

HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 3145/2008

Judgment reserved on: 27th October, 2009
% Judgment delivered on: 29th October, 2009

BRAHAM PAL ARYA Petitioner
Through: Mr. M.S. Yadav, Adv.

Versus
BABITA ARYA @ KILA DEVI & ORS. Respondents
Through: Mr. R.P. Srivastava, Adv.

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J.

1. Petitioner has filed this petition under Section 482 of Code of Criminal Procedure praying therein that the order dated 19th July, 2008 passed by learned Additional Sessions Judge be set aside.

2. Petitioner is the husband of respondent No. 1 and father of respondent No. 2. Respondents filed a petition under Sections 12,18,19,20 and 22 of the, Protection of

Women from Domestic Violence Act, 2005 (hereinafter referred to as “said Act”) for grant of maintenance, rent of residence, monitory reliefs, compensation and protection from domestic violence, in the court of learned Additional Chief Metropolitan Magistrate, Delhi, who in turn assigned the same to the Metropolitan Magistrate for trial.

3. Respondents also filed an application under Section 23 of the said Act in the pending case seeking ad interim ex-parte order. After hearing the petitioner as well as respondents, learned Metropolitan Magistrate, vide order dated 18th September, 2007 disposed of this application and directed the petitioner to pay a sum of Rs. 9,000/- (Rs. 6,000/- to respondent No. 1 and Rs. 3,000/- to respondent No. 2) towards maintenance and besides this Rs. 10,000/- towards litigation the expenses. Petitioner was also prohibited from entering into the residence of the respondents and from committing any act of domestic violence, till final disposal of the petition.

4. Aggrieved by the aforesaid order, petitioner preferred an appeal under Section 29 of the said Act, before the learned Additional Sessions Judge, who dismissed the

appeal as not maintainable. Learned Additional Sessions Judge was of the view that order passed under Section 23 of the said Act was purely an interlocutory order which did not affect the rights of the parties, thus, was not appealable. While taking this view, he placed reliance on ***Sulochana & Ors. Vs. Kuttappan & Ors.*** reported in ***2007 (4) LRC 78 (Ker).***

5. Aggrieved by the order of learned Additional Sessions Judge, petitioner has preferred this petition.

6. I have heard the learned counsel for both the parties. Learned Metropolitan Magistrate has disposed of application under Section 23 of the said Act, after hearing both the parties. Detailed and reasoned order was passed by him, thereby providing ad interim reliefs to the respondents, pending disposal of the main petition. In my view this order passed by the learned Metropolitan Magistrate is not a procedural order and in fact affects the rights of parties. Therefore it cannot be termed as merely a procedural order and/or purely an interlocutory order. Rights and liabilities of the parties have been determined pending disposal of the main petition by the order passed by the learned

Metropolitan Magistrate, in exercise of its power under Section 23 of the said Act. Accordingly, I am of the view, that an appeal under Section 29 of the said Act would be maintainable.

7. In ***Abhijit Bhikaseth Auti vs. State of Maharashtra and Anr.*** reported in **2009 CRI. L.J. 889** Bombay High Court categorically held that an appeal will lie against the order passed under Sub-section (1) and Sub-section (2) of the Section 23 of the said Act passed by the learned Magistrate.

8. This High Court in ***Amit Sundra & Ors. vs. Ms. Sheetal Khanna*** reported in **2008 CRI.L.J. 66** held that appeal under Section 29 of the said Act would be maintainable against the order passed by learned Magistrate granting said interim relief to a party in exercise of its power under the said Act. This view was expressed by the Court after scrutinizing Sections 25 and 29 of the said Act.

9. In view of above discussion, I am of the opinion that the learned Additional Sessions Judge erred in coming to

the conclusion that the order passed by the learned Metropolitan Magistrate was not appealable being purely an interlocutory order. Accordingly, I set aside the impugned order dated 19th July, 2008 and remand the appeal back to the learned Additional Sessions Judge, Rohini, New Delhi with the direction to dispose of the same in accordance with law.

10. Parties to appear before the learned Additional Sessions Judge on 12th November, 2009.

A.K. PATHAK, J

OCTOBER 29, 2009

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