

**IN THE COURT OF DEEPAK WASON:  
SPL. JUDGE (NDPS): DWARKA COURTS: NEW DELHI**

**Criminal Appeal No. 87-2020**

In the matter of:

**Deepak Kumar@Tinku**

S/o Sh. Bhori Lal Bairwa  
R/o H.No. 10, Gali No. 22,  
Midas Garden, Village Baprola,  
Nangloi, New Delhi

**.... Appellant**

**Versus**

**1) Smt. Kavita**

D/o Sh. Babulal  
W/o Sh. Deepak Kumar@Tinku

**2) Baby Paridhi**

D/o Sh. Deepak Kumar@Tinku  
(Through mother Smt. Kavita)

**Both presently residents of:**

C/o Sh. Chandra Kala Chauhan  
E-139, Mansa Ram Park,  
New Delhi-110059

**Also at:**

B-92, Phase-I, J.J Colony,  
Sector-3, Dwarka, New Delhi-110078

**....Respondent(s)**

Date of Institution of the Appeal : **19.02.2020**  
Date of Arguments : **16.10.2021**  
Date on which judgment was pronounced : **16.10.2021**

**JUDGMENT:**

1. Vide this judgment, I shall dispose of the present appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (in short 'PWDV Act') by the appellant against the impugned order dated 18.01.2020, whereby the Ld. Trial Court disposed of the application under Section 23 PWDV Act.

2. I have gone through the file as well as Ld. Trial Court record and have heard the arguments of both the counsel for the parties. I have also gone through the judgment relied upon by the appellant titled as '**Sh. Bharat Hegde Vs. Saroj Hegde**', **CM (M) No. 40/2005 dated 24.04.2007, passed by Hon'ble High Court of Delhi.**

3. The perusal of order passed by Ld. Trial Court shows that Ld. Trial Court awarded interim maintenance of Rs.15,000/- per month in favour of respondent no. 1 / complainant and her minor daughter from the date of filing of application/petition i.e 08.03.2019 till the final disposal of petition. It was also ordered that payment of maintenance has to be made on or before 10<sup>th</sup> day of each English calender month.

4. The Ld. counsel for appellant has raised various grounds in the present appeal for assailing the impugned order. It is argued by the counsel for appellant that impugned order is against the surmises and conjectures. It is further argued that the Ld. Trial court has failed to appreciate the law and various case judgment passed by various Hon'ble Courts as well as the Hon'ble Apex Court in a number of cases. It is further argued that the Ld. Trial court has passed the impugned order for maintenance by pure guesswork. It is further argued that the Ld. Trial court has passed the impugned order without appreciating the fact that the complaint filed under Section 12 of PWDV Act 2005 is full of inconsistent/vague statements. It is further argued by Ld. counsel for the appellant that appellant is only earning a salary of Rs. 12,000/- per month and Ld. Trial Court has wrongly passed the order of maintenance. It is further argued by Ld. counsel for the appellant that respondent no. 1 had not filed any documentary proof before Ld. Trial Court with regard to the income of the appellant.

5. On the other hand, the counsel for respondents have argued that the Ld. Trial Court has already assessed the monthly income and passed the order of interim maintenance as per material available on record. It is further argued by Ld. counsel for respondents that appellant is living a lavish and luxury life. It is further argued by Ld. counsel for the respondents that respondent

no. 1 is required to take care minor child who is in her custody. It is argued that amount granted by Ld. Trial Court towards the maintenance is on lower side and same is required to be enhanced.

6. It is to be kept in mind that after marriage, husband is bound to maintain his legally wedded wife and minor child as per law. There is no reason, not to pay maintenance to her legally wedded wife and minor child. So, the arguments of the appellant seems to be irrelevant at this stage. The material available on record have already been considered by Ld. Trial Court.

7. It is well settled law of the land that the husband cannot take subterfuges to deprive her wife 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 and children 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.

8. The Ld. Trial Court has rightly assessed the monthly income of appellant. It is not disputed that both appellant and respondent got married on 19.01.2014. So, the marriage between the parties is not disputed. The parentage of child born out of said wedlock is also not disputed. The minor child is entitled to some reasonable maintenance amount for leading decent dignified life. The welfare of minor child is paramount purpose for both parents and the minor child cannot be thrown at the mercy of others by the father.

9. In the present case, the wife has been awarded interim maintenance of Rs.15,000/- per month for maintaining herself and her minor child who is in her custody. In the present state of affairs, Rs.15,000/- is not such a great amount which can be reduced. The husband is duly bound to support his wife as well as child and is required to use all his potential for his earning. The husband cannot be allowed to say that he is not in a position to earn more or that most of the amount is required for his own purposes. The couple was blessed with a daughter which is also the liability of the husband and he should take care of minor child. The argument addressed by husband seems to be just as a mere escape from his liability to pay to the minor child and he should shoulder the responsibility of his child.

10. In the latest judgment passed by Hon'ble High Court of Delhi, titled as '**Kanupriya Sharma vs. State & Anr**' Crl. Rev.

**Pet. 849/2018 & Crl. M.A. 33234/2018 dated 31.05.2019,**  
wherein it is held that:

*21. An application under Section 23 (1) of the D.V. Act is an application for fixing interim maintenance. **Interim maintenance is fixed on taking a prima facie view of the matter. Serious disputed question of facts raised at that stage, requiring evidence cannot be gone into.***

*30. The grant of maintenance under the DV Act has not been made dependent upon the expression “unable to maintain herself”. Further, the expression “unable to maintain herself” does not mean capable of earning.*

11. The **Apex Court in Noor Khatoon Vs. Mohd. Quasim; 1997 Crl. L. J. 3972** has made the observation that **“a father having sufficient means has the obligation to maintain his minor children who are unable to maintain themselves till they attain majority and in case of females, till they get married”.**

12. Since the minor child is to be maintained by the appellant/husband and even the paternity is not disputed, therefore, in the absence of denial of existence of the marriage and denial of paternity of minor child, the appellant cannot shy away from his statutory obligation of maintaining his minor child.

13. The statutory obligation to maintain child is paramount wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds. In this regard, help can be taken from the judgment of the **Hon'ble Punjab and Haryana High Court in the case titled as Dr. R. K. Sood Vs. Usha Rani Sood; 1996 (3) 114 PLR 486** and the relevant paragraph is reproduced as under:-

**“17. Father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the test of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and**

***baseless grounds.”***

14. Hence, in view of the submission made above, this Court is of the considered view that amount of interim maintenance cannot be reduced. As far as judgments relied upon by the appellant is concerned, it is to be kept in mind that each case has its own facts and circumstances.

15. Accordingly, in view of the above discussion, the present appeal stands dismissed being without any merits. There is no illegality and infirmity in the impugned order. Copy of this judgment be sent to Ld. Trial Court alongwith Trial Court record. Appeal file be consigned to record room.

16. It is made clear that the Ld. Trial Court would be at liberty to assess final maintenance, after parties have led their evidence, without being influenced by the present order.

**Pronounced in the Open Court  
today i.e 16<sup>th</sup> October, 2021**

**(Deepak Wason)**  
Spl. Judge (NDPS)  
Dwarka Courts/ New Delhi