



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 16th August 2024

Pronounced on: 19th September, 2024

+ CRL.M.C. 2890/2019, CRL.M.A. 11665/2019, CRL.M.A. 11666/2019, CRL.M.A. 3840/2020 & CRL.M.A. 6076/2021.

SIDDHARTH TALWAR & ORS.

.....Petitioner

Through: Ms. Zeba Khair, Ms. Farheen, Ms. Shikha Singhal and Ms. Ananya Garg, Advs. along with petitioner-in-person.

versus

SARIKA TALWAR

.....Respondent

Through: Mr. Sanjeev Mahajan, Mr. Rishabh Varshney and Mr. Pranjal Tandon, Advs. along with respondent in-person.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition assails orders dated 29th March 2019 ('**Impugned order**') passed by the ASJ (Pilot Court), West District, Tis Hazari Court in Criminal Appeal No. 143/2018 dismissing the appeal and approving the order dated 21st June 2018 passed by the MM (Mahila Court-03), West, Tis Hazari Court. The said order by MM emanated from CC No. 484/2017 in an interim application under Section 23(2) of The Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') by the respondent/wife.



2. By order dated 21st June 2018, the MM had awarded interim maintenance at the rate of Rs.25,000/- per month, each to the respondent/wife and the minor daughter with effect from the date of filing of the application i.e. 5th August 2017; the said order was affirmed by the ASJ and the appeal filed by the petitioner no.1/husband was dismissed.

Factual background

3. The petitioner no.1/husband and the respondent/wife were married on 19th April 2007. Since June 2017, they are living separately. One girl child Kyra born out of the said wedlock on 16th February 2008, has been in the custody of the mother and is presently aged 16 years. Divorce was granted between the parties on 20th December 2022.

4. The said petition under the DV Act was filed in August 2017. When the matter was before this Court, by order dated 12th September 2019, the Trial Court proceedings were stayed subject to deposit of 50% of the arrears of maintenance. Subsequently, the said arrears amounting to Rs.4,75,000/- were deposited by petitioner no.1.

5. On 22nd November 2023, the petitioner no.1/ husband stated in Court that as an *ad interim* measure, he was ready to pay Rs.25,000/- as maintenance to the respondent/wife and the daughter, commencing from November 2023. Accordingly, the said amount of Rs.25,000/- was paid for 10 months till August 2024 by the petitioner no.1, amounting to a total of Rs.2,50,000/-.

6. Thereafter, by order dated 16th May 2024, the said order of 12th September 2019 was clarified and it was modified to read that instead of



‘Trial Court proceedings’, the impugned order dated 29th March 2019 would remain stayed.

7. When the matter came up before the Court on 16th July 2024, considering facts and circumstances, the petitioner no.1 was directed to pay an amount of Rs.1,00,000/- within 3 days as an ameliorative measure, considering the huge arrears.

8. Considering that the impugned order was stayed, the matter was heard on an urgent basis, considering that both parties submitted that there were various facts and circumstances which would have to be ultimately tried in the Court. Submissions were, however, made by both the counsels on the issue of interim maintenance.

Submissions on behalf of petitioner

9. The thrust by petitioner no.1’s counsel was essentially that till 2017, the petitioner no.1 was bound to expend for himself and his family, including the wife and the daughter, till, as per him, the wife left the matrimonial home. Counsel for petitioner no.1 submits as follows:

- (i) Since 2017, he was paying the school fees of the minor daughter, as also Rs.40,000/- per annum each for the respondent and the minor daughter towards medical insurance (*amounting to a total of Rs.6,40,000/- till date*).
- (ii) He had further been paying the premium of Rs.27,000/- per month since inception until December 2017 towards EMIs for two



properties jointly held by the petitioner no.1 and the respondent in Noida.

- (iii) Pursuant to the judgment of 21st June 2018 passed by MM, the petitioner no.1 also paid maintenance for 6 months and 10 days amounting to Rs.3,10,000/-.
- (iv) As per the petitioner, he had, therefore, paid a total of Rs.18,75,000/- till date and in addition he was paying the insurance premium as noted above.

10. Counsel for the petitioner no.1 stressed on the fact that the petitioner no.1 was employed by the Sahara Group which collapsed in 2015 and, thereafter, he was on a contractual employment in 2017 with a salary of Rs. 1,12,000/- p.m.

11. It was basis this Rs.1,12,000/- salary, which was for a limited contractual employment, that the MM passed the maintenance order. However, he lost his job in December 2017 and, thereafter, tried his hand at various entrepreneurial ventures including opening a restaurant '*Flames of India*' in Noida in 2018, which did not work out.

12. Thereafter, the pandemic precluded him from getting proper livelihood and the business resurfaced only in 2022. It was stressed that his passport was cancelled at the behest of the respondent, since he had issued a passport through Tatkal Services without mentioning the name of the respondent as his wife and he had to surrender his passport, which was finally reissued only in July 2024. In between, therefore, he could not seek any employment. The petitioner no.1 was a B.A. Graduate and so was the respondent, who also



holds a diploma in HR; therefore, both the petitioner no.1 and the respondent were equally qualified.

13. The employment of the petitioner no.1 was renewed w.e.f. 1st July 2024 by the Sahara Group for remuneration of Rs. 60,000/- per month at the position of Consultant, International.

14. Counsel for petitioner no.1 submits that the impugned order was not well considered since it did not take into account ITR returns of the petitioner no.1.

15. Counsel for petitioner no.1 adverted to the decision of the Supreme Court in **Rajnish v Neha & Anr.** 2021 2 SCC 324, in particular para 79, to highlight that Court must consider the status of the parties and the capacity of the spouse to pay for his or her support and that maintenance is dependent upon factual situations.

16. The petitioner relied upon *inter alia* decisions in **Rohtash Singh v Ramendri (Smt.) & Ors.** 2000 3 SCC 180 & **Amit Kumar Kachhap v Sangeeta Toppo** 2024 SCC OnLine Jhar 155 on the point that if it is the wife who deserted her husband without any reasonable cause, then she is not entitled to maintenance and the decision in **Sanjay Bhardwaj & Ors. v State & Anr.** 2010 SCC OnLine 2912 on the point that an unemployed husband who has a degree, cannot be treated differently to an unemployed wife, who is also holding the same degree and since both are on an equal footing, one cannot be asked to maintain the other.

17. Considering this, the maintenance directed, was therefore, challenged.



Submissions on behalf of respondent

18. Counsel for the respondent pointed out, that while the petitioner no.1 had been not only the advisor to Sahara India, but was also the Vice-President of Eurasian Minerals and Enterprises Ltd., Director in Basix Earth Pvt. Ltd., Director in Sanyukta Developers Pvt. Ltd., Director in Octagon Distributors Pvt. Ltd., of which DIN details had been filed, along with being a finalist of 'Masterchef India'.

19. Besides that, he was the owner of restaurants 'Pablo- The Food Cartel', 'Tex-Mex and Italian Cafe' in Gurgaon and take away joints, was a social media influencer and a Culinary Consultant at the Global Kitchen Gurgaon. Moreover, he operated a YouTube channel called 'Cook with Sid' with over a million subscribers.

20. The petitioner no.1 was staying at a house in Sector 52, Noida, jointly owned by him and the wife, while the wife was staying with her widowed mother at West Patel Nagar, Delhi.

21. The wife had no source of income. She had filed for maintenance of Rs.40,000/- per month for herself and Rs.40,000/- for her daughter, of which only Rs.25,000/- per month each to the wife and minor child had been awarded.

22. In the application under the DV Act, she had stated on affidavit that the daughter's expenses included Rs.12,000/- pm for school fee, Rs.7,000/- for private tuition, Rs.500/- pm for stationery, Rs.3,000/- pm for outings, Rs.2,500/- pm for sports activities and Rs.3,000/- pm for general expenses.



23. Initially the daughter was studying in Sriram Global School, but now was studying in Jesus and Mary Joseph, Paschim Vihar, considering that these marital issues had arisen.
24. Besides, the wife herself has huge expenses towards rental, groceries, electricity, gas, transportation, etc.
25. Respondent's counsel further stated that though petitioner no.1 alleges he is unemployed, the ITR of the petitioner no.1 filed for the latest year shows his net income as Rs.1,00,570/- pm. Further, the alleged that the email relied upon by the petitioner no.1, dated 19th December 2017, states that he himself did not want to work with Sahara and there was no corresponding confirmatory email of Sahara. The said email, therefore, cannot be relied upon at this stage in the interim.
26. Further, the husband drives a Maruti Ciaz car and pays Rs.7,500/- pm for a maid, along with being a member of the Noida Golf Club.
27. The Courts below had taken note of various engagements of the petitioner no.1. The bank statement of petitioner no.1 showed income receipts of Rs.12,06,226/- for the period of 1st May 2016 to 31st March 2017 and Rs.17,00,609/- from 1st April 2017 to 31st March 2018.
28. The petitioner no.1's claim that the respondent was employed as an HR executive with Eurasian Minerals and Enterprises Pvt. Ltd. was completely untrue since the petitioner, as its Vice President, had shown Rs 30,000/- as a salary being given to the wife, and which went into an account which was jointly held with the wife, but had the husband as the first signatory.



Analysis

29. The decision cited by petitioner in ***Rohtash Singh*** (*supra*) may not be relevant since considering the facts of that matter, the decree of divorce had been passed on the ground of the wife's desertion, therefore, she was held as disentitled to maintenance under section 125 of CrPC.

30. In ***Amit Kumar Kachhap*** (*supra*) as well, there was a finding that the wife had been residing aloof from her husband without any feasible cause and, therefore, was not entitled to maintenance.

31. As regards the decision in ***Sanjay Bhardwaj*** (*supra*) there was not even *prima facie* proof of the husband being employed in India, the husband being NRI and working in Africa, and that his passport had been seized and he was not permitted to leave the country.

32. The order passed by the MM awarding interim maintenance at the rate of Rs.25,000/- per month each to the respondent/wife and the minor daughter was affirmed by the Sessions Judge when the appeal filed by the husband, was dismissed. The two Courts have already traversed the disputed issues of the parties and have confirmed the decision of interim maintenance in favor of the wife.

33. The educational qualification of the wife is stated to be 12th pass with a diploma in fashion designing, whereas, the petitioner is a graduate who has been in significant positions as an Advisor in Sahara India and Vice-President /Director in various companies, details of which have been provided. Further, he has been a serial entrepreneur and has been the owner of restaurants in



Noida and Gurgaon, as well as, developed a reputation as a culinary consultant and a media influencer.

34. It was the petitioner no.1 who was staying at a house in Noida, which was jointly owned by him and his wife, the wife was living with the widowed mother at West Patel Nagar, Delhi. The maintenance that she had claimed was Rs.40,000/- per month for herself and her daughter whereas only Rs.25,000/- had been granted to the wife and the minor child. Details of expenses had been given as per the affidavit provided in 2017. The bank statements of the petitioner had shown income receipts of more than of Rs.12,00,000/- in 2016 and more than Rs.17,00,000/- in 2017-18, which the DV Court has taken into account.

35. The thrust of the petitioner's argument was that his contract with the Sahara group had ended in December 2017 and he was getting a salary of about Rs.1,00,000/-. However, an email had been adverted to dated 2nd December 2017, which was sent by him to Sahara India Group for granting petitioner leave without pay. The Trial Court has correctly noted, that if the petitioner was praying for leave without pay till 31st March 2018 when his contract was ending on 31st December 2017, there was no reason for him to send the email. However, there is no confirmatory email from Sahara, from which the point as stressed by the petitioner, can be believed.

36. The Sessions Court further in para 10.10 of the impugned order dated 29th March 2019, noted as under:

“10.10 It may be noted that the perusal of the various images, photographs, facebook posts, bills issued by Noida Golf Course etc. show the financial status of the appellant



and it is hard to believe that the appellant who had such good financial and social status before filing of the present petition under the Domestic Violence Act, was suddenly left with no income so as to support his wife and daughter.”

37. The petitioner’s counsel sought to allege that due to the complaint by the respondent, he had to surrender the passport and therefore, could not take any job at that stage.

38. As regards the surrender of the passport, he had omitted the name of the respondent as his wife and pursuant to the complaint, the passport was forfeited.

39. Non-compliance of applicable rules and regulations relating to issue of passport, even if it was based on an information given by the respondent/wife, cannot be held against the wife for the purposes of disputing maintenance.

40. Further, there is no evidence which has been placed before the court, to bear out that there had been offers from international companies to the petitioner, which were lost out due to the imbroglio with the passport.

41. In any case, this would have no relevance to the issue of maintenance, considering all other facts and circumstances which have been already traversed in detail by the MM, against which the appeal has been dismissed by the Sessions Court.

42. In *State v Manimaran* 2019 13 SCC 670 the Supreme Court has observed as under:

“16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452, ordinarily it



would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”

(emphasis added)

43. This has been noted with approval by Coordinate Bench of this Court in ***Sudhir Gupta v Manisha Kumari*** 2021 SCC OnLine Del 3278 wherein a petition filed under Section 482 CrPC, against the dismissal of the appeal against the maintenance order passed by the DV Court, was dismissed. The relevant paragraphs are extracted as under:

“11. The learned Metropolitan Magistrate and the learned Additional Sessions Judge have analysed the facts and the law in the correct perspective. The judgements are well reasoned. It cannot be said that the conclusions drawn by the Courts below are perverse or are based on nil evidence. The judgments of the Courts below do not warrant any interference.

12. Needless to state that the learned Metropolitan Magistrate has granted only interim maintenance to the respondent herein and the final maintenance is subject to the outcome of the proceedings.”

(emphasis added)

44. In this case too, judgments of the Courts below are well-reasoned and cannot be said that they are perverse or not based on any evidence. In any event, only interim maintenance has been granted and final maintenance shall be subject to the outcome of proceedings in the Trial Court.



45. Therefore, this Court does not find any reason to interfere with the impugned order.
46. The petition is accordingly dismissed, along with pending applications.
47. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 19, 2024/RK/na