



2024:DHC:7173



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

Date of decision: 10th SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6157/2022 & CRL.M.A. 23031/2024**

[REDACTED]

.....Petitioner

Through: Dr. Sanjay Kumar Tiwary, Advocate

versus

[REDACTED]

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging the Order dated 19.09.2022, passed by the learned Additional Sessions Judge-II, Saket Courts, in C.A. No.61/2019, upholding the Order dated 21.12.2018, passed by the learned Metropolitan Magistrate, Mahila Court, Saket, in CC No.461449/2016, fixing maintenance @ Rs. 30,000/- per month to be paid by the Petitioner herein to the Respondent herein. *Vide* Order dated 12.12.2018, the learned Metropolitan Magistrate has also directed the Petitioner herein to pay Rs.5,00,000/- to the Respondent herein towards injuries sustained by her, including mental torture, depression and emotional distress and further the Respondent herein was also awarded Rs.3,00,000/- as compensation, including Rs.30,000/- as litigation costs.

2. The facts, with which the Respondent herein approached the Trial Court seeking maintenance, are that the marriage of the Respondent herein and the Petitioner herein was solemnized on 03.03.1998 according to Hindu



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rites and customs. It is stated that out of the wedlock there are two children. It is the case of the Respondent/Wife that the Petitioner/Husband used to return home late at night and used to abuse the Respondent/Wife physically, mentally and verbally. It is stated that noticing change in the attitude of the Petitioner/Husband, the Respondent/Wife made inquiries and found out that the Petitioner is having an extra-marital affair with another lady (*hereinafter referred to as 'Ms. X'*). It is stated that in March, 2010, the Petitioner herein/Husband brought Ms. X to the matrimonial house and introduced her to his parents and when the Respondent herein/Wife objected to the affair of the Petitioner, the Petitioner stopped coming to the matrimonial house. It is further stated that the parents of the Petitioner supported the Petitioner and threatened the Respondent/Wife not to take any action against the Petitioner/Husband else the Petitioner/Husband would stop the financial support to the Respondent and her kids. It is also stated that the Respondent/Wife came to know that the Petitioner/Husband got married to Ms. X and has a daughter with her. It is stated that having no other option, the Respondent/Wife had to leave the matrimonial house. In the complaint it is also stated that the Petitioner herein is carrying on the business in the name and style of M/s Amit Tent and Decorators. It is stated that the monthly income of the Petitioner/Husband from the said business is around Rs.2,50,000/-. It is further stated in the complaint that the Petitioner owns two cars and one flat in Noida and is maintaining several bank accounts. It is stated that the Petitioner also owns a warehouse in Sector 51 Noida and he is also a member of the Noida Golf Club, yearly membership of which is Rs.1,00,000/-. It is also stated in the complaint that the Petitioner has employed two part-time domestic helps at the matrimonial house and one



full-time house help at his Noida house. On the other hand, the Respondent has stated that she is not employed. It is stated that the father of the Respondent/Wife has passed away and her mother is aged and has no financial support. It is stated that the Respondent/Wife was employed at a salary of Rs.15,100/- in February, 2023, however, due to lack of experience and education, the employment lasted only for a month.

3. Evidence was led by both the parties before the Trial Court. The Trial Court held that though the Respondent herein has not been able to prove the marriage of the Petitioner herein with Ms. X, evidence on record shows that the Petitioner has a daughter from Ms. X. The Trial Court held that the fact that the Petitioner is living with another lady and has a daughter from her is sufficient to make out a case of domestic violence against the Petitioner. The Trial Court, after examination of the evidence, came to the conclusion that the Petitioner is not maintaining the Respondent and directed that the Petitioner must pay Rs. 30,000/- per month to the Respondent herein as maintenance. The Trial Court also directed the Petitioner to pay Rs.5,00,000/- to the Respondent herein towards injuries sustained by her, including mental torture, depression and emotional distress and further the Respondent herein. The Trial Court also directed the Petitioner to pay Rs.3,00,000/- to the Respondent herein as compensation, including Rs.30,000/- as litigation costs.

4. Aggrieved by the said Order, the Petitioner filed an Appeal before the learned Additional Sessions Judge. In the Appeal, it was stated by the Petitioner that the Respondent has married some other man. To substantiate his claim, the Petitioner also produced the PAN card of the Respondent herein, which shows the name of the Respondent as "Aarti Khanna". In the



Appeal it is also stated that the Petitioner was not married to the Respondent as the marriage has not taken place in accordance with the customary ceremonies. It was also contended by the Petitioner before the Appellate Court that the Respondent had stated that her monthly expenditure is Rs.9,000/- and the Trial Court has erred in awarding Rs.30,000/- to the Respondent as monthly maintenance as it is more than the expenditure of the Respondent. The Petitioner also stated that the Respondent is an able bodied lady, who has worked in a boutique and, therefore, she cannot be allowed to become a parasite on the Petitioner by misusing the law. It was also contended by the Petitioner before the Appellate Court that the Petitioner has already paid Rs.14 lakhs to the Respondent in another proceeding initiated by the Respondent before other forums and that amount has not been taken into consideration while awarding Rs.30,000/- per month as maintenance to the Respondent. The Petitioner also contended that the Trial Court has not looked into the income reports filed by the Petitioner before the Trial Court.

5. The Appellate Court rejected the contentions raised by the Petitioner regarding the name of the Respondent herein in her Pan Card by stating that the Respondent/Wife is the daughter of Mr. SK Khanna and Pan Card which indicates that the Respondent is the wife of Mr. SK Khanna is only a typographical error. The Appellate Court, therefore, dismissed the Appeal upholding the findings of the Trial Court.

6. It is this Order which has been challenged by the Petitioner in the present Petition.

7. Heard the learned Counsels for the parties and perused the material on record.



8. Section 24 of the Hindu Marriage Act, Section 125 Cr.P.C and Section 12 of the Domestic Violence Act are all tools of social justice which have been enacted to ensure that the women and children are protected from a life of potential vagrancy and destitution. The Apex Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities.

9. In Bhuwan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353, the Apex Court examined the underlying purpose as well as social context of Section 125 of the Code, and observed as under:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the



statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

10. In Kirtikant D. Vadodaria v. State of Gujarat, (1996) 4 SCC 479, while discussing the dominant purpose of Section 125 of the Code, the Apex Court has held as under:

“15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

11. The Apex Court in Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, has stated that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who



can provide support to those who are unable to support themselves and who have a moral claim to support. The Apex Court has observed as under:

*"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. **The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].***

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain



his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC." (emphasis supplied)

12. A perusal of the law laid down by the Supreme Court would indicate that the proceedings under Section 125 Cr.P.C have been enacted to remedy/reduce the financial sufferings of a lady, who was forced to leave her matrimonial house, so that some arrangements could be made to enable her to sustain herself. It is the duty of the husband to maintain his wife and to provide financial support to her and their children. The object of Section



125 CrPC and the provisions of DV Act which gives power to the Court to award maintenance have been used for the same purpose, viz., to reduce further financial sufferings of a lady who has been forced to leave her matrimonial house. A husband cannot avoid his obligation to maintain his wife and children except if any legally permissible ground is contained in the statutes.

13. The Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'the DV Act'*) was enacted to provide relief to an aggrieved woman who is subject to domestic violence. Aggrieved person is defined under Section 2(a) of the DV Act to mean any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Domestic relationship, which is defined under Section 2(f) of the DV Act, means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The term 'Respondent' used in Section 2(a) of the DV act means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the DV Act. Section 3 of the DV Act defines domestic violence and it includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse and all other forms of abuse which can be inflicted on a lady. The Petitioner is an aggrieved person who is entitled to maintain a claim under the DV Act.

14. In the facts of the present case, the Courts below have come to the



conclusion that the Petitioner/Husband is living with another lady and has a child through her. In the present Petition, the Petitioner has not provided any material to shock the concurrent findings of the Court. In the complaint filed by the Respondent/Wife, it is stated that she was subjected to physical and mental abuse by the Petitioner herein. No lady can tolerate that her husband is cohabiting with another lady and has a child from her. All these facts make the Respondent/Wife a victim of Domestic Violence. The contention of the Petitioner that the complaint filed by the Respondent/Wife does not come within the four corners of the DV Act cannot be accepted. The Respondent had to leave her matrimonial house because she was unable to tolerate the fact that her husband is living with another woman. Since the Respondent/Wife was not in a position to take care of her two children, she had no option to leave them with the parents of the Petitioner herein. Looking at the peculiar facts of the case, the action of the Respondent/wife cannot be found fault with.

15. Looking at the financial status of the Petitioner, as has been found by the Courts below, and taking judicial notice of the cost of living, this Court is of the opinion that the amount of Rs.30,000/- per month awarded by the Trial Court to be paid by the Petitioner herein/Husband to the Respondent/Wife does not require any interference. The fact that the Respondent/Wife is capable of earning cannot work to her detriment.

16. The Petitioner, who has abandoned his wife and children, is living with other women and has a child from her. As held by the Courts below, the Petitioner, who runs a business under the name M/s Amit Tent and Decorators, has a reported monthly income of approximately Rs. 2,50,000/- and in addition to his business earnings, he owns two cars and a flat in



Noida. He also owns a warehouse situated in Sector 51, Noida, and he is also a member of the Noida Golf Club, which requires an annual membership fee of Rs. 1,00,000. The Petitioner has also employed two part-time domestic helpers at his matrimonial home and one full-time house help at his residence in Noida. The financial and asset profile of the Petitioner reflects a comfortable and affluent lifestyle and, therefore, is in a position to pay Rs.30,000/- per month to the Respondent/Wife as maintenance. Undoubtedly, the said amount will be taken into account by other Courts, which are considering the issue of maintenance, while fixing maintenance in the respective proceedings.

17. The fact that the Respondent is able bodied and can earn a livelihood does not absolve a husband not to provide maintenance to his wife and children. Indian women leave their jobs to look after the family, cater to the needs of their children, look after their husbands and his parents. The contention that the Respondent is only a parasite and is abusing the process of law is nothing but an insult not only to the Respondent herein but to the entire women kind.

18. In view of the above, this Court does not find any reason to interfere with the well-reasoned Orders passed by the Courts below.

19. Accordingly, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 10, 2024

Rahul