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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 490/2010

SOBIA KHAN Petitioner
Through: Mr.Rashid Hashmi, Advocate

versus

FARID UZ ZAMANKHAN & ANR Respondent
Through

CORAM:
JUSTICE SHIV NARAYAN DHINGRA

% **ORDER**
09.09.2010

The present criminal revision petition has been preferred by the petitioner under Section 397, 401 read with Section 482 Cr.P.C. against an order dated 4th August, 2010 passed by Additional Sessions Judge-02, Central District, Tis Hazari Courts, Delhi in a criminal appeal no.08 of 2009 modifying the order of learned Metropolitan Magistrate.

The learned MM on an application under Domestic Violence Act had awarded maintenance to the petitioner on the basis of past salary of her husband. The husband had placed on record the documents showing that he was relieved from his previous job and was presently working at other place at much lower salary.

It is submitted by counsel for the petitioner that the learned ASJ had, with consent of petitioner counsel, directed that the case be sent back so that an order for maintenance was passed after recording evidence of the parties regarding income. This course of action was agreed to by both the parties. However, subsequently the order was passed on merits and in an interim maintenance

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granted to the petitioner by the MM was reduced.

It is considered that whatever is submitted by counsel was truthful, it only shows that the learned ASJ while sending back the case, to MM for passing an order of maintenance, after recording evidence, perhaps thought that the wife and child should be given some maintenance in the meantime on the basis of material placed on record. He, therefore, passed the impugned order. There is no illegality in this. However, it is made clear that the observations made by learned ASJ in the impugned order qua the material are only prima facie in nature and when finally the maintenance is fixed by the learned MM on the basis of evidence, he shall pass the maintenance order without being influenced by the order passed by learned ASJ.

With above observations, the petition stands disposed of.



SHIV NARAYAN DHINGRA, J

SEPTEMBER 09, 2010
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