

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 1010/2011 & CrI.M.A. No.3773/2011**

Decided on 29.03.2011

IN THE MATTER OF :
KARAMCHAND & ORS

..... Petitioners
Through : Mr. Dharmendra Kumar Vashishtha, Adv.

versus

STATE NCT OF DELHI & ANR Respondents
Through : Mr. M.N. Dudeja, APP for State.

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* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 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 the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioners under Section 482 Cr.P.C. praying *inter alia* for quashing of the impugned order dated 24.1.2011 passed by the learned ASJ in a criminal appeal preferred by petitioner No.1, husband of respondent No.2, and petitioners No.2 & 3, sons of petitioner No.1, against an interim order dated 24.12.2008 passed by the learned Metropolitan Magistrate, Mahila Court, granting interim maintenance to respondent No.2, on a complaint filed by her under Section 12 of the Protection of Domestic Violence Against Women Act, 2005 (in short '**the Act**').

2. Vide order dated 24.12.2008, the learned Metropolitan Magistrate, Mahila Court had directed petitioner No.1 to pay a sum of ₹5,000/- per month and petitioners No.2 & 3 to pay a sum of ₹2,500/- each per month to respondent No.2 as interim maintenance, from the date of the order.

3. Aggrieved by the aforesaid interim order granting maintenance to respondent No.2, the petitioners filed an appeal before the Sessions Court, which was partly allowed by the impugned order dated 24.1.2011, wherein petitioner No.1 was directed to pay a sum of ₹2,000/- per month and petitioners No.2 & 3 to pay a sum of ₹1,000/- and ₹2,000/- respectively per month to respondent No.2. In other words, the petitioners were collectively directed to pay a sum of ₹5,000/- per month to respondent No.2.

4. Counsel for the petitioners submits that while passing the impugned order dated 24.1.2011, the learned ASJ did not consider the fact that respondent No.2 continues to reside with the petitioners, and that they are bearing all the household expenses. He further states that the provisions of Section 20 of the Act could not have been invoked by respondent No.2 for seeking maintenance, as the same can be granted only under or in addition to the maintenance sought under Section 125 Cr.P.C., and since respondent No.2 has not claimed any maintenance under Section 125 Cr.P.C., she would not be entitled to seek such a relief under Section 20 of the Act.

5. It may be stated at the outset that the order dated 24.12.2008 passed by the learned Metropolitan Magistrate, Mahila Court is only an interim order which is passed on a *prima facie* view of the matter. Further, the said order has been modified in the appeal preferred by the petitioners, by halving the interim maintenance of ₹10,000/- per month granted by the learned Metropolitan Magistrate, Mahila Court to ₹5,000/- to be collectively borne by

the three petitioners.

6. Having regard to the fact that only a *prima facie* view on the matter has been expressed by the learned MM while granting interim maintenance to respondent No.2 and that the impugned order is interim in nature, which has been further modified by the learned ASJ, this Court does not find any patent illegality or arbitrariness, resulting in miscarriage of justice, in the impugned order, in order to exercise its inherent powers under Section 482 Cr.P.C. As regards the contention of the counsel for the petitioners that as the petitioners are bearing all the household expenses of respondent No.2, she is not entitled to any separate maintenance, the same has been considered by the learned ASJ while modifying the order passed by the learned MM on 24.12.2008 and further, the same shall be a matter of consideration before the learned Metropolitan Magistrate at the time of final arguments. Admittedly, pleadings in the complaint filed by respondent No.2 before the learned Metropolitan Magistrate are complete and the matter is at the stage of recording of evidence. At the stage of arguments, the petitioners would be at liberty to take all the pleas available to them before the learned MM.

7. It is stated by the counsel for the petitioners that the amount payable by the petitioners w.e.f. 24.12.2008 is huge and petitioner No.1 has in any case, been paying a sum of ₹1,400/- per month to respondent No.2 directly, even prior to the filing of the complaint by her. Hence, he is not entitled to pay any further maintenance to respondent No.2. Such a payment by petitioner No.1 cannot be considered compliance of the order dated 24.1.2011 passed by the learned ASJ. The sum of ₹5000/- per month to be paid collectively by the petitioners to respondent No. 2, as directed by the

learned ASJ, has to be paid over and above, any amount which is being spent towards household expenses. Further, the petitioners can show proof of payment to the court below and claim adjustment from the arrears that have accumulated. Admittedly, as of date, no amount on account of accumulated arrears, has been paid by the petitioners to respondent No.2 as interim maintenance, as directed by the learned ASJ.

8. As regards the submission of the counsel for the petitioners that the remedy, if any, available to respondent No.2 is under Section 125 Cr.P.C., and that the only way for respondent no. 2 to seek maintenance under Section 20 of the Act would be under or in addition to Section 125 Cr.P.C., the said submission is contrary to the very spirit of the Act. A perusal of Section 20 of the Act clearly shows that the said provision was made for granting monetary relief to a woman who claims to be a victim of domestic violence. The section provides for such relief to be paid under four heads, one of which is payment of maintenance under or in addition to the maintenance sought under Section 125 Cr.P.C. If the section is read in the manner suggested by the counsel for the petitioners, then clause 1(d) of Section 20 of the Act would be rendered otiose and if such had been the intention of the legislature then there would have been no need to enact a specific provision for payment of maintenance in the Act. In this view of the matter, the submission of the counsel for the petitioners is rejected as being untenable.

9. Even otherwise, the inherent powers vested in this Court under Section 482 of the Cr.PC are extraordinary in nature and it is a settled law that the same ought to be exercised with restraint. Given the aforesaid facts and circumstances, this Court is not inclined to exercise its inherent powers

under Section 482 Cr.P.C in favour of the petitioners. The petition is accordingly dismissed along with the pending application.

10. However, having regard to the fact that the counsel for the petitioners states that the petitioners are not in a financial position to clear the arrears of maintenance right away and further in view of the submission that petitioner No.1 has been paying an amount of ₹1,400/- per month to respondent No.2, even prior to the passing of the interim order by the learned MM, the petitioners are permitted further time to pay the arrears of maintenance at the rate of ₹5000 per month w.e.f. the date of passing of order by the learned MM, amounting to ₹1.40 lacs(approx.) to respondent No.2 in four equal monthly installments, after deducting the sum of ₹1,400/- being paid by petitioner No.1 to respondent No.2 during the said period, subject to showing proof of payment to the court below. The first installment of ₹35,000/- shall be paid by the petitioners to the respondent No.2 within four weeks. In case the petitioners comply with the aforesaid order of payment of arrears in installments as indicated above, no coercive steps shall be taken against them. However, in case of default of payment of arrears, respondent No.2 shall be entitled to seek her remedies in accordance with law.

MARCH 29, 2011
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HIMA KOHLI,J