

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

% Judgment reserved on : 23rd May, 2019
Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 103/2015

MANJU SHARMA Petitioner

versus

VIPIN Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Lal Singh Thakur and Mr. Sudhir Tewatia, Adv.
with petitioner in person.

For the Respondent: Mr. Kunal Rawat, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 01.11.2014 whereby the appellate court has dismissed the appeal of the petitioner impugning order dated 06.06.2013 whereby the trial court had fixed the maintenance for the petitioner and her daughter at Rs. 10,000/- per month with effect 13.09.2011.

2. Parties were married on 11.07.2008. On 02.05.2009, a daughter was born who is in the care and custody of the petitioner.

3. As per the petitioner she was turned out of her house on 14.11.2010 on account of failure to bring enough dowry and to give a

car.

4. The respondent has filed proceedings for divorce which are pending. The petitioner filed the subject petition under the Protection of Women from Domestic Violence Act 2005.

5. By the impugned order dated 06.06.2013, the trial court held that respondent had not clearly disclosed his income and the assertion that he was earning only Rs. 12,000/- per month was unbelievable and accordingly prima facie assessed his income at Rs. 30,000/- and awarded Rs. 10,000/- to the petitioner and her daughter.

6. The appellate court by the impugned order found no infirmity in the view taken by the trial court and dismissed the appeal filed by the petitioner seeking enhancement.

7. Petitioner impugns the said order and seeks enhancement of the maintenance to Rs. 40,000/- per month besides an order for residence.

8. The case of the petitioner is that the respondent is engaged in several businesses and engaged in the business of manufacturing and sale of R.O. Water Purifier and has a turnover of approximately Rs. One Crore and employs nearly 10 persons.

9. Further it is contended that the respondent is also engaged in sale and purchase of used cars. Further it is contended that the father of the respondent in his evidence in a suit for injunction filed by him against the petitioner had deposed that there is a jewellery showroom

on the ground floor of their property which was being run by him and his two sons including the respondent. The showroom was being run under the name and style of Vipin Jewellers. However, he stated that the said shop was closed. He further deposed in his statement that he and his son/respondent – Vipin were jointly running the shop earlier. The other son was doing his computer hardware business.

10. Petitioner has contended that the trial court as well as the appellate court has erred in not appreciating that respondent had several businesses and several sources of income and had misled the court and had not disclosed his correct income. Further it is contended that the daughter of the parties has an eye ailment for which she requires regular treatment and expense of approximately Rs. 5000/- per month is spent on her education and upbringing. Further it is contended by the petitioner that the daughter urgently requires an operation and does not have funds for the same.

11. Per contra, the respondent has contended that his income is only Rs. 10,000/- to Rs. 15,000/- per month.

12. In support of the contention, the petitioner has placed on record several website listings of Genesis Traders, which is stated to be a sole proprietorship concern and claims to have a turnover of about Rs. 50 lakhs to Rs. One Crore per annum. She has further placed on record the website listings to show that respondent is engaged in the business of sale/purchase of second hand car dealings.

13. Medical record of the daughter has also been placed on record which shows regular visits to the doctor and expenditure being incurred by the petitioner.

14. Further the trial court as well as the appellate court have found that the respondent has not been truthful in his disclosure.

15. Clearly, the appellate court has erred in placing the burden of proof on the petitioner and has erred in holding that she has not placed the details of contract with regard to the RO Water business of the respondent. The listings which are placed on various websites by the respondent prima facie show a turn over of Rs. 50 lakhs to Rs. One Crore per annum. Further the website listings placed on record prima facie show that the respondent is also engaged in the business of sale and purchase of second- hand cars. Even the father of the respondent had stated that he was engaged in jewellery business along with the respondent though the business is stated to be closed today. At the stage of assessment of interim maintenance, court has to only form a prima facie opinion.

16. It has also been brought on record that respondent has even visited Bangkok in the year 2012; though it is contended that the visit was sponsored by a friend. However, no details as to who had sponsored that visit and why, has been placed on record. It has further been brought on record that the respondent is also engaged in IT Business under the name and style of Om Sai Solutions wherein also

the turnover is shown as Rs. 50 lakhs to Rs. One Crore per annum.

17. The Supreme Court of India in *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 has held 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 whereunder 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.

18. The rationale for grant of maintenance under section 125 Cr.P.C. as expounded by the Supreme Court in *Bhuvan Mohan Singh (supra)* applies on all fours to the grant of maintenance under the DV Act.

19. Regular medical expenditure being incurred by the petitioner on her daughter is approximately Rs. 5,000/- per month besides her educational expenses and other day-to-day expenditure.

20. In my view the trial court as well as the appellate court had erred in assessing the income of the respondent and fixing interim maintenance on a very lower scale. Keeping in mind the requirement of the petitioner and her daughter, the interim maintenance needs to be enhanced. In view of the material placed by the petitioner on record and the expenditure required to be incurred, I am of the view that the interim maintenance should be enhanced to Rs. 30,000/- per month.

21. The petition is accordingly allowed in the above terms. The respondent is directed to clear the entire arrears of maintenance in three equal monthly instalments with the first instalment being payable within two weeks from today. The respondent shall continue to pay interim maintenance @ Rs. 30,000/- till the final adjudication by the trial court. The arrears shall be payable from the date of filing of the application before the trial court i.e. 13.09.2011.

22. It is clarified that the above assessment is prima facie and would be subject to final orders passed by the trial court after parties have led their evidences.

23. The petition is allowed and disposed of in the above terms.

24. Order *Dasti* under the signatures of Court Master.

JULY 01, 2019
'rs'

SANJEEV SACHDEVA, J

नित्यमेव जयते