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

Judgement reserved on: 05.07.2022

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Judgement pronounced on: 11.07.2022

+ **CRL.REV.P. 1133/2019 & CRL.M.As. 39285-87/2019**

VISHESH TANEJA

..... Petitioner

Through: Mr Anil Sharma, Mr Aman Bhardwaj
& Mr Sahil Batra, Advs.

Versus

REETA

..... Respondent

Through: Mr Deepak Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. This petition is directed against the order dated 08.08.2019, passed by the Principal Judge (East), Family Court, Karkardooma, Delhi, whereby, an application under Section 125(3) of Cr.P.C. filed by the respondent, has been partly allowed.

2. The facts of the case are that the petitioner and respondent are husband and wife. Their marriage was solemnised on 19.11.2018, according to Hindu laws, Customs and Rites. After their marriage, matrimonial disputes crept up and the petitioner and respondent started living separately. The respondent filed an application under Section 125 of Cr.P.C. before the Principal Judge (East), Family Court, Karkardooma, Delhi seeking maintenance from the petitioner.

3. The respondent had pleaded in her application that the petitioner is a property dealer and running office for the said purpose in the name and style of *Mangalam Properties at JA-2, Khidki Extn. Panchsheel Extn, Malviya Nagar, New Delhi-110017*. According to respondent the petitioner is earning about a sum of Rs.1 Lakh per month. The respondent also stated that she is not able to bear her expenses and it is the petitioner who is responsible to maintain her, therefore, she prayed for a sum of Rs.25,000/- per month as maintenance. She also prayed for interim maintenance while filing an application under Section 125(3) of Cr.P.C.

4. The petitioner opposed the application and filed his detailed reply denying the averments made by the respondent in her application. It has been stated by the petitioner that the respondent is a qualified individual, who at the time of marriage, was working in a company at Nehru Place, New Delhi. It has also been pleaded that the petitioner does not have any relation with respect to alleged company and he is unable to work due to his illness and is completely dependent on his family for his sustenance.

5. The learned court below vide impugned order has found that both the parties have not disclosed their true and correct income and employment. While deciding application under Section 125(3) of Cr.P.C. for grant of interim maintenance, the court below, however, directed the petitioner to make a payment of Rs.10,000/- per month apart from litigation expenses of Rs.11,000/-. The maintenance was awarded from the date of filing of the petition.

6. The learned counsel appearing for the petitioner vehemently submitted that the order passed by the learned trial court is completely erroneous. While referring to the pleadings from paragraph No.5 of the petition under Section 125 of Cr.P.C. filed by the respondent, he states that

according to the respondent herself the petitioner is not mentally fit. He further submits that there is no basis for awarding maintenance @ Rs.10,000/- per month when the trial court itself has found that the details of income and employment are not adequate. According to him, the petitioner is unemployed and his entire expenses are being incurred by his father. He is not able to run his own livelihood and on the contrary, the respondent/wife is an educated individual. There is no reason to disbelieve that she is not working lady. He placed reliance on Division Bench judgement of this Court dated 12.02.2019 in the matter of “**KN v. RG¹**” to submit that when spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted.

7. The learned counsel appearing for the respondent/wife controverts the submissions made by the petitioner and he submits that the order passed by the learned court below is in accordance with law. This court under revisional jurisdiction should not interfere into the well reasoned order passed by the family court when there is no jurisdictional error committed by the Court below. According to him, the affidavit filed by the petitioner before the court below itself demonstrated that under the head of occupation, the petitioner has claimed to be self-employed. The learned counsel, further, submits that the petitioner has cleverly left few columns blank which relates to disclosure of monthly income. The petitioner has not even mentioned that his monthly income is nil. It is, therefore, seen that when the petitioner has not disclosed the correct facts, he is not entitled for any relief. The learned counsel for the respondent/wife has also drawn the attention of this Court to column No.82 of the affidavit where the petitioner has mentioned in his

¹ 2019 SCC OnLine Del 7704

affidavit that in a particular year, he did not have any foreign travel, which shows that the petitioner does have foreign travel in past in other years, which he has not disclosed. The learned counsel appearing for the respondent/wife has taken this court to various entries of the statement of account of the petitioner from page No.93 to page No.118 to demonstrate that on various dates certain amounts are being credited to the account of the petitioner by voucher TFR. If there is no income of the petitioner, there is no reason for amount being credited to his account.

8. In the rejoinder, learned counsel appearing for the petitioner pointed out that the amount so credited to his account is being sent by his father and the medical documents placed on record at page No.91 clearly suggests that the petitioner is not mentally fit.

9. I have heard the learned counsel appearing for the parties and perused the record. The material available on record i.e. the affidavit filed by the petitioner before the trial court itself states that the petitioner is under self-employment. In all fairness, the petitioner was required to state the nature of his self-employment and the actual income therefrom.

10. The provisions of Section 125 are intended to fulfil a social purpose and its object is to compel a man to perform the moral obligation which he owes to the society in respect of his wife and children.

11. The status of the parties and their capacity, of course is required to be considered so as to arrive at a reasonable conclusion as to whether wife and children require maintenance and, if yes, to what extent. In the instant case, the order of maintenance of Rs.10,000/- cannot be said to be arbitrary or illegal when there is no material to indicate that the respondent/wife has any source of income. On the contrary, the petitioner himself stated in his affidavit that he is under self-employment.

12. The larger issues, whether the respondent would at all is entitled for any maintenance from the petitioner or whether the petitioner is of unsound mind, are to be decided by the court below after recording evidence of the respective parties. However, at the interim stage, if the family court passes an order granting maintenance @ Rs.10,000/- per month considering the totality of circumstances, the same does not call for any interference under the revisional jurisdiction of this court.

13. So far as the judgment relied upon by the learned counsel for the petitioner in the case of “**KN v. RG**” (supra) is concerned, the same does not appear to be applicable in the facts of the present case. In the case of “**KN v. RG** ” (supra) there was clear finding recorded by the court that the wife was earning @ Rs.1 Lakh per month and she was claiming Rs.2.5 Lakh per month, on the basis of the income of her husband which was about INR13,000/- per month. Under the facts of that case the Division Bench of this Court had held that the provisions of Section 125 of Cr.P.C. are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to tie over the litigation expenses and to provide a comfortable life to the spouse.

14. In view of the aforesaid, this court is not inclined to interfere into the order passed by the Family Court, Karkardooma, Delhi, hence, the revision petition stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 11, 2022/p