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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 16th, 2010

Date of Order: September 22nd, 2010

+ Crl. M.C. No.2853/2009

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Joginder

22.09.2010

...Petitioner

Versus

State NCT of Delhi & Anr.

...Respondents

Counsels:

Mr. K.K. Manan, Mr. Nipun, Mr. Safdar Ali and Mr. Ashish George for petitioner.
Mr. O.P. Saxena, APP for State/respondent.

AND

+ Crl. Rev. P. No.581/2009

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Usha

...Petitioner

Versus

State & Ors.

...Respondents

Counsels:

Mr. Amit Khanna for petitioner.
Mr. O.P. Saxena, APP for State/respondent.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. These two petitions, one preferred by husband and one by wife are against an order dated 18th July, 2009 passed by learned Sessions Judge, Delhi whereby the learned Sessions Judge dismissed the appeal of both the parties against an order passed by learned Metropolitan Magistrate fixing an interim maintenance for wife and the child

@ Rs.5,000/- per month under Domestic Violence Act and the order refusing to pass a residence order in favour of wife.

2. The husband assailed the order on the ground that he was employed with BSES as a diploma engineer and his total salary at the time of passing the order was hardly Rs.6,491/- and presently it was around Rs.7,000/- per month. He has placed on record the salary certificate issued by his employer i.e. BSES which shows that his gross salary in June, 2009 was Rs.7,000/- and after statutory deductions of labour welfare fund, provident fund, insurance, ESI, his net salary comes to Rs.6491.25. His latest salary certificate shows that his gross salary in the month of June and July 2010 was Rs.7,500/- per month and the net salary after statutory deductions was Rs.6976.25 per month.

3. I consider that while passing the interim order for maintenance, the court has to keep in mind the means and earning of the husband and the law in respect of grant of maintenance to wife and child. Over the times, the courts have evolved a formula that if there are three dependents on the salary of husband, the husband would be entitled to half of the salary and the other two dependents would be entitled to remaining half. In the present case, when the salary of the husband was around Rs.6500/-, granting of interim maintenance of Rs.5,000/- for wife and child was unjust and improper. I, therefore, consider that the order of learned Metropolitan Magistrate and learned ASJ needs modification. The impugned order passed by learned MM and learned ASJ is modified to the extent that the interim maintenance payable to wife and child instead of Rs.5,000/- shall be half of the salary of husband which comes to around Rs.3400/- per month.

4. With above modification, the petition of husband is allowed partly and the petition filed by wife for enhancement of maintenance and for residence order is hereby dismissed being not maintainable in view of the circumstances.

September 22, 2010
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SHIV NARAYAN DHINGRA, J