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

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Date of Decision: 8th May, 2024

+ **CRL.REV.P. 1126/2023 & CRL.M.A. 28846/2023,**
CRL.M.A. 28847/2023

RAKESH SAINI

..... Petitioner

Through: Mr. Vaibhav Vats, Adv.
(through VC)

versus

SANGEETA SAINI & ANR. & ORS. Respondents

Through: Ms. Priya Puri and Ms. Parul
Sharma, Advs. for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petition is filed Section 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 impugning an order dated 03.12.2022 (hereafter the '**impugned order**'), passed by the learned Family Court, in MT No. 676/2017, titled as *Sangeeta Saini & Ors v. Rakesh Saini*.

2. By way of the impugned order the learned Family Court had directed the petitioner to pay interim maintenance of ₹3600/- per month from the date of the filing of the maintenance petition till the passing of the impugned order and thereafter has enhanced the interim maintenance amount and has directed the petitioner to pay an amount of ₹ 2,400/- for each of the respondent totalling to Rs.4,800/- per month as maintenance.



3. The learned Counsel for the petitioner submits that the learned Family Court has erroneously assessed the income of the petitioner and there was no basis for granting ₹4,800/- per month to the Respondents.

4. It is not in dispute that the Respondent No.1 is not working and is also having the custody of the fourteen year old minor child / Respondent No.2.

5. The learned Family Court in the impugned order had noted:

“36. Counsel for petitioner argued that the entire contention and deposition of respondent is a blatant lie as it is bogus statement that he was earning as a Rickshaw puller Rs. 100/- to Rs.150/- per day and was giving a rent of Rs. 500/- per month including electricity and water charges in the year 2008 because no premises of any nature would be having a rent of Rs.500/- per month including water and electricity charges where he was staying with petitioner wife and the child and that even a Rickshaw puller would not be earning only Rs. 100/- to Rs. 150/- per day.

37. Petitioner has not placed any material evidence as to the income of respondent or as to respondent being painting contractor and a well qualified painter as alleged.

38. On the contrary, respondent has placed the document which is a job card under MNREGA, Ex. RW-1/2 to reflect that he was doing work under said scheme and also placed a certificate Ex. RW-1/4 from tehsildar of Tehsil Utrola Balrampur, U.P. in respect of income of his family from all sources as Rs. 3,000/- per month.

39. It is also significant that respondent has not been able to clear the arrears at the rate of Rs. 1,800/- per month for each of the petitioner's despite being sent to Judicial Custody.

40. It is admitted that respondent was staying with the petitioners in Mumbai and thereafter in Delhi also. It does not appeal at all that while staying in Delhi, he was earning only Rs. 150/- or so per day. It is also correct that presently he claims to be staying at his village but at the same time it is his legal and moral



duty to maintain his legal wedded wife and the children born from the wedlock. Both the petitioners and her mother are dependent upon him. Being able bodied person he is expected to do the earning to maintain himself and his dependents. Taking note of the same his income was taken as Rs. 9,000/- per month while passing the order dated 16.10.2018. There is no occasion to differ from the same. Respondent cannot shirk his responsibility by self serving averments and production of document like Ex. RW-1/4 the certificate as to his income. In the facts and circumstances of this case where even on behalf of the petitioners there is no cogent evidence as to respondent being qualified painter and doing the painting work on contract and in respect of income of Rs. 30,000/- from the same, fixation of the income of Rs. 9,000/- from the date of filing of the petition till date of accordingly deemed as proper. The grant of interim maintenance vide order dated 16.10.2018 is therefore, confirmed during pendency of the case i.e. maintenance u/s 125 Cr.P.C is awarded to the petitioners at the rate of Rs. 1,800/- per month for each of the petitioners totaling Rs.3,600/- per month. But from the date of this order i.e. today his income on the basis of minimum wages is taken to be Rs.12,000/- per month. Therefore, after duly accounting for one share for each of the petitioners, one share for mother of respondent and one additional share for the respondent in connection with his day-to-day expenses, maintenance u/s 125 Cr.P.C from the date of order is granted at the rate of Rs. 2,400/- per month for each of the petitioners i.e. totaling Rs.4,800/- per month. This relief is awarded to petitioner no.1 during her lifetime or till she remarries and to petitioner no.2 till she attains majority.

41. **Issue No. 2:- Relief.**

In view of my findings on issue no. 1, the petition filed by the petitioner u/s 125 Cr.P.C. for seeking maintenance is allowed. The respondent is directed to pay an amount of Rs. 1800/- for each of the petitioners i.e. totaling Rs.3600/- per month from the date of filing of this petition till passing of this order and from the date of order i.e. today it is awarded @ Rs.2400/- for each of the petitioners i.e. totaling Rs.4800/- per month, qua petitioner no. 1 during her lifetime or till she remarries and qua petitioner no. 2 till she attains majority.

The arrears of maintenance shall be cleared by the respondent within a period of three months from today. Any



amount paid by the respondent to the petitioner as maintenance, under the order of any Court shall be adjusted against arrears. File be consigned to record room after due compliance.”

6. On being pointedly asked, as to how much maintenance the petitioner is willing to pay *qua* his wife and the minor child, the learned counsel for the petitioner submits that the petitioner is not in a position to pay anything. He submits that the petitioner is merely earning ₹174/- per day, as he is registered with NREGA Scheme.

7. The petitioner is an able-bodied man. There is nothing placed on record to show as why the petitioner is unable to pay ₹4800/- per month to his own wife and minor child. The Hon’ble Apex Court, 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)

8. 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 incomes. 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. The learned Family Court has not committed any error and has assessed the income of the petitioner as ₹9000/-, since the minimum wages for an unskilled employee, as on today, in Delhi are ₹17,234/- per month, and in Uttar Pradesh the minimum wages for an unskilled employee are ₹10,275/-.

10. The petitioner being an able-bodied man is legally obligated to maintain his wife and minor child. In such circumstances, the monthly maintenance of ₹4,800/-, in my opinion, is even otherwise not unreasonable.

11. In view of the above, this Court finds no reason to interfere with the impugned order and the petition is, therefore, dismissed.

AMIT MAHAJAN, J

MAY 8, 2024