



2024:DHC:6907



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:09.09.2024

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CRL.REV.P. 1083/2023, CRL.M.A. 27842/2023 &CRL.M.A. 27843/2023

..... Petitioners

versus

**THE STATE (GOVT. OF NCT OF DELHI)
& ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Nipun Joshi, Advocate (Through V.C.).

For the Respondents : Mr. Pradeep Gahalot, APP for the State for the State alongwith Mr. Prashant Malik, Mr. Harsh Antil, Ms. Kanupriay Aswal & Mr. Mohit Panghal, Advocates.

Mr. Rajesh Kumar Singh, Mr. Amit Bidhuri & Mr. Yogesh Sharma, Advocates for R-2alongwith RespondentNo.2 (Through V.C.).

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

JUDGMENT

1. The present petition is filed under Section 397 read with Section



401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the judgment dated 29.04.2023, passed by the learned Additional Sessions Judge ('ASJ'), South District, Saket Courts, Delhi, in CrI. Appeal No. 271/2022. The petitioner has also challenged the order dated 20.08.2022, passed by the learned Trial Court, in Ct Case 6486/2020.

2. The learned ASJ, by the impugned judgment dated 29.04.2023, has dismissed the appeal filed by the petitioners under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') against the order dated 20.08.2022, whereby the learned Trial Court, considering the financial status of the parties, had directed Petitioner No.1 to pay an amount of ₹15,000/- per month as interim maintenance to Respondent No.2 along with an additional amount of ₹10,000/- per month as rent *in lieu* of alternative accommodation, from the date of filing of the case till its disposal.

3. The learned Trial Court, in the impugned order dated 20.08.2022, had noted that the parties were admittedly spouses who had shared a domestic household and noted that a perusal of the complaint and the Domestic Incident Report *prima facie* shows that Respondent No.2 was a victim of domestic violence and entitled to monetary compensation under the DV Act.

4. The monthly income of the petitioner was assessed to be ₹1,50,000/- per month on the basis of the multiple sources of income of Petitioner No.1. The learned ASJ took note of the sudden drop in the gross income of Petitioner No.1 around the time when Respondent No.2 preferred the application under Section 12 of the DV Act. It was noted



that Petitioner No.1 could not taking the excuse of the Covid-19 pandemic as the drop in his income pertaining to the financial year 2019-2020. The learned Trial Court had noted that while Petitioner No.1 was claiming that he was drawing a meagre salary from his father's partnership firm, however, he was driving a Duster Car and receiving profit from the firm as well.

5. The learned counsel for the petitioner submitted that the learned Trial Court erroneously granted an interim maintenance of ₹15,000/- along with ₹10,000/- towards rent to Respondent No.2 and the learned ASJ mechanically upheld the said order.

6. He submitted that the learned Courts below had solely relied on the facts as presented by Respondent No.2 to hold that Petitioner No.1 was running a profitable business of branded optical shop in the name of 'Prince Eye Vision' without considering that the same is owned by Petitioner No.3, who is the father of Petitioner No.1. He submitted that Petitioner No.1 is earning merely around ₹ 15,000/- per month.

7. He submitted that it is admitted that Petitioner No.1 is taking care of the children of the parties for more than three years and Respondent No.2 has made no attempt to even meet them. He submitted that their expense is being borne by Petitioner No.3.

8. He submitted that the Income Tax Returns ('**ITR**') returns of the assessment year 2020-2021 shows the annual income of Petitioner No.1 as ₹2,45,030/- that is less than his income in the years 2018-2019 and 2019-2020 as the business of Petitioner No.1 took a hit due to the pandemic.



9. He submitted that the income affidavit was filed by the petitioner before the learned ASJ that he has to manage the expenses of four dependents, including, his children and elderly parents, despite which, an exuberant maintenance was awarded to Respondent No.2.

10. He submitted that Petitioner No.1 had made all the efforts to bring back Respondent No.2 from her parental home and repeatedly requested her as well, however, she blatantly refused and he had to thus return with only the children.

11. He denied the allegations of domestic violence and submitted that Respondent No.2 left the company of Petitioner No.1 of her own will and not due to any act of the petitioners. He submitted that there was no proof of the domestic violence allegations levelled by Respondent No.2 and she was thus not entitled to grant of any maintenance.

12. He submitted that the learned ASJ dismissed the appeal filed by the petitioners without giving them sufficient chance to address arguments and make good their case.

13. He submitted that Respondent No.2 is qualified as a 'Air Hostess' and she is earning a handsome amount by giving private tuitions as well.

14. The learned counsel for Respondent No.2 argued that at the stage of grant of interim maintenance, the Court only has to see whether a *prima facie* case is made out. He submitted that Respondent No.2 has categorically made allegations of Petitioner No.1 engaging in extra-marital relations and beating her. She has also alleged that Petitioner No.1 has neglected her and refused to maintain her.



15. He submitted that the learned Courts below had rightly appreciated that Petitioner No.1 is earning handsomely from the business of optical wear and granted reasonable maintenance to Respondent No.2.

16. He submitted that Petitioner No.1 had deliberately manipulated his income on the filing of the case by Respondent No.2 to pay less maintenance.

17. He submitted that the learned ASJ dismissed the appeal of the petitioners by granting them due opportunity, despite which, no counsel appeared on behalf of the petitioners to address arguments. He submitted that even so, the learned ASJ addressed the arguments taken by the petitioners in the pleadings.

ANALYSIS

18. It is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the respondent is committing an act of domestic violence, has committed an act of domestic 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. Respondent No.2 herein had also prayed for relief towards rent.

19. In the present case, learned Trial Court as well as the Appellate Court have explicitly recorded that *prima facie* it appears from the complaint that the respondent was subjected to domestic violence. The



learned ASJ has also noted that there are images on record that show injury marks on the body of Respondent No.2 as well. As rightly noted by the learned ASJ, the defences and allegations in this regard can only be conclusively determined after the parties have led their evidence.

20. This Court is in agreement with the observation of the learned Trial Court that unlike Section 125 of the CrPC, maintenance under the DV Act is not tethered on the inability of the wife/ victim to maintain herself. Moreover, *prima facie*, in the absence of cogent proof of Respondent No.2 being gainfully employed or earning a sufficient income to maintain herself, the bald allegation that Respondent No.2 is earning through private tuitions, without any documentary proof, does not disentitle her from getting an award of interim maintenance.

21. It is the case of Petitioner No.1 that his income has been erroneously assessed. It is his case that he is drawing a meager salary of ₹15,000/- per month and he is also responsible for maintaining his parents and children.

22. It is peculiar that while Petitioner No.1 is arguing on one end that the partnership firm where he is working is owned by his father, he is also claiming that he has to take care of his parents.

23. It is argued by Petitioner No.1 that his ITR clearly reflects that he is earning nowhere near the assessed income. 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 even 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).

24. The learned Trial Court has also explicitly noted that it is evident from the material on record that Petitioner No.1 was receiving profits from the partnership firm as well as the rent from one shop. It was noted that Petitioner No.1 admittedly had joint ownership of the same as well. It was noted that there were multiple credit entries into the account of Petitioner No.1 that were diverted by him or withdrawn from time to time. No argument or pleading has been made on behalf of Petitioner No.1 in this regard. It was also noted that Petitioner No.1 is driving a Duster Car. While Petitioner No.1 has argued that the said car was bought by his father – Petitioner No.3, no proof to such effect has been placed on record.

25. Thus, the possibility of Petitioner No.1 undermining his income to avoid paying maintenance of an appropriate amount to the respondent cannot be ruled out at this stage. It is trite law that the Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning. For the said purpose, the status and lifestyle of the parties can be considered (Ref. *Bharat Hegde v. Saroj Hegde* : 2007 SCC OnLine Del 622). As discussed above, the learned Courts below have taken into account that the income of Petitioner No.1 dipped around the time of filing of the complaint and thus guessed his income on the basis of the partnership business and other factors, like the car he is driving.

26. This Court in the case of *Annurita Vohra v. Sandeep Vohra* : 2004 (74) DRJ 99 had observed that the court should initially determine



the net disposable income of the Husband or the primary earner within the family. If the other spouse is also employed, those earnings should be taken into consideration. This collective income forms the Family Resource Cake, which is then distributed among the family members. The allocation of this "cake" should align with the financial needs of each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members.

27. Considering the children of the parties as dependents, the awarded amount is in conformity with the dictum of *Annurita Vohra v. Sandeep Vohra* (*supra*).

28. Insofar as the argument regarding no adequate opportunity being granted to the petitioners before the learned Appellate Court is concerned, admittedly, two opportunities were granted to the petitioners to address arguments however no counsel appeared on their behalf. It is pleaded that the said counsel did not appear "for the reasons best known to him". Litigants cannot be allowed to take the Courts for granted. Courts are not expected to keep cases pending at end for litigants who are not diligent to pursue the proceedings instituted by them.

29. It is not disputed that the impugned order dated 20.08.2022 is only in relation to interim maintenance. The learned Trial Court would pass a final order in regard to maintenance after considering the evidence on record.

30. The defences raised by the petitioner, along with the allegations



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and counter allegations, would be the subject matter of the trial, and would have to be decided after the parties have led their evidence.

31. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the impugned judgment dated 29.04.2023 or in this judgment.

32. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 9, 2024