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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 119/2024, CRL.M.A. 35809/2024**
& CRL.M.A. 35810/2024
SHRI AJAYPetitioner

Through: Mr. Kanwar Pal Singh,
Adv.

versus

SMT SAVITARespondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **29.11.2024**
CRL.M.A. 35811/2024 (exemption)

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

CRL.REV.P.(MAT.) 119/2024, CRL.M.A. 35809/2024 &
CRL.M.A. 35810/2024

3. The present petition is filed against the order dated 06.03.2024 (hereafter '**impugned order**') passed by the learned Principal Judge, Family Court, Karkardooma, Delhi in MT Case 645/2023.

4. By impugned order, the learned Family Court directed the petitioner to pay interim maintenance to the tune of ₹5,000/- per month to the respondent.

5. The learned counsel for the petitioner/husband submits that the petitioner is not employed at the moment. He submits that the petitioner is not in a position to pay a sum of ₹5,000/- per month.



6. He further submits that the respondent / wife has been running a Beauty Parlour and is in a position to maintain herself. He, however, does not dispute that no evidence has been brought on record as yet in order to show that the wife is gainfully employed.

7. The learned Family Court noted that the respondent, in her affidavit, stated that she is unemployed. The learned Family Court, noting that the minimum wages of even unskilled persons is more than ₹15,000/- per month, directed the petitioner to pay a sum of ₹5,000/- per month to the respondent from the date of filing of the application for interim maintenance till the disposal of the petition/ till further orders.

8. It is common knowledge and has been observed by this Court in many cases that it is a normal tendency of the parties, especially in matrimonial disputes to not disclose their true income. 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**).

9. 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)

10. 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....***

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)

11. In the present case, the learned counsel for the petitioner/ husband has claimed that the petitioner is not gainfully employed at the moment. It was the petitioner's case before the learned



Family Court that the petitioner is doing the work of *Dhobhi*, and has already been disowned by his family.

12. It is the petitioner's case, at this stage, that he is unemployed and the payment of ₹5,000/- per month to the respondent as interim maintenance is not feasible. While the veracity of the contentions of the petitioner/husband would be tested during the course of trial, this Court cannot lose sight of the fact that husbands embroiled in matrimonial disputes have a tendency to downplay their income and claim that they have no source of income in order to evade their liability to pay maintenance.

13. In the present case, the learned Family Court noted the averment of the petitioner and held that even an unskilled person earns more than ₹15,000/- per month as on date and fixed an interim maintenance of ₹5,000/- per month.

14. The said amount, in the opinion of this Court, is not unreasonable, considering that the petitioner is an able-bodied man and is in a position to earn. The relationship of the petitioner with the respondent is not disputed. In line with the dictum of the Hon'ble Apex Court in *Shamima Farooqui v. Shahid Khan* (*supra*) and *Anju Garg and Anr. v. Deepak Kumar Garg* (*supra*), the petitioner/husband cannot avoid his obligation to maintain his wife by raising contentions such as he is unemployed or is not doing well and is consequently not in a position to maintain his wife. The right of the wife to receive maintenance under Section 125 of the Code of Criminal Procedure, 1973, unless disqualified, is absolute.

15. It is thus incumbent on the petitioner, who is an able-bodied man, to financially support the respondent. Even



otherwise, the maintenance of ₹5,000/- per month, in the opinion of this Court, is not unreasonable at the interim stage.

16. 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.

17. It is not disputed that the order dated 06.03.2024 is only an order of interim maintenance. The learned Family Court would pass a final order in regard to maintenance after considering the evidence on record.

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.

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

20. Pending applications also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 29, 2024
“SK”