

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

+CrI. M.C. No. 4066 of 2009 & CrI. M.A. No. 13807/2009

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01.09.2010

AMIT KHANNA

... Petitioner

Through: Mr J.C. Mahindro, Advocate

Versus

PRIYANKA KHANNA & ORS.

... Respondents

Through: Respondent No. 1 in person
Mr Sunil Sharma, APP for the State

Date of Reserve: 23rd July, 2010
Date of Order: 1st September, 2010

AND

+CrI. M.C. No. 1416 OF 2010

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PRIYANKA KHANNA

... Petitioner

Through: In person.

Versus

STATE

... Respondent

Through: Mr Sunil Sharma, APP for the State.
Mr Sunil Sharma, APP for the State

Date of Reserve: 23rd July, 2010
Date of Order: 1st September, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By these petitions petitioners, husband and wife have assailed order dated 26th October, 2009, passed by learned Additional Sessions Judge (ASJ) in appeal. Ms Priyanka Khanna had moved an application before learned Metropolitan

Magistrate (MM) under Section 12 of Protection of Women from Domestic Violence Act and also made an interim application for residence, protection and maintenance. Learned MM considered the income of the husband for the financial years 2004-05, 2005-06, 2006-07 and 2007-08 and found that annual gross income of the husband for the latest financial year i.e. 2007-08 was ₹ 3,47,550/- (before deduction of tax). She considered that gross monthly income of the husband was between ₹ 28,000/- and ₹ 29,000/-. She awarded monthly maintenance of ₹ 10,000/- to the wife. Apart from that, she also awarded ₹ 5,000/- per mensem (p.m.) as rent for residence. Thus, she awarded ₹ 15,000/- p.m. to the wife. In appeal, the learned ASJ enhanced the house rent payable to the wife from ₹ 5,000/- p.m. to ₹ 15,000/- p.m. and maintenance from ₹ 10,000/- p.m. to ₹ 30,000/- p.m., although, the husband had placed before the learned ASJ his latest salary slip showing gross monthly income of ₹ 41,000/-. This enhancement was done by the learned ASJ on the ground that husband was a man of status and owner of vast movable and immovable properties and it was a matter of common knowledge that parties generally conceal their actual income and do not show their real income in the Income Tax Returns. The respondent-wife was alone in this world. She had lost her job and was unemployed and was living with her parents and dependent on them. It was also observed by the learned ASJ that it was very difficult to find a suitable residence by paying ₹ 5,000/- p.m.

2. It is noteworthy that a petition for divorce was filed by the husband which is pending before the court of ADJ and the learned ADJ after considering the material vide order dated 16th September, 2008, granted to the wife a monthly maintenance of ₹ 25,000/- from the date of filing of application under Section 24 of Hindu Marriage Act till the disposal of the case and awarded ₹ 10,000/- towards litigation expenses.

3. It is evident from the order passed by the learned ASJ that he has not enumerated the vast movable and immovable properties owned by the husband. Mere allegations made by the wife that husband was a man of status and had vast movable and immovable properties would not give jurisdiction to the Court to pass an order of maintenance beyond the means of the husband. When allegations are made by the spouses about the vast movable and immovable properties of other, even for passing an interim order the allegations must be substantiated by some sort of documentary evidence. The properties existing in the name of sister-in-law, mother or father cannot be considered to be the properties of the spouses. If such properties are considered as properties of husband, then property existing in the name of father of the wife, mother of the wife or brother or sister of the wife could reflect her status and income and the courts can think that a wife has sufficient properties and she does not need maintenance.

4. After attaining self sufficiency and being employed, a man's own income has to be the basis for fixing maintenance for his dependants whether wife, parents or children. Properties of his brothers or parents cannot be a basis for fixing maintenance. Status of a man is not determined from the status of his brothers or parents. There may be many cases where a man is egoistic and does not take help from his rich parents or rich brother and does not maintain same status which his rich brother and parents may maintain.

5. In the present case, the marriage between husband and wife was not a marriage arranged by respective parents. It was a love marriage after courtship of 8 years and I do not think that this courtship or love was there between the parties before marriage because of the status of brothers of the husband or status of parents of the husband. It has to be presumed that love was with the person and not with the property and it is the income and wealth of the husband which is to be looked by the

Court for deciding proper maintenance. When the income of the husband was ₹ 41,000/- p.m., granting maintenance plus rent of ₹ 45,000/- p.m., under no circumstance is justified. I find the order passed by the learned ASJ unjustified and contrary to settled legal preposition. The order of learned ASJ is hereby set aside.

6. Since the income of the husband is now ₹ 41,000/- p.m. without deducting tax and after deducting tax it would be around ₹ 38,500/-, a maintenance of ₹ 15,000/- p.m. and rent of ₹ 5,000/- p.m. would be the just maintenance. This would be payable from the date of order of the Appellate Court. Prior to the date of order of the Appellate Court, since the income of the husband was only ₹ 29,000/- p.m., the order of the Court of Metropolitan Magistrate would prevail. However, this maintenance and amount towards rent is not over and above the maintenance awarded by the matrimonial court, neither this order shall affect the order passed by ADJ granting maintenance @ ₹ 25,000/- p.m. The amount payable under this order shall be adjustable against other maintenance order.

7. Both petitions stand disposed of in view of my above finding and conclusion.

SHIV NARAYAN DHINGRA, J.

SEPTEMBER 01, 2010

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