

स्वाय सिद्ध त्रिपाठी
SWAYAM SIDDHA TRIPATHY
महानगर दण्डाधिकारी नारी महिला कोर्ट
Metropolitan Magistrate (Mahila Court-5)
कमरा नं. 310 नौवारी नौपल
द्वारका न्यायालय नई दिल्ली
Dwarka Court, New Delhi
IN THE COURT OF MS. SWAYAM SIDDHA TRIPATHY:
MM (MAHILA COURT - 05)

ROOM NO: 310: DWARKA COURTS: NEW DELHI

MC No: 140/20

02.03.2023

INTERIM ORDER

1. Vide this order, I shall decide the application of the complainant for interim relief filed under Section 23 of Protection of Women from Domestic Violence Act, 2005.
2. This Court has considered the submissions of the parties and perused the record.
3. Briefly stated, it is the case of the complainant that she got married to respondent no.1 on 26.12.2018. After marriage, the respondents demanded dowry from the complainant in the form of household articles and jewelries. On 15.04.2020, the respondent no.2 molested and misbehaved with the complainant. On 22.05.2020, respondent no.1 and 2 in presence of other respondents beat up the complainant. The respondents also tortured and harassed the complainant by stopping her from access of food items and refrigerator, even



during lockdown.

4. Per contra, the respondents have stated that the complainant intentionally hid the factum of her first marriage from the respondent no.1 for several months. After marriage, the complainant did not want to vacate the matrimonial house in order to join the company of respondent no.1 at an independent house. She even tried to spoil the relationship of the respondent no.1 with his family.
5. Both the parties have made allegations and counter allegations against each other. Whether the complainant is able to prove that she was subjected to domestic violence or not is a matter of trial. However, *prima facie* the court is of the opinion that the complainant has been subjected to domestic violence by the respondents, therefore she is entitled to interim relief.
6. At the outset, it is to be noted that vide order dated 24.09.2020, the Ld. Predecessor of this Court had granted Rs.8,000/- as ad-interim relief to the complainant. However, this order was challenged before the Hon'ble High Court of Delhi. The Hon'ble Court dismissed the petition with the observation that the complainant is wealthier than the respondent no.1 and maintaining a better standard of life.
7. Counsel for respondents has taken the plea that in view of the observation made by Hon'ble High Court of Delhi, the complainant is not entitled to any interim relief and



application u/s 23 of PWDV Act is not required to be entertained. In my view, the order of Hon'ble High Court was emanating from the ad-interim order passed by this Court. The observation made by Hon'ble Court does not in any manner deprive the complainant from seeking appropriate remedies before this Court as available to her under the Protection of Domestic Violence act, 2005.

8. In the application u/s 23 of PWDV Act, the complainant has firstly prayed for interim maintenance of Rs.50,000/- per month.
9. In the income affidavit, the complainant has stated that she has done BBA and MBA. She is unemployed and has no source of income and completely dependent on her husband. She is residing with her parents. She is having household expenditure of Rs. 50,000/- per month. She does not have any dependents or liabilities.
10. On the other hand, respondent no.1 has stated in his income affidavit that he is MBBS D-Ortho and is residing in a rented accommodation and paying monthly rent of Rs. 16,000/-. He is temporarily working at Ganga Ram Hospital as Senior Resident and earning Rs.92,000/- per month. He has no dependents. Further, he is making payment of Rs. 8000/- per month as ad-interim maintenance.
11. Counsel for complainant has argued that respondent no.1 has deliberately not disclosed his actual income. The status of the



respondents can be seen from the amount spent by the Respondents for the trip to Australia. The respondent no.1 is having insurance policies, PPF and Demat Account and also maintaining safety deposit locker which he has not disclosed before the Court. The average monthly withdrawal in his account is of Rs. 50,000/-. He is earning more than Rs.1,25,000/- per month. He is working as Sr. Resident Doctor in Sir Ganga Ram Hospital. He also owns Sunny XL Nissan car.

12.The counsel for the complainant has relied upon the following judgments:

- i. ***Sunita Kachwaha and Ors v. Anil Kachwaha***, CrI. Ap.No. 2310/14.
- ii. ***Rajnesh v. Neha***, 2020 SCC OnLine SC 903.
- iii. ***Babita Bisht v. Dharmender Singh Bisht***, 2019 SCC OnLine Del 8775.
- iv. ***Annurita Vohra v. Sandeep Vohra***, 2004 SCC OnLine Del 192.
- v. ***Meenu Chopra v. Deepak Chopra***, 2001 (59) DRJ 761.
- vi. ***Shailja v. Khobbanna*** (2018) 12 SCC 199.
- vii. ***Kanupriya Sharma v. State*** (2019) 261 DLT 349.
- viii. ***Manish Jain v. Akanksha Jain*** (2017) 15 SCC 801.

1. *Per contra*, counsel for respondent no.1 has argued that complainant is well qualified and is also capable of earning. Further, the respondent no.1 was expelled from his services at Ganga Ram Hospital as he could not concentrate on work due to pending litigations. The complainant is wealthier than the respondents and has also inherited properties from her



parents. She has 2 cars at her disposal. As per the FIR of her previous marriage, she spent around Rs.1 crore on the first marriage. She had also told the respondent no.1 that her entire jewelry was taken by her first husband and the remaining jewelries were seized by Income Tax Department in a raid in 2016-17.

2. The right to receive maintenance from the husband is not an absolute right of a wife. The wife has to firstly show her inability to sustain, survive and manage even the basic necessities. Additionally, she also has to show that the husband is earning and is having a better lifestyle whereas she has been left fendng for herself. The complainant has to prove that either she is not earning or her income is not sufficient to maintain the same standard of living which was provided to her in the matrimonial house.

3. It was held in ***Sunita Kachwaha (Supra)*** by the Hon'ble Supreme Court that:

"Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her..... Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

4. It was also rightly held by Justice S. N. Dhingra in ***Sanjay***



Bhardwaj v. State, Crl.M.C.No. 491/2009 that:

"A perusal of Domestic Violence Act shows that Domestic Violence Act does not create any additional right in favour of wife regarding maintenance. It only enables the Magistrate to pass a maintenance order as per the rights available under existing laws. While, the Act specifies the duties and functions of protection officer, police officer, service providers, magistrate, medical facility providers and duties of Government, the Act is silent about the duties of husband or the duties of wife. Thus, maintenance can be fixed by the Court under Domestic Violence Act only as per prevalent law regarding providing of maintenance by husband to the wife. Under prevalent laws i.e. Hindu Adoption & Maintenance Act, Hindu Marriage Act, Section 125 Cr.P.C - a husband is supposed to maintain his un-earning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage."

5. Thus, the intention of the legislation is never to encourage willful unemployment and unnecessary dependence on the husband. The power of granting maintenance is also not intended to be exercised for equalizing the income of the parties as held by Hon'ble Delhi High Court in ***Ritu Bhargav v. Sharad Bhargava, 2018 LAWPack (Del) 79351***. The



relevant portion of the judgment is as follows:

"The perusal of the entire facts and circumstances of the present case and also the evidence on record, it is observed that the appellant's monthly income is Rs. 44,740/- while the respondent is drawing an annual income of Rs. 1,75,351/- i.e. amounting approximately to Rs. 14,280/- per month. It is also seen as per the bank accounts and the Statement of Expenditure (s) as filed by the appellant that the appellant has sufficient means to maintain herself. The observations adduced herein before lead to the only conclusion that there is no infirmity in the impugned order whereby the Family Court has struck a clear balance between the ability of the appellant / wife to maintain herself and the extent of liability on her shoulders and has dismissed the subject application for maintenance. Section 24 of the HMA is not meant for equalising the income of wife and with that of husband but to grant relief only in favor of a spouse who has no independent source of income for his or her support."

6. In the present case, the complainant is an MBA graduate and is qualified at par as her husband. The complainant is able-bodied and well educated however, she has chosen not to seek employment and instead be a dependent on her husband. Further, the complainant has failed to show that respondent no.1 is maintaining a better standard of living than her. The respondent no.1 is presently unemployed and cannot be said to be living a luxurious life.

7. The Hon'ble Supreme Court in **Rajnesh (Supra)** had laid



down the criteria for determining the quantum of maintenance by holding that, the objective of granting interim alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage. Similarly, in *Kanupriya Sharma (Supra)*, it was held that it is the obligation of the husband to see that the wife does not become a destitute or a beggar. The husband cannot take subterfuges to deprive her of the benefit of living with dignity.

8. As per the FIR filed against the first husband and his family members, the complainant and her family spent close to Rs.1 crore on the marriage. The complainant has also filed the list of dowry articles given by her parents in the marriage with respondent no.1. The amount spent in the second marriage would also easily be in lakhs of rupees. The complainant also received Rs. 9 lakhs as settlement amount from first marriage. Thus, the family status of the complainant does not make it believable that if the complainant is not provided with maintenance, she would be reduced to destitution or vagrancy. In fact, it is quite the opposite.

9. Counsel for complainant had argued that the financial position of the wife's parent and whether the spouse is educated and could support herself are immaterial as held in *Manish Jain (Supra)*. However, as held by Hon'ble Supreme Court in *Sunita Kachwaha (Supra)*, inability to maintain oneself is a pre-condition for grant of maintenance. In the



instant case, considering the standard of living of the complainant and her family on the basis of expenses made by them in both the marriages of the complainant, it does not appear that the complainant is incapable of maintaining herself. Although the Hon'ble high Court in **Kanupriya Sharma (Supra)** held that the expression 'unable to maintain herself' does not mean capable of earning. However, the complainant has been unable to show that she was provided with a better standard of living at the matrimonial house than available to her at her parental house. Merely alleging that she has no income would not suffice. Ultimately, it is the responsibility of the husband and not his parents to ensure that the wife is given proper care and her basic necessities are being fulfilled. The respondent no.1 is a qualified doctor however, he is not employed at present. Thus, both the complainant and her husband are 'capable of earning' but are not employed. Therefore, this argument cannot be used against one unemployed spouse for providing maintenance to the other unemployed spouse.

10.As relied upon by the Counsel for Complainant, it was held by Hon'ble High Court in **Meenu Chopra (Supra)** that principles of equity must be applied in cases of maintenance. Equity means fairness and evenness and it cannot be applied solitarily upon the aggrieved wife. In absence of any dependent, either of the qualified spouses cannot be made responsible for the other's well-being considering that neither of them are at the verge of destitution. Moreover, as



discussed above, the complainant is from a well-to-do family and has also received compensation from her first husband. The complainant is highly qualified and capable of finding a source of income for herself. Allowing maintenance to her will only promote idleness and dependency on the husband. Therefore, I am not inclined to grant any maintenance to the complainant in view of her capacity to earn. ***Accordingly, no interim monetary relief is granted to the complainant.***

11. The complainant has also prayed to direct the respondents not to dispossess the complainant and provide food, clothing etc. However, admittedly she is no longer residing at the matrimonial house. Therefore, this prayed is not allowed as being infructuous.

12. Application u/s 23 of PWDV Act is disposed of accordingly. Nothing herein shall tantamount to expressing any opinion on merits of case.

Copy of this order be given dasti to both parties.

**(Announced in open court
on 02.03.2023)**

Sd/-
(SWAYAM SIDDHA TRIPATHY)

MM:MAHILA COURT-05

DWARKA COURTS:DELHI

महानगर दण्डाधिकारी
Metropolitan Magistrate
द्वारका न्यायालय, नई दिल्ली
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