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

\+ W.P.(CRL) 1266/2023, CRL.M.A. 11913/2023, CRL.M.A. 1885/2024

SH DEV TYAGI .....Petitioner

Through: Mr. Pramod Kumar Dubey, Senior Advocate along with Ms. Smriti Sinha, Mr. Rupraj B., Ms. Shivani Singh, Mr. Samarth Panwar and Mr. Harshit Pandey, Advocates.
Mr. Nishant Solanki, Advocate.

versus

THE STATE .....Respondent

Through: Mr. Yasir Rauf Ansari, ASC for State.
Mr. Rajiv Dewan and Mr. Raunak Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **23.09.2025**

1. The present writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973[1] seeks quashing of order dated 13th March, 2023 passed by the Additional Sessions Judge-05, South District, Saket Courts New Delhi. By the impugned order, the Appellate Court dismissed the appeal preferred by the Petitioner and affirmed the order of the Metropolitan Magistrate dated 4th October, 2021,

[1] "Cr.P.C."

whereby interim maintenance was awarded in favour of Respondent No. 2 and the minor child.

2. To appreciate the controversy, the relevant facts, are briefly noted. The parties were married on 2nd December, 2015. Owing to marital discord and differences, they began living separately, and Respondent No. 2 has since been residing with her parents. Parties have one minor child from the marriage who is presently in the custody of Respondent No. 2. Respondent No. 2 thereafter invoked Section 12 of the Protection of Women from Domestic Violence Act, 2005[2] and moved an application seeking interim maintenance.

3. The factum of marriage between the parties is undisputed. Equally undisputed is the paternity of the minor child born from the marriage, who continues to remain in the custody of Respondent No. 2. Taking into account these circumstances, and upon consideration of the material placed on record, the Trial Court awarded interim maintenance in favour of Respondent No. 2 and the minor child to the following effect: INR 20,000/- per month to Respondent No. 2, INR 7,000/- per month for the minor child, along with his school fees, and INR 10,000/- per month as future rent upon production of rent documents.

4. Both parties carried the matter in appeal: Petitioner impugning the award on the ground of excessiveness, and Respondent No. 2 seeking enhancement. By the impugned order dated 13th March, 2023, the Appellant Court dismissed both appeals, thereby affirming the order of the Metropolitan Magistrate dated 4th October, 2021.

5. The impugned order not only records the rival submissions but also

extensively reproduces the reasoning of the Trial Court. The relevant portion, which forms the substratum of the present controversy, is extracted below:

> *"4. The reasoning of the Ld. Trial Court is also reproduced as under:*
> *"i) Though the first income affidavit filed by the aggrieved is dated 25.06.2018 but she has not declared here occupation in the said affidavit. It is only in her replication which is filed in February, 2021 that she has submitted the documents with respect to her employment from 05.06.2018 till 16.06.2020. The fact that she concealed her employment in the first instance cannot be ignored, however, in can also not be ignored that considering the situation of pandemic, it is very much possible that the aggrieved lost her job of cabin attendant with Indigo Airlines due to circumstances beyond her control. It can also not be ignored that schools and day cares are not completely open and it may be difficult for the aggrieved to work as she has the custody of the minor child.*
> *ii) The aggrieved has not brought on record any material to show that the respondent no.1 is earning a sum of Rs.15 lakhs per month.*
> *iii) From the ITRs of the respondent no.1 filed by aggrieved for the AY 2016-17 and 2017-18, it is noted that his gross total income was Rs.10 lakhs approximately. Further, as per the ITR filed by respondent no.1 for the year 2018-19, his gross total income is Rs.8,30,630/- and as per the computation of income filed with the same, it is noted that respondent no.1 has declared from house property of three properties. Thereafter, for the AY 2019-20, the respondent no.1 has declared gross total income of Rs.2,43,110/- and from the computation it is noted that the income from house property was not declared but income from business is declared. Similarly, for the AY 2020-21, the respondent no.1 has declared total income of Rs.2,62,010/- and has declared income from business and not income from house property. Now, it is evidence that income of the respondent no.1 as declared in the ITR has drastically reduced from AY 2016-17 to 2020-21. There is no explanation as to what happened to the properties in respect of which income from house property was declared in the AY 2018-19 but not in the subsequent years. It must be noted that the alleged date of separation is 19.03.2018, i.e. the end of financial year 2017-18(AY 2018-19). It is only after the said AY, that the income as well as source of respondent no.1 has changed with effect from AY 2019-20 and for AY 2020-21, that too without any explanation as to the source of income and change of the ownership of the house properties. It, thus, appears that respondent no.1 has tried to manipulate his sources*

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[2] "DV Act"

of income as declared in the ITR to avoid payment of interim maintenance to the aggrieved and minor child.

iv) It is also pertinent to note that in the latest income affidavit filed by respondent no.1 which is as per the format prescribed by Hon'ble Supreme Court of India in the case of Rajnesh vs. Neha (supra), the respondent no.1 has not declared the complete particulars. Though he has stated in part F that he is self employed and earning a monthly income of Rs.35,000/- but in the part I, respondent no.l has not given any description of nature of business/profession/vocation/self employed/work activity. He has not disclosed whether the same is being run as an individual, sole proprietorship, partnership, LLP, company or HUF etc. He has not even disclosed his net income or liabilities in respect of the said business. Thus, it is clear that the respondent no.1 has not disclosed complete particulars of his income to the Court despite the same being required to be disclosed in the affidavit. Accordingly, the respondent has withheld necessary information from the Court regarding business and income.

v) From the bank statement of respondent no.1, it is noted that he has received huge sums of money in his bank account in the year 2018 to 2020. For instance, a sum of Rs.50,000/- each is received on 02.08.2018 and 03.08.2018, thereafter, again a sum of Rs.50,000/- each is received on 27.08.2018 and 01.09.2018, further, a sum of Rs.1 lakh is received on 08.10.2018, a sum of Rs. 2,30,000/- is also received on 03.04.2019, a sum of Rs. 7,50,000/- is received on 04.12.2019 etc. There is no explanation as to the source of the said amounts being received in the account of respondent no.1. It was argued on behalf of the respondent no. 1 that even if the respondent no. 1 has received certain amounts in his bank account, it does not prove that he has any independent source of income. However, in this regard, firstly, it has to be noted that there is no explanation with respect to the amounts received on regular basis from one Manoj Kumar Tyagi and Anuj Tyagi. Secondly, as regards some amounts received from the father of the respondent no. 1 i.e. Sh. S.C. Tyagi, it is ironical that on one hand respondent no. 1 has filed publication in the newspaper dated 27.03.2018 claiming that his father has severed all ties with him and also debarred him from his movable and immovable properties by giving a public notice in the newspaper, but on the other hand his father is transferring lakhs of rupees to him even after the alleged public notice. Though it may be correct that mere receipt of money in the bank account of respondent no. 1 does not conclusively prove any independent source of income. However, in the absence of any explanation on record, presumption has to be drawn that huge sums of money being paid to respondent no. 1 in his bank account belong to him, otherwise why would people regularly pay him such huge sums of money. vi) It is also interesting that in his income *affidavit filed on 13.12.2018, respondent no. 1 states that he does not have any monthly income and that he is dependent on parents and relatives, while he has himself declared income for the AY 2019-20 (FY 2018-19). Clearly respondent no. 1 had made wrong disclosure in his income affidavit filed on 13.12.2018. From the aforesaid it is clear that respondent no.l has manipulated his income disclosed in ITRs after the separation from aggrieved and filing of the present case, without any justifiable explanation on record as to the sources of income; he has withheld requisite information regarding his income and source from the Court; he has made contrary submissions regarding being disowned by his father and yet enjoying a luxurious status from the money given by his father. At the same time, it can also not be ignored that income of the respondent no.1 cannot be taken to be Rs.15 lakhs per month as there is no material to support the same at this stage. Aggrieved is entitled to the interim maintenance from the income of the respondent no.1 and not from the income of the parents. It is also trite that some guess work is allowed in ascertaining the income of the parties while fixing interim maintenance, especially when parties have suppressed their true income".*

5. It is hardly believable that the parents of Dev Tyagi have disowned him or that his income has suddenly started decreasing on such a large scale. This is a clear case of deliberate attempt to manage the assets, properties and income in such a manner that any creditor cannot have any scope for recovering the money. It seems that from the date of separation, the husband Dev Tyagi started thoughtfully preparing a plan to somehow circumvent the eventual maintenance proceeding. Even during the arguments, Ld. Counsel for Dev Tyagi has not been able to explain as to what basically happened to the properties shown in the earlier income tax returns. I am of the opinion that no one can disown his son by paper publication. If in future the properties (even if self-acquired) have to be succeeded intestate, this Dev Tyagi shall be the Class-I legal heir despite any kind of paper publication. I am of the view that the said Dev Tyagi did not come to the Court with clean hands and rather made deliberate attempt to somehow conceal his actual income from the Court. It was for him to show every document, to provide every detail to the Court. If he has not done so, he cannot raise any grievance that the Court has made some guess work on the basis of concealments and living standard.

6. So far as the claim that Kanika Sharma was employed or is capable of earning is concerned, I am of the view that both the claims cannot come in the way of grant of monetary relief to an aggrieved person, as such a relief is not a charity but is a direct consequence of a culpable act. A claim has also been made that Kanika Sharma is residing with her parents and therefore, she cannot be provided with rental expenses. I am of the opinion that this argument is misconceived. The law does not oblige a father to maintain her daughter after the marriage. It is the husband who is *morally and legally obliged to maintain his wife. If due to a culpable act of husband, the wife is forced to reside with her parents, the husband cannot escape from his liability to ensure a suitable accommodation for the wife in terms of Section-19 of DV Act. If this alternate accommodation is not in the scene, the Ld. Trial Court cannot be faulted with in granting rental expenses. The Magistrate has also been considerate while deciding the rental expenses. She has directed such payment to be made for future rental expenses on filing of rent agreement. I am of the view that no grievance can be raised by Dev Tyagi in this regard.*

7. So far enhancement is concerned, it seems that Kanika Sharma has included the properties and assets of her in-laws without clarifying as to whether the same specifically belong to Dev Tyagi or not. It is not the law that the husband should take money from his parents or from their assets and then pay to the wife. It is this misconceived notion which appears to have prompted the Kanika Sharma to claim enhancement. I am further of the view that a matter related to interim maintenance should not be placed at the footing of final proceedings. There will be sufficient opportunities to both the sides to prove their allegations and counter-allegations including in respect of the actual income and expenses. Upon conclusion of evidence, a clear view can be taken in respect of the actual income of Dev Tyagi and actual maintenance requirement of Kanika Sharma. Thereafter the Ld. Trial Court can take a decision to enhance or reduce the maintenance. Nowadays, parties of domestic violence proceedings are fighting the interim maintenance till the end as if the same is the end of the matter. This is, however, not so. In my opinion, at this stage, there is no necessity to enhance the maintenance awarded by the Ld. Trial Court but at the same time considering the medical needs of the Kanika Sharma, I am of the view that the Ld. Trial Court should take a call for making proper arrangement in the form of medical insurance or ensuring that the medical needs of the wife Kanika Sharma is not frustrated due to shortage of funds. Section-23(1) of the DV Act does not say that interim orders can be passed only at once. Interim orders can be passed at any stage and for any number of times. The only pre-condition is that it should be just in the opinion of the Ld. Magistrate. Considering this situation, I am of the view that if Kanika Sharma applies for interim orders in respect of medical needs, the Ld. Magistrate may deal with the same in accordance with the law but at the earliest. At the same time, the main proceedings should not be stopped for any reason whatsoever and adjournments for evidence should not be granted unless exceptional circumstances are shown (In this case, it seems that Kanika Sharma has not cooperated for evidence despite several opportunities, as appearing from the last order passed by the L.d. Trial Court). Time has come to indicate to the parties that the Parliament has obliged the Courts to dispose the main proceedings within 60 days and the Courts will handle the situation strictly.

8. Having heard both the sides, I am of the opinion that both the

appeals have no merit and therefore, the same are dismissed but with the observations as aforesaid. However, nothing stated hereinabove shall be construed as opinion on final outcome of the case and the same shall be decided in accordance with law upon conclusion of evidence.
9. A copy of this judgment alongwith TCR be sent to the Trial Court.
10. Appeal file be consigned to the Record Room after due compliance."

6. While Respondent No. 2 has accepted the decision and not carried the matter further, the Petitioner remains dissatisfied and has approached this Court by way of the present writ petition.

7. Mr. Pramod Kumar Dubey, Senior Counsel for the Petitioner, assisted by Mr. Nishant Solanki, contends that both the Trial Court and the Appellate Court erred in their appreciation of the material on record. According to him, the assessment of the Petitioner's monthly income at Rs. 1,00,000/– is wholly without foundation and unsupported by any cogent evidence. It is urged that the Courts below failed to scrutinise the documents placed on record by the Petitioner, and equally failed to take note of Respondent No. 2's own independent earnings. Mr. Dubey stresses that Respondent No. 2 had suppressed material facts regarding her employment and sources of income, which, if disclosed, would have materially altered the outcome.

8. It is further submitted that undue weight was accorded to Respondent No. 2's alleged medical condition which is entirely unsubstantiated. The reliance on such unverified claims has resulted in an unwarranted financial burden on the Petitioner. It is argued that the credit entries into the Petitioner's bank account from his relatives, namely Manoj Kumar Tyagi and Anuj Tyagi, were not his income, but transfers made to enable the Petitioner to service his outstanding bank

liabilities, particularly EMI payments. By treating such transactions as indicative of disposable income, both Courts below, according to the Petitioner, have drawn perverse and untenable conclusions.

9. Mr. Dubey further submits that the inference drawn by both Courts below regarding concealment of income by the Petitioner, is wholly misconceived. It is argued that the Petitioner is a freelancer with no fixed or regular source of income, and that no cogent material has been brought on record to establish that he enjoys a stable or recurring earning capacity sufficient to justify the award of maintenance at the level directed. The Appellate Court's observation that the Petitioner, being a Class-I heir, must have succeeded to ancestral property, is speculative and unsupported by evidence.

10. *Per Contra*, Mr. Rajiv Dewan, counsel appearing for Respondent No. 2, supports the impugned order and contends that the assessment of income by the Courts below is both reasonable and justified. He submits that Petitioner deliberately suppressed his income and failed to disclose his true income and financial resources. In such circumstances, it is open to the Court, to draw presumptions adverse to the party in default, particularly where the conduct discloses a pattern of concealment. Mr. Dewan further emphasises that the present dispute concerns only an order of interim maintenance, intended to secure sustenance during the pendency of proceedings. The parties will, in due course, have ample opportunity to adduce their full evidence before the Trial Court, and it is at that stage that the rival claims regarding actual income, assets, and liabilities will be adjudicated conclusively. He also disputes the assertion that Respondent No. 2 has admitted to any concealment of arrears. He

further highlights that the Petitioner continues to be in default of clearing the arrears already directed by the Trial Court.

11. The Court has carefully weighed the rival submissions. Certain foundational facts are not in dispute: the marriage between the parties stands admitted, and the paternity of the minor child is also acknowledged. The controversy centres on the quantum of interim maintenance fixed by the Courts below, and whether No. 2 Respondent's alleged earning capacity or concealment of income should disentitle her from relief.

12. The Trial Court, upon examining the Petitioner's income affidavits, tax returns, and bank statements, found a clear pattern of suppressed financial particulars. The Appellate Court, affirming this assessment, noted key irregularities, namely, a steep decline in disclosed income post-separation, disappearance of previously declared rental income, and significant unexplained deposits from relatives, notwithstanding the Petitioner's assertion of being disowned by his father.

13. Given these findings, the Courts estimated the Petitioner's monthly income at INR 1,00,000/-, which formed the basis for the award of interim maintenance of INR 20,000/- per month to Respondent No.2, INR 7,000/- per month to the minor child, along with payment of school fee, and INR 10,000/- per month as rent in lieu of alternative accommodation.

14. This approach is in line with the settled position of law on maintenance. Where a party withholds true financial particulars, adverse inference and fair estimation are legitimate tools to avoid reducing

maintenance to a hollow formality. An element of reasonable guesswork is permissible where income is concealed or not fully disclosed. [3] The rationale is based on settled position that, in such cases, the Court must have regard to the parties' standard of living, social background, and overall circumstances, rather than rely solely on the self-serving statements of either party.

15. The submission that Respondent No. 2 had concealed her employment status and her income cannot at this stage advance the case of the Petitioner. The Appellate Court examined this exact argument and acknowledged that although Respondent No. 2 initially failed to disclose her employment and hid her income, it also recognized that her employment terminated in June 2020 and she has subsequently served as the primary caregiver for a minor child. The Trial Court has exercised its power under Section 23 of the DV Act for grant of interim relief. At this stage, the Court is not expected to weigh rival depositions or test the veracity of disputed admissions as if conducting a mini-trial.

16. However, even if it were assumed that Respondent No. 2 has some earning capacity, that does not, in law, absolve the Petitioner of his duty to provide for her sustenance and for the upkeep of the minor child. Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005, expressly empowers the Magistrate to grant monetary reliefs, including maintenance, notwithstanding the existence of an independent income of the aggrieved person, where such income is found insufficient to meet her needs. The test is not whether the wife has any income, but whether she has adequate means to secure a life of dignity, consistent

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[3] ***Bharat Hegde v. Saroj Hegde*** 2007 SCC OnLine 622; ***Rajnesh v. Neha and Anr***. (2021) 2 SCC 324.

with the standard she was entitled to in her matrimonial home.

17. The Supreme Court has held that an able-bodied husband cannot evade his maintenance duty by claiming the wife is employed, should contribute equally, or citing limited means.[4] This duty is especially crucial when minor children live with the wife, as their welfare depends on her support. Maintenance is a statutory and moral obligation that continues unless legally ended by remarriage, proven misconduct, or a court order.

18. In the prevailing circumstances, Respondent No. 2, a former employee, is now caring for a minor child of tender years. It is unrealistic to expect her to simultaneously discharge the role of primary caregiver and generate sufficient income to match the Petitioner's obligation.

19. The contention that the maintenance awarded is excessive is equally without merit. As underscored by the Supreme Court in ***Chaturbhuj v. Sita Bai,***[5] maintenance must be "reasonable and realistic": adequate to prevent hardship to the wife, yet not so excessive as to become oppressive to the husband. Based on the material on record, the Courts below estimated the Petitioner's income at INR 1,00,000/- per month. Viewed alongside the parties' standard of living, social background, and overall circumstances, the maintenance awarded under the impugned orders falls well within the bounds of fairness and reasonableness.

20. The award of INR 10,000/- towards rent in lieu of alternative

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[4] ***Shamima Farooqui v. Shahid Khan*** (2015) 5 SCC 705; ***Anju Garg v. Deepak Kumar Garg*** 2022 SCC OnLine SC 1314.

accommodation is equally unexceptionable. Section 19 of DV Act expressly entitles an aggrieved woman to claim residence or alternate accommodation. Where the Petitioner has failed to provide such residence, the award of a modest amount towards rent is a legitimate substitute. The argument that Respondent No. 2 currently resides with her parents does not dilute her entitlement; as the Appellate Court rightly noted, the obligation to maintain falls upon the husband, not her natal family.

21. At this juncture, it is noted that the Court cannot lose sight of the fact that interim maintenance is a provisional measure. It is not determinative of final rights. Both parties retain the liberty to establish their actual income and liabilities in the course of trial. At this stage, what is required is a practical, workable arrangement that secures Respondent No. 2 and the minor child from deprivation. The total sum of INR 37,000/- (inclusive of rent and excluding school fees paid directly) cannot, by any stretch, be said to be disproportionate given the Petitioner's own lifestyle, bank transactions, and background.

22. For these reasons, this Court finds no merit in the challenge mounted by the Petitioner. The impugned order suffers from no illegality or perversity warranting interference under Article 226 read with Section 482 of Cr.P.C. The petition is, therefore, dismissed.

23. That said, this Court takes note of the grievance raised regarding delays in the proceedings. The Trial Court is directed to expedite the trial and discourage unnecessary adjournments from either side. Both parties are bound by their counsel's assurances that they will cooperate to bring

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[5] (2008) 2 SCC 316.

the matter to conclusion without avoidable delay.

SANJEEV NARULA, J

SEPTEMBER 23, 2025
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