

IN THE COURT OF SH. SANJAY SHARMA-II : ADDL. SESSIONS JUDGE-03,  
(CENTRAL): TIS HAZARI COURTS, DELHI

**Criminal Appeal No. 107/2021**  
CNR No.: **DLCT01-015593-2021**

**Pawan Deep Singh**  
S/o Late Gurdeep Singh  
R/o 995, Dr. Mukherjee Nagar,  
Delhi-110009

..... Appellant

**VERSUS**

**Jaspreet Kaur**  
D/o Sh. Satinder Singh  
R/o E-156, First Floor, Gali No. 03,  
Hardev Nagar, Jharoda Majra, Burari,  
Delhi-110084

..... Respondent

**Date of Institution** : 17.11.2021  
**Date of Arguments** : 01.02.2022  
**Date of Judgment** : 05.02.2022

**J U D G M E N T**

1. The criminal appeal under Section 29 of '*The Protection of Women From Domestic Violence Act, 2005*' (Hereinafter referred to as '**the Act**') is directed against order dated 01.04.2021 (In short '**the impugned order**') in complaint case vide CC No. 529227/16 titled as '*Jaspreet Kaur vs. Pawan Deep Singh & Ors.*' whereby Ld. MM-03 (Mahila Court), Central District, Tis Hazari Courts, Delhi (In short '**the trial Court**') directed the appellant to pay interim maintenance in the sum of Rs. 5,133/- per month to the respondent from the date of filing of present petition till its final disposal.

**BRIEF FACTS:**

2. The facts preceding to institution of the criminal appeal are that the respondent (*Hereinafter referred to as 'the complainant'*) filed an application under Section 12 of the Act against the appellant and his family members alongwith an application under Section 23 of the Act for interim maintenance on the averments that the complainant was married with the appellant on 04.08.2013. The complainant alleged that she was subjected to physical and mental cruelty for bringing insufficient dowry. There are allegations and counter-allegations against each other with which we are not presently concerned. The complainant left shared household on 07.10.2013.

3. The case of the complainant, as pleaded in para No. 19 of the complaint, is that the appellant is earning more than Rs. 50,000/- per month. The appellant is living a luxurious life. The complainant is residing with her parents.

4. In reply, the appellant stated that he was employed with M/s. Studio Prem Colour Lab Pvt. Ltd. in Kamla Nagar, Delhi-110007 @ Rs. 6,000/- per month. He stated that he is unemployed. He stated that he has no source of income. He stated that he is bearing domestic expenses and looking after his old ailing father. The complainant left matrimonial home. He stated that the complainant is earning more than him from stitching work. In additional reply, the appellant stated that he was terminated by his employer on 02.09.2016 and his claim case is pending adjudication before Labour Court, Delhi.

## **THE IMPUGNED ORDER:**

5. The relevant part of the impugned order is as under:

“By way of present application, complainant has sought interim maintenance from the respondent No. 1. It is submitted that complainant is totally dependent upon her parents and she has no source of income. She is living at her parental home whereas respondent No. 1 is a professionally qualified photographer and earning more than Rs. 50,000/- per month. Therefore, he may be directed to pay a sum of Rs. 20,000/- per month towards the maintenance of complainant. However, respondent No. 1 has admitted in his income affidavit that he was working as professional photographer but at present he is unemployed and he also mentioned that his case is pending before the Ld. Labour Court, Rouse Avenue.

Further, neither the complainant nor the respondent No. 1 has placed anything on record to substantiate their averments *qua* income of respondent No. 1. Respondent No. 1 is able bodied and termination from one job does not mean that he cannot do job / work anywhere else. In the light of aforesaid facts and circumstances, respondent No. 1 is deemed to be a semi-skilled worker (Photographer) and his income is assessed as Rs. 15,400/- per month, as per the Minimum Wages Rules, Delhi as he is not expected to earn less than the amount fixed by Government under Minimum Wages Act.

It was held by the **Hon'ble High Court of Delhi** in the case of **Annurita Vohra vs. Sandeep Vohra 2004 (3) AD 252**, that the family income should be divided equally between all the family members entitled to maintenance with one extra portion / share being allotted to the earning spouse since extra expenses would necessarily occur. In view of the said judgment, the said amount will be divided into three parts i.e. two parts for the respondent No. 1 and one part for the complainant.

Having regard to the status of the parties and their responsibilities, **respondent No. 1 is directed to pay a sum of maintenance @ of Rs. 5,133/- per month in favour of the complainant, from the date of filing of present petition till its disposal.** Payment shall be made by the 10<sup>th</sup> day of every calendar month by instant money order or be deposited in the bank account of the petitioner. Arrears shall be cleared within six months. Maintenance awarded in other proceedings shall be liable to adjustment.”

**GROUND OF APPEAL:**

6. Feeling aggrieved and dissatisfied with the impugned order, the appellant preferred the appeal on the grounds, as under:

“a. The trial Court did not consider that the complainant has filed a false case and she is residing separately without any domestic violence against her;

b. The trial Court did not consider that the appellant is unemployed as his service was terminated by M/s. Studio Prem Colour Lab Pvt. Ltd. in the year 2016;

c. The trial Court did not consider that the appellant has challenged his termination and his claim case is pending before Labour Court at Rouse Avenue Courts, Delhi;

d. The trial Court did not consider statement of claim and other documents filed by the appellant pertaining to reference of his termination to Labour Court;

e. The trial Court did not consider that the appellant was employed with M/s. Studio Prem Colour Lab Pvt. Ltd. at Rs. 6,000/- per month only;

f. The trial Court did not consider that the complainant was working and earning good amount from stitching work;

g. The trial Court committed error in assessment of income of the appellant @ Rs. 15,400/- per month;

h. The trial Court did not consider that the appellant was drawing an amount of Rs. 6,000/- per month and therefore, there was no reason for presuming monthly salary @ Rs. 15,400/- per month; and

i. The trial Court did not consider that FIR No. 154/2016 was registered at PS Mukherjee Nagar against the appellant and her family members wherein they are charged for offences under Section 341/323/506/509/34 IPC *vide* order dated 24.01.2019.”

**APPEARANCE:**

7. I have heard arguments of Mr. Rajesh Bhatia, Advocate for the appellant and Ms. Monika Sharma, Advocate for the complainant and perused the trial Court record and written arguments filed by the parties.

**CONTENTIONS OF THE APPELLANT:**

8. Ld. Counsel for the appellant contended that the appellant was employed with M/s. Studio Prem Colour Lab Pvt. Ltd. and drawing salary @ 6,000/- per month. He contended that the appellant was terminated from his service on 02.09.2016 after institution of the complainant on 10.07.2015. He contended that the appellant has challenged his termination and the dispute is pending adjudication before Labour Court, Rouse Avenue Courts, Delhi. He contended that the appellant is seeking reinstatement will full back wages and continuity of service in the said case. He contended that the appellant is unemployed since 02.09.2016. He contended that the appellant has responsibility to maintain his old father who is suffering from '*parkinson*'.

9. Ld. Counsel for the appellant contended that the appellant cannot be saddled with the liability to pay interim maintenance as he is unemployed. He contended that in any case, liability of the appellant cannot be assessed on minimum wages as there is documentary evidence that the appellant was drawing salary @ Rs. 6,000/- per month. He contended that the complainant left shared household and an FIR No. 154/2016 was registered under Section 341/323/506/509/34 IPC at PS Mukherjee Nagar against the complainant and her family members wherein charges were framed on 24.01.2019. He referred the documents pertaining to reference of his termination to Labour Court and proceedings before Labour Court. He referred documents pertaining to treatment of his mother in Dr. Ram Manohar Lohia Hospital, Delhi. He contended that the trial Court did not consider that the complainant left shared household without any reason. He contended that the trial Court did not consider termination of service of the appellant and pendency of his claim case before Labour Court. He contended that the trial Court did not consider that the complainant is earning good amount from stitching work. He contended that the trial Court did not consider that the complainant and her family members are facing charges for committing serious offences against the appellant and his family members. He contended that the impugned order deserves to be set-aside. He contended that the appellant is neither liable nor capable of paying such amount to the complainant.

**CONTENTIONS OF THE COMPLAINANT:**

10. Ld. Counsel for the complainant contended that the appellant has not paid any amount to the complainant since the date of filing of the case on 29.06.2015. She contended that the allegations and counter-allegations made by the parties are not relevant at this stage. She contended that the complainant is a legally wedded of the appellant and she is entitled to seek maintenance as per status of the appellant. She contended that the complainant is residing with her old aged parents. She contended that the complainant is 12<sup>th</sup> pass and unemployed. She contended that the appellant is a graduate and a qualified photographer. She contended that the appellant has no other responsibility. She contended that the appellant is residing in a palatial house in a posh colony in Dr. Mukherjee Nagar, Delhi built over 160 over square yards. She contended that the appellant stated in his '*Income and Expenditure Affidavit*' that he is incurring expenses to the extent of Rs. 5,000/- per month on grocery and therefore, the complainant is also entitled to seek maintenance on that standard. She contended that the appellant rendered himself unemployed after institution of this case to demonstrate his status as that of an '*unemployed person*'. She contended that the appellant has not shown source of his income from which he is maintaining himself and his parents. She contended that if the appellant can take care of his parents, he must discharge his obligation towards his legally wedded wife. She prayed for dismissal of the appeal.

### **ANALYSIS OF THE IMPUGNED ORDER:**

11. On careful examination of the impugned order, it is evident that the trial Court passed the impugned order on grounds, as under:

(a) The complainant and the appellant have not filed any material pertaining to income of the appellant;

(b) The appellant is able bodied person and termination from service does not mean that he cannot work elsewhere;

(c) Income of the appellant is assessed as Rs. 15,400/- per month being minimum wages for a semi-skilled worker after considering his qualification as a photographer; and

(d) One part of monthly income, so assessed, is granted to the complainant.

### **ANALYSIS AND DISCUSSION:**

12. The complainant is wife of the appellant. It is trite to state that it is the moral and legal obligation of the appellant to maintain his wife and provide her same comforts commensurate to his status and standard of living.

13. The appellant is a graduate. In this regard, '*Affidavit of Assets, Income and Expenditure*' filed by him can be referred wherein he mentioned at Sl. No. 7 his '*Educational Qualifications*' as '*Graduate*'. He is a photographer. This fact is mentioned in his additional reply. In his notice dated 19.10.2016 to M/s. Studio Prem Colour Lab Pvt. Ltd., he stated that he was in service since 20.01.2000 and he was working as a '*Video Camera Man*' since 2011. Therefore, it is clear that the appellant is a graduate and an experienced photographer.



14. The complainant has done 12<sup>th</sup> standard. She is not employed. She has no source of income. She has no movable or immovable property capable of generating any income. She is residing with her parents. She is dependent upon her parents. A mere statement that the complainant is earning from stitching work in the absence of any credible material in this regard is inconsequential. She is entitled to seek maintenance from the appellant.

15. The appellant admitted that he is residing in his ancestral house i.e. H. No. 995, Dr. Mukherjee Nagar, Delhi-110009.

16. The fact that the appellant is unemployed would not absolve him from his responsibility to maintain the complainant. The appellant has requisite educational and professional qualification for earning. Termination of service does not mean that the appellant is incapable of finding another employment or work. The appellant stated, in his '*Affidavit of Assets, Income and Expenditure*' that his expenses is around Rs.5,600/- per month and he has shown his mother as his dependent. He has not explained source of his income.

17. The appellant is a graduate. He is able-bodied and experienced photographer. He is residing in ancestral home in a posh colony of Delhi. He is not suffering from any physical disability preventing him from doing any work. He cannot shrink his responsibility regarding interim maintenance towards the complainant by pleading unemployment since 02.09.2016.

18. In ***Rajnish vs. Neha & Anr***, CrI. Appeal No. 730/2020 decided on 04.11.2020, Hon'ble Supreme Court of India held as under: (pg. no. 39)

“.....The plea of the husband and he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.”

19. In the said judgment, Hon'ble Supreme Court of India held as under: (pg. no. 42 and 43)

“An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash Bodhraj v Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligation for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

20. In ***Shamima Farooqui vs. Shahid Khan***, (2015) 5 SCC 705, Hon'ble Supreme Court of India held as under:

“14.....Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

21. In ***Bhuvan Mohan Singh vs. Meena & Ors.***, (2015) 6 SCC 353, Hon'ble Supreme Court of India held as under:

“2.....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.”

22. In ***Masud Alam vs. Mariam Bibi & Anr.***, 2014 SCC OnLine Cal 22627, Hon'ble Calcutta High Court held as under:

“.....Merely because a person is claiming that he has no income that is no ground to exonerate him from the liability of maintaining his wife.

In such a situation if it is found the husband is an able bodied person and has capacity to earn then in that case he shall be bound to maintain his wife.”

23. In ***Chander Parkash vs. Shrimati Shila Rani***, AIR 1968 Del 174, Hon'ble High Court of Delhi held as under:

“7. But this apart, as submitted by Shri Bhandari, an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.....”

24. In the absence of any evidence pertaining to income of the appellant, the trial Court rightly assessed his monthly income on the scale of minimum wages.

25. As regards contention that the complainant left matrimonial home and the appellant did not commit any incident of domestic violence, it is stated that it is a disputed question of fact and it can only be gone into after trial. Such contention cannot be considered minutely at this stage. On perusal of the file, it cannot be stated that *prima facie*, there was no justification available to the complainant to reside separately from the appellant.

26. In *Nakul vs. Padmini*, (2016) SCC OnLine Bom 10624, Hon'ble High Court of Bombay held as under:

“9. The contentions of the petitioner that the respondent wife has deserted him without any reasonable cause and therefore, she is disentitled to maintenance, cannot be considered in great details at the stage of determination of interim maintenance.”

**CONCLUSION:**

27. This Court does not find any reason to interfere with the impugned order awarding a meagre amount of interim maintenance @ Rs. 5,133/- per month to the complainant. There is no manifest error of law or procedure or perversity in the impugned order. Accordingly, the criminal appeal filed by the appellant is dismissed. A copy of the judgment be sent to Ld. trial Court alongwith the trial Court record. Appeal file be consigned to record room.

Announced in the open Court  
on this 05<sup>th</sup> February, 2022

SANJAY SHARMA-II  
Addl. Sessions Judge-03 (Central)  
Tis Hazari Courts, Delhi

**Pawan Deep Singh vs. Jaspreet Kaur**

CNR No.: DLCT01-015593-2021

CrI. Appeal No. 107/2021

05.02.2022

Present : Mr. Rajesh Bhatia, Advocate with the appellant.  
Ms. Monika Sharma, Advocate with the respondent.

*Vide* separate judgment, the appeal filed by the appellant is dismissed. The appeal file be consigned to record room.

Sanjay Sharma-II  
ASJ-03, Central District,  
Tis Hazari Courts, Delhi  
05.02.2022