

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

% **Pronounced on: 18th July, 2022**

+ CRL.M.C. 1692/2022, CRL.M.A. 7236/2022 (for stay)
PRADEEP KUMAR Petitioner

Through: Mr. Pradeep Kumar Yadav,
Advocate

versus

SMT BHAWANA & ANR. Respondents

Through: Mr. Praveen Goswami & Mr. Vijay
Chauhan, Advocates.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 Cr.P.C. for quashing of an order dated 10th December, 2021, passed by the learned Family Court, North-East, Karkardooma Courts in MT No. 233/2020, whereby, directions had been issued to the petitioner to pay a sum of Rs.20,000/- as a consolidated amount towards the interim maintenance of the respondents herein w.e.f. 29th September, 2020, till the disposal of that petition. Two months' time was granted to the petitioner to clear the arrears of interim maintenance. The future interim maintenance was to be paid by the 5th day of each English calendar month.

2. This Court vide order dated 20th April, 2022 in the present petition had directed the petitioner to deposit the difference in the amount that was fixed by the learned Trial Court and the sum that he was willing to pay,

namely, Rs.4,000/-, which he had claimed the he had paid up to February, 2022 to the respondent in the form of an FDR before the Registry of this Court.

3. It was submitted by Mr. Pradeep Kumar Yadav, learned counsel for the petitioner, that a sum of Rs.1,00,000/- had been deposited with the Registry of this Court in compliance of this order towards the difference.

4. It is the contention of the learned counsel for the petitioner that the petitioner is willing to pay Rs.4,000/- per month to the respondents, in keeping with his monthly earning of Rs.28,000/-, as disclosed by him before the learned Family Court in his affidavit of income and expenditure (Annexure P-7). The learned counsel further submitted that the petitioner was even willing to keep the respondents and was willing to rent out a premises for their separate residence. It is alleged that it is the respondent No.1 who was unwilling to join the company of the petitioner. It is also submitted that due to Covid-19 pandemic, the earnings had come down and he could not be asked to pay Rs.20,000/- out of Rs.28,000/- to the respondents, leaving only a meager amount of Rs.8,000/- available to the petitioner, to meet his expenses including the payment of rent of the premises he was residing in and to look after his parents who were partly dependent on him.

5. Mr. Praveen Goswami, learned counsel for the respondents, on the other hand, has refuted all these claims on behalf of the petitioner. It is submitted that it was from the extract of the bank account that had been placed by the petitioner before the learned Family Court that it was revealed that he was earning much more than Rs.28,000/- per month and

that the father of the petitioner was a government servant and required no care or maintenance from the petitioner. It was further submitted that the Rent Agreement is of September, 2021 and before that, the petitioner was residing with his father. Furthermore, though he had undertaken to make payments @ Rs.4,000/- per month, he had made such payments only upto September, 2021 and not upto February, 2022, as claimed. With regard to his offer of the taking of a separate rental premises, it was submitted that no such offer had been made to the respondents. Furthermore, during the quashing proceedings before the Allahabad High Court, the parties had been referred to mediation and the petitioner had been directed to meet the travel expenses of the respondents to and fro from her residence to the Allahabad High Court Mediation Centre, which the petitioner has refused to meet.

6. I have heard the submissions of both sides and have perused the record.

7. The present petition under Section 482 Cr.P.C. has been filed with the prayer to quash and set aside the order dated 10th December, 2021, passed by the learned Family Court and all consequential proceedings arising therefrom.

8. The power of the Court under Section 482 Cr.P.C. is an extraordinary power, to be used sparingly, carefully and with caution and only when the continuation of the criminal proceedings will lead to mis-carriage of justice or there was a disclosure of abuse of process of the court. When the matter is considered in this light, it is clear that there is no merit in the present petition.

9. The order dated 9th February, 2021 was no doubt passed on the willingness expressed by the petitioner to pay a sum of Rs.4,000/- per month as an ad-interim maintenance to the respondents, however the learned Family Court then had also directed that the petitioner would pay this ad-interim maintenance @ Rs.4,000/- per month w.e.f. the date of the petition i.e., 29th September, 2020, till further orders, and that he would deposit the arrears in the bank of the respondent no.1 within 8 weeks and continue the payments month-by-month @ Rs.4,000/-. Though, the petitioner claims that this amount had been paid upto February, 2022, the fact is disputed by the learned counsel for the respondents, who had submitted that the payments were made only upto September, 2021 i.e., for 7 months. An Execution Petition filed by the respondents is also stated to be pending. The non-compliance of directions of a consent order speaks of the “fair conduct” of the petitioner. But he wants this Court to accept a similar offer towards maintenance of the respondents.

10. The learned counsel for the petitioner has relied on the judgment of a Coordinate Bench of this Court in ***Jyoti @ Gayatri Vs. Rohit Sharma @ Santosh Sharma***, 2022 SCC OnLine Del 1765, to urge that the financial capacity of the husband would have to be considered and a balance drawn between all relevant factors. Suffice to note that the learned Family Court has marshaled all relevant factors, relying on the observations of this Court in ***Bharat Hegde Vs. Saroj Hegde***, 2007 SCC OnLine Del 622, and the eleven factors as enumerated in para 8 thereof, to be taken into consideration while deciding an interim application for maintenance, though in respect of an application under Section 24 of the Hindu Marriage

Act, being relevant for a claim for maintenance under Section 125 Cr.P.C. also. The learned Family Court has also followed the dictum of this Court in *Annurita Vohra Vs. Sandeep Vohra*, 2004 SCC OnLine Del 192 for apportioning the earnings of the petitioner. The application of the law is certainly not erroneous.

11. As regards the determination of the income, the learned Family Court seems to have considered the very documents filed by the petitioner. The income affidavit and the bank account statement were filed interestingly on 9th October, 2021 i.e., when Covid-19 was waning and economic activity had picked up with no lockdown. The claim of a dip in the income due to Covid-19, as claimed before this Court, is not credible. It is also to be noted that the petitioner admits that he is employed with a private company, M/s Royal Sunderam Insurance Co. Ltd.

12. His expenditure, however, he claims is about Rs.25,000/-. If that be so, then there was no meaning in his offer on 9th February, 2021 before the learned Family Court that he could pay Rs.4,000/- every month to the respondents towards their maintenance! While alleging that the respondents had hiked their expenditure, it is amply apparent on the face of the record that it is the petitioner who had inflated his expenditure including Rs.10,000/- per month for his aged parents, who are admittedly living in their own residence on a 50 sq. yds. Plot at Bhajanpura, Delhi owned by his father.

13. The statement recorded on oath by the learned Family Court on 9th February, 2021 (Annexure P-5) also records that the petitioner owns a Hyundai EON car and a smartphone of Samsung. Yet, he wishes to peg the

maintenance of the respondent to Rs.4,000/- (before this Court Rs.5,000/-) i.e., less than half of the sum he allegedly spends on his old parents. A growing child and a mother who is taking care of all the needs of such a growing child is to somehow manage with Rs.4,000/-, whereas, the petitioner and his parents can have a greatly enhanced level of comfort by spending Rs.25,000/- to Rs.28,000/- on themselves.

14. This attitude is shameful to say the least. It behoves no husband or a father to deny a fair standard of living for a wife who is a homemaker and their child of tender age. It is alleged in the petition that the respondent No.1 is earning Rs.30,000/- by way of tuitions. It is no doubt a wild allegation, but it is curious, as to why the petitioner, is unwilling to make such additional efforts himself, to earn some more income, to meet the financial obligations of a husband and a father.

15. The malafide intentions of an estranged husband is to depress his income as much as possible, for sadistic pleasure, of seeing the agony of someone, who has no choice, but to be dependent on him, may be dictated by egoistic propensity to also possibly teach his wife a lesson for not falling in line with whatever be his dictates. Matrimonial relationships can come to an end for a variety of reasons including ego clashes. It is time that there is a change in the attitude when litigation is filed by one spouse against the other. To introduce bitterness in the litigation serves nobody's purpose. The creation of Family Courts, the entire set up of Counseling Centers, and the availability of mediation whether before litigation or during litigation, are all intended for a more amiable and less torturous resolution of matrimonial and family problems. The legal fraternity must

encourage quick resolution by these methods. Their role would be of immeasurable value in rescuing lives from the brink of ruination and annihilation.

16. To deny maintenance to an estranged wife and child is the worst offence, even from a humanitarian prospective. Yet, it is a sad truth that husbands force their wives to file execution petitions to delay payments, even after a court of law has determined her entitlement, albeit, even if as an interim measure.

17. The present petition is an abuse of the process of court. No error is evident in the order of the learned Family Court nor has any ground been made out for quashing of the proceedings before the Family Court. The petition is accordingly dismissed with costs of Rs.20,000/- to be paid to the respondent No.1 before the learned Family Court on the next date of hearing fixed before it.

18. The sum of Rs.1,00,000/- that has been deposited in the Registry shall be released to the respondent No.1, on an application filed in this regard. The said amount will, of course, be adjusted towards the existing arrears of maintenance.

19. With the aforesaid observations, the petition stands dismissed alongwith the pending application.

20. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 18, 2022/ck