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

% *Date of Decision: 14<sup>th</sup> May, 2024*

+ **CRL.REV.P. 306/2017, CRL.M.A. 6852/2017, CRL.M.A. 6854/2017 & CRL.M.A. 11212/2019**

VIKAS MITTAL

...Petitioner

Through: Mr. Vikas Nagpal, Advocate.  
versus

STATE & ANR.

....Respondents

Through: Mr. Satinder Singh Bawa, APP  
for the State alongwith Mr.  
Bharat Rajput, Mr. Bhashvi  
Saxena & Mr. Bhuvan Anand,  
Advocates.  
Mr. Digvijay Singh Jawal,  
Advocate for Respondent No.2.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**AMIT MAHAJAN, J.**

1. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 (CrPC) read with Section 9 of the Family Courts Act, 1984, challenging the order dated 30.11.2016 (hereafter '**impugned order**'), passed by the learned Principal Judge, Family Court, Tis Hazari, Delhi in MT No. 5861521/16 titled as *Shubham Mittal v. Vikas Mittal*.

2. The learned Family Court, by the impugned order, had granted interim maintenance of ₹65,000/- per month to the Respondent No. 2, from the date of the filing of MT No. 5861521/16. Respondent No. 2 is the wife of the petitioner.



3. The learned Family Court considered the relevant documents (including Income Tax Return) regarding the business and income of the petitioner and his family. It also considered his various immovable commercial / residential properties owned by him and his family and thereby, assessed the income of the petitioner as ₹2,50,000/- per month.

4. The learned Family Court noted that assuming Respondent No. 2 to be earning ₹13,000/- or ₹14,000/- per month by doing some work, as claimed by the petitioner / husband, there is considerable gap between the income of the petitioner and Respondent No. 2. The learned Family Court further considered the escalating cost of living and observed that sufficient funds were required for a decent living of Respondent No. 2, and hence noted that she is entitled for reasonable maintenance.

5. The learned counsel for the petitioner submits that the learned Family Court had erroneously and mechanically assessed the income of the petitioner on the basis of the income tax return and other documents.

6. He submits that all the businesses which were considered by the learned Family Court had been closed / shut down and presently, the petitioner is only engaged in sale and purchase of the old cars. He submits that the learned Family Court wrongly assumed his income based on his earlier business.

7. He submits that presently the petitioner earns ₹13,000/- to ₹15,000/- per month, which is not sufficient for his own maintenance.



8. He submits that the petitioner is incapable of paying the awarded maintenance amount and has already paid a sum of ₹20,00,000/- to Respondent No. 2 to show his *bona fide*.

9. He submits that the petitioner has other financial liabilities as well.

10. The learned Family Court has assessed the income of the petitioner as ₹2,50,000/- per month. Admittedly, the assessment was based on the income tax returns of the petitioner for the years 2009-2010, 2010-2011, 2011-2012 and 2012-2013, however, the same is clearly only for the purpose of grant of interim maintenance. It is not the case of the petitioner that he had adduced any evidence before the learned Family Court to showcase his alleged deteriorated financial condition, which was ignored by the learned Family Court in carrying out the assessment at this stage.

11. It has been noted in a catena of judgments that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute and that income tax returns do not necessarily provide an accurate reflection of the actual income in such cases [Ref. ***Kiran Tomar v. State of U.P. : 2022 SCC OnLine SC 1539***]. Thus, the possibility of the petitioner undermining his income to avoid paying maintenance of an appropriate amount to the respondents cannot be ruled out at this stage.

12. It is also 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]

13. At this stage, no evidence has been filed which would show that Respondent No. 2 is in a position to maintain herself except for bare claims of the petitioner.

14. In so far as the contention of the petitioner having showing his *bona fides* by paying ₹20,00,000/- is concerned, in the opinion of this Court, the same is immaterial.

15. It is stated that the petitioner has suffered a setback and has other financial liabilities as well. 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)

16. The petitioner claims that he has to borrow money from a friend to pay maintenance to Respondent No.2 because he allegedly lacks sufficient funds. This claim is *prima facie* questionable. Although he has presented his bank statement to this court, the same was neither placed before the learned trial court nor is made part of the trial record. Consequently, this issue will be examined during the trial. At this stage, it appears that the petitioner may be withholding information and misleading the court to evade his maintenance obligations.

17. The learned counsel for Respondent No.2 has taken the Court through the bank statements of the petitioner which *prima facie* show that the maintenance amount is transferred by the petitioner into a bank account of his friend from where the money is transferred to Respondent No.2. The said bank account statement was not produced before the learned Trial Court. The same, at this stage, *prima facie* shows that the petitioner is trying to hide his true financial means.



18. It is also important to note that the petitioner previously paid one crore to his former wife, which clearly suggests that he possesses considerable financial means. Therefore, it is justified for the learned trial court to award maintenance based on some guesswork where the representations made by the petitioner seem to be incomplete.

19. Thus, it is incumbent on the petitioner, who is an able-bodied man, to financially support Respondent No. 2. In such circumstances, in my opinion, the interim monthly maintenance of ₹65,000/- per month to Respondent No. 2 is reasonable.

20. 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.

21. The learned Family Court would pass a final order in regard to the maintenance after considering the evidence on record.

22. The learned Trial Court is directed that the final order be passed in the case uninfluenced by the findings made in the impugned order or this order.

23. 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.

**AMIT MAHAJAN, J**

**MAY 14, 2024/UG**