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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 9494/2024**

AZIZ-UDDIN

.....Petitioner

Through: Ms. Jyoti Tiwary &
Mr. Ajay Kumar
Srivastava, Advs.

versus

NAZIS PARVEEN

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

04.12.2024

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CRL.M.A. 36468/2024 (for exemption)

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

CRL.M.C. 9494/2024, CRL.M.A. 36469/2024, CRL.M.A. 36466/2024 & CRL.M.A. 36467/2024

3. The present petition is filed against the order dated 27.07.2024 (hereafter '**impugned order**') passed by the learned Principal District and Sessions Judge ('**PDSJ**'), South East District, Saket Courts, New Delhi in CA No. 20/2024.

4. By the impugned order, the learned PDSJ dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') and upheld the order dated 02.06.2023 passed by the learned Metropolitan Magistrate ('**MM**') whereby the petitioner was directed to pay interim maintenance of ₹20,100/- to the



respondent for the maintenance of the respondent and two minor children.

5. The learned counsel for the petitioner submits that the learned PDSJ erred in upholding the order of the learned MM granting interim maintenance to the tune of ₹20,100/- to the respondent. She submits that the order of the learned MM was passed mechanically without considering the facts and circumstances of the present case.

6. She submits that the petitioner is a Constable in UP Police earning a sum of ₹47,000/- per month. She submits that the said amount is not sufficient for the petitioner to maintain himself and his parents who are dependent on him. She submits that the respondent is well qualified and can maintain herself. She consequently submits that payment of interim maintenance to the tune of ₹20,100/- is not feasible.

7. The learned Metropolitan Magistrate ('MM') *vide* order dated 02.06.2023 assessed the monthly income of the petitioner to be ₹47,000/- per month as per the petitioner's own admission, and directed the petitioner to pay a sum of ₹20,100/- as interim maintenance to the respondent for the maintenance of the respondent and both their minor children.

8. The learned PDSJ *vide* impugned order noted that the respondent is a B.A. graduate. It was also the case of the respondent that she possessed no independent source of income, and is residing at the house of her maternal uncle.

9. The learned PDSJ further noted that the petitioner had not brought any material on record to show that his parents are dependent upon him. In the light of the aforesaid, the learned PDSJ dismissed the appeal filed by the petitioner under Section 29 of the DV Act and upheld the order dated 02.06.2023 passed

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by the learned MM granting interim maintenance for a sum of ₹20,100/- for the maintenance of the respondent and both their minor children.

10. 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. It is pertinent to note that Section 23 of the DV Act empowers the Magistrate to grant interim maintenance if the application prima facie discloses that the petitioner is committing an act of domestic violence, has committed an act of violence or may commit an act of domestic violence against the aggrieved person. Any woman who prima facie shows that she has suffered domestic violence at the hands of her spouse/ partner is entitled for interim relief.

12. It is pertinent to note that unlike Section 125 of the Code of Criminal Procedure, 1973 (**‘CrPC’**), maintenance under the DV Act is not tethered on the inability of the wife to maintain herself. Even otherwise, in the absence of credible proof to disclose that the wife is earning sufficient income to maintain herself, merely stating that the wife is earning does not disentitle



the wife from a grant of maintenance.

13. In the present case, the learned MM noted that from a perusal of the complaint, it *prima facie* appeared that the respondent was subjected to domestic violence by the petitioner. The learned MM took into consideration the status of the parties. It was noted that the petitioner, as per his own admission, was earning at least a sum of ₹47,000/- per month. The learned MM also took into account that the parents of the petitioner are dependent upon him. Considering that the respondent also has to provide for the two minor children, and the role and responsibility of the petitioner, the learned MM awarded a sum of ₹20,100/- per month as interim maintenance.

14. The learned PDSJ upheld the order dated 02.06.2023 passed by the learned MM. The learned PDSJ considered that the petitioner had not brought any material to demonstrate that his parents are dependent upon him. The learned PDSJ, considering the status of the parties, observed that interim maintenance for a sum of ₹20,100/- for the respondent and their children is a reasonable amount.

15. It is also pertinent to mention that the payment of maintenance under the DV Act is not dependent upon the inability of the wife to maintain herself. Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the commission of domestic violence. For this reason, in the absence of cogent proof establishing that the wife is earning sufficient income and is able to maintain herself, order for maintenance cannot be denied.

16. It is the contention of the petitioner before this Court that he also has to take care of his parents who are dependent on him, and that the father of the petitioner is not getting any pension.



This Court has taken note of the contentions of the learned counsel for the petitioner. It cannot however be denied that the respondent also has to provide for both the minor children. This Court cannot turn a blind eye to the fact that raising and providing for the interests of two children is a challenging task which demands substantial effort and dedication. Husband who has shirked his duty to raise his children, at this stage, cannot be allowed to contend that the wife is well-qualified and can maintain herself as well as two minor children.

17. It is, thus, incumbent on the petitioner to maintain his wife and children. The payment of ₹20,100/- per month to the respondent, in the opinion of this Court, is not unreasonable, at the interim stage.

18. It is not disputed that the impugned order is only in relation to grant of interim maintenance. The defences raised by the petitioner, 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.

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

20. 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. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 4, 2024