08.2021, Rs. 21,750/- on 11.08.2021, Rs. 22,475/- on 0-7.09.2021. Rs. 20,000/- on 17.09.2021, Rs. 27,000/- on 18.10.2021. Rs. 30,000/- on 23.12.2021, Rs. 30,000/- on 19.01.2022, Rs. 20,000/- on 25.01.2022. Rs. 15,000/- on 02.03.2022, Rs. 28,200 /- on 09.06.2022. Rs. 20,000 /- on 04.07.2022, Rs. 22,000/- on 20.01.2023, Rs. 98,500/- on 04.10.2023. Rs. 21,800/- on 05.10.2023, Rs. 21,800/- on 05.10.2023, Rs. 11,000/- on 18.10.2023, Rs. 26,000/- on 19.10.2023, Rs. 25,000 /- on 13.01.2024, Rs. 25,000 /- on 29.01.2024, Rs. 14,000/- on 08.02.2024, Rs. 20,000/- on 09.02.2024, Rs. 60,000 /- on 20.03.2024 and many other entries of different amounts. Similarly, he has entries of Rs. 12,000/- dated 29.06.2022, Rs. 20,000/- dated 04.07.2022, Rs. 29,000/- dated 29.09.2022 with HDFC Bank.”

16. It is common knowledge that the parties embroiled in matrimonial dispute often underplay their income in order to avoid the liability of maintenance. The Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning [Ref. ***Bharat Hegde v. Saroj Hegde : 2007 SCC OnLine Del 622***].

17. From a bare perusal of the bank entries of the petitioner, in the opinion of this Court, the learned Family Court has rightly



observed that the income of the petitioner is not less than ₹50,000/- per month.

18. It is also argued that Respondent No.1 is capable of maintaining herself and Respondent No.2 as she earns ₹50,000/- per month from her work with the Rape Crisis Cell and over ₹25,000/- per month from her private practice at Karkardooma Court. Apart from the bald averments of the petitioner in this regard, no material has been placed on record to endorse the said submission.

19. It is trite law that a father cannot shirk his sacrosanct duty to financially support his minor child. 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 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)

20. Thus, it is incumbent on the petitioner, who is an able-bodied man and is a practicing lawyer, to financially support Respondent No.2. Even otherwise, in my opinion, the interim monthly maintenance of ₹15,000/- per month to Respondent No. 2 is reasonable.

21. It is not disputed that the impugned order is only an order of interim maintenance. 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.

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 Trial Court is directed to pass the final order in the main petition uninfluenced by the findings made in the impugned order or this order.

AMIT MAHAJAN, J

DECEMBER 5, 2024

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