

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

Date of Decision: February 04, 2015

+ CRL.M.C. 133/2013 & Crl. M.A.No.502/2013

BRIJESH KUMAR GUPTA Petitioner
Through: Ms. Geeta Luthra, Senior Advocate
with Ms. Malini & Ms. Naina
Dubey, Advocates with petitioner
in person

versus

SHIKHA GUPTA & ANR. Respondents
Through: Mr. Maninder Singh, Advocate for
respondent No.1
Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent
No.2-State

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT
% **(ORAL)**

Impugned order of 18th December, 2012 entertained petitioner's appeal under Section 29 of *The Protection of Women from Domestic Violence Act, 2005* subject to deposit of arrears of maintenance, as granted by the trial court while permitting petitioner to deduct the amount of ₹92,000/- from the amount due. Appellate Court vide impugned order has directed the petitioner to convert the arrears of maintenance into two

fixed deposit receipts of equal amount in the name of respondent-wife.

The challenge to the impugned order of 18th December, 2012 is on the ground that no pre- condition can be imposed for hearing a statutory appeal under Section 29 of *The Protection of Women from Domestic Violence Act, 2005*. However, at the hearing learned senior counsel for petitioner had placed reliance upon Apex Court's decision of 29th January, 2015 in Crl.M.P.No.1577/2015 in Crl. Appeal No.2070/2014 *Shalu Ojha Vs. Prashant Ojha* whereby time bound directions have been issued to the Appellate Court to hear the appeal under Section 29 of *The Protection of Women from Domestic Violence Act, 2005* on merits without any pre-condition.

During the course of hearing, attention of this Court was drawn to various interim orders passed by different Benches of this Court whereby statutory appeal under Section 29 of *The Protection of Women from Domestic Violence Act, 2005* have been directed to be heard upon deposit of 50% of the maintenance amount. It was submitted by learned senior counsel for petitioner that till date petitioner has already deposited a sum of ₹4,00,000/- and has no means to further deposit the highly inflated maintenance amount awarded by trial court and since substantial amount has been deposited by petitioner, therefore, Appellate Court be directed to hear petitioner's statutory appeal without any further deposit.

Attention of this Court was drawn to Apex Court's decision rendered on 18th September, 2014 in Crl. Appeal No. 2070/2014 *Shalu Ojha Vs. Prashant Ojha* 2014 SCC Online SC 734 to remind this Court that in proceedings under *The Protection of Women from Domestic*

Violence Act, 2005 the courts should be slow to grant interim orders.

It was pointed out by learned counsel for respondent that arrears of maintenance till date are of ₹18,00,000/- and amount of ₹4,00,000/- only has been deposited by petitioner towards arrear of maintenance, which is kept in fixed deposit receipts and respondent is not permitted to withdraw it and thereby leaving respondent without any means of surviving. It was submitted by learned counsel for respondent that Apex Court's order of 29th January, 2015 in *Shalu Ojha (Supra)* relied upon by petitioner's counsel is distinguishable, as in the aforesaid case, the husband was in custody due to inability to pay the maintenance amount and in that background, Apex Court had directed hearing of appeal on merits without any pre-condition. It was further pointed out that in the instant case, petitioner has means to pay the maintenance amount but is deliberately avoiding to do so and thereby driving respondent to penury. Reliance was placed upon Apex Court's decision in *Rajeev Preenja Vs. Sarika & ors.* 159 (2009) DLT 616 and *Nitin Gupta Vs. Ruchika Gupta* 2012 (3)Crimes 227 (Del) to submit that the provision under Section 125 of the Cr.P.C. are akin to the provisions of maintenance under *The Protection of Women from Domestic Violence Act, 2005* and this special enactment has been brought to protect the women and children from neglect. Attention of this Court was also drawn to Sub-Rule (5) of Rule 6 of *The Protection of Women from Domestic Violence Act, 2006* which mandates that application under Section 12 of *The Protection of Women from Domestic Violence Act, 2005* shall be dealt with in the same manner as laid down in Section 125 of the Code of Criminal Procedure. Thus, it was submitted

by learned counsel for respondent that the dictum of decisions in *Rajeev Preenja & Nitin Gupta (Supra)* squarely applies to the instant case and there is no illegality in the impugned order and petitioner's appeal be directed to be heard after the entire arrears of maintenance are deposited, so that respondent does not come on the road.

After having heard both the sides and on perusal of the impugned order, material on record and the decisions cited, I find that there cannot be an absolute rider that the entire maintenance amount, as granted by the trial court, should be deposited prior to hearing of the statutory appeal because it would otherwise leave the remedy of statutory appeal illusory. The Apex Court's order of 29th January, 2015 is of no avail to the case of petitioner because in the said case, the husband was in custody and was unable to deposit the arrears of maintenance whereas in the instant case, it is not so. Petitioner is a practicing lawyer, who claims that even respondent is a practicing lawyer. Without getting into this aspect, in the peculiar facts and circumstances of this case, impugned order of 18th December, 2012 is modified to the extent that instead of depositing the entire arrears of maintenance, petitioner is directed to deposit 50% of the maintenance amount from the date of the application after deducting ₹92,000/- from it i.e. the amount already paid to petitioner. Petitioner is granted twelve weeks' time to deposit 50% of the maintenance amount with the trial court. As an interim measure, respondent is permitted to withdraw 50% of the maintenance amount w.e.f. the date of filing of this petition i.e. from January, 2013 till petitioner's appeal is decided by the appellate court.

With aforesaid directions, this petition and application are disposed of while refraining to comment on the merits.

(SUNIL GAUR)
JUDGE

FEBRUARY 04, 2015

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