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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : SEPTEMBER 03, 2015

DECIDED ON : DECEMBER 01, 2015

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CRL.REV.P. 120/2015 & CRL.M.A.No.3092/15

NARESH KUMAR SINGHAL & ORS

..... Petitioners

Through : Mr.A.K.Mishra, Advocate.

versus

STATE OF NCT DELHI & ANR

..... Respondents

Through : Mr.Ashok K.Garg, APP.

Mr.A.K.Singh, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant Revision Petition has been preferred by the petitioners to challenge the legality and correctness of an order dated 18.11.2014 of learned Additional Sessions Judge in Crl.A.No.78/14 by which order dated 24.04.2014 of learned Metropolitan Magistrate, Mahila Court (South) in Complaint Case No.331/1 was modified to the extent that instead of ₹1,00,000/- each, the petitioners shall pay in all ₹80,000/- as compensation to the respondent; the petitioner No.1 shall pay

maintenance @₹5,000/- p.m. instead of ₹6,000/- p.m. from the date of filing of the petition before the Trial Court. The Revision Petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. On perusal of the file, it reveals that the petition under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as D.V.Act) was filed by the respondent against the petitioners which was duly contested by them. By an order dated 24.04.2014 the respondent was granted various reliefs including compensation @₹1,00,000/- each to be paid by the petitioners and ₹6,000/- p.m. as maintenance for the respondent and her child from the date of the said order. Being aggrieved by the said orders, the petitioners preferred the appeal which was disposed of by an order dated 18.11.2014. Review Petition came to be dismissed vide order dated 14.01.2015.

3. The petitioners are primarily aggrieved by the quantum of compensation and maintenance awarded by the Courts below. They are also aggrieved whereby petitioner Nos.2 and 3 have been ordered to share the compensation. The impugned order dated 18.11.2014 records that the petitioners had no grievance so far as relief protection under Section 18 and order under Section 19 of DV Act were granted by the Trial Court.

The appellate court categorically observed that there were no allegations of domestic violence against petitioner Nos.2 and 3 in the evidence of the respondent as CW-1. She had levelled allegations of domestic violence only against her husband and mother-in-law. The appellate court further observed that the Trial Court did not analyze the testimony of CW-1 (Chanchal-the respondent) carefully. Apparently, there were no allegations of domestic violence against petitioner No.2 and 3 (father-in-law and brother-in-law of the respondent respectively). The Courts below had no occasion to direct petitioner Nos.2 and 3 to share the compensation amount to be paid by petitioner No.1. Order of the learned appellate court to that extent cannot be sustained and petitioner Nos.2 and 3 cannot be asked to share the compensation amount. Accordingly, the entire amount of compensation of ₹80,000/- shall be paid by the petitioner No.1 to the respondent.

4. The Trial Court had granted maintenance at the rate of ₹6,000/- p.m. to the respondent and her minor child from the date of passing of the order. The appellate court reduced the quantum to ₹5,000/- and stated that it shall be payable from the date of filing of the petition before the Trial Court. It is pertinent to mention that the respondent had not filed any appeal/revision petition against the impugned order of Trial

Court to claim arrear of maintenance from the date of filing of the petition. Hence, it was not permissible for the appellate court to order the payment of arrears of maintenance from the date of filing of the petition and not from the date of the impugned order.

5. The appellate court observed that the income of the petitioner No.1 has not been ascertained by the Trial Court and the amount of ₹6,000/- as total maintenance for the respondent and her child was based only upon presumptions. It noted that earlier petitioner No.1 had claimed of doing business of computer learning in the name and style of ANTEC and generating total income of ₹5,000/- to ₹6,000/-. It was also noted that the maintenance amount granted was on the higher side and accordingly it was modified to ₹5,000/-. Again, there is no logic in awarding maintenance at the rate of ₹5,000/- p.m. when there was no evidence on record to show if the income of petitioner No.1 was enough to make that payment. Contrary to that, it has come on record that the respondent got employment as Anganwari worker and she was getting ₹4,000/- p.m. as salary. This amount was not accounted for in the impugned order. The petitioners have placed on record the copy of judgment dated 17.07.2013 in the proceedings under Section 125 Cr.P.C. whereby after considering the income of the parties and other circumstances, the petitioner No.1 was

directed to pay maintenance to the respondent and her child at the rate of ₹1,000/- p.m. each from the date of filing of the said petition till 31.12.2012. He was further directed to pay maintenance at the rate of ₹1500/- each p.m. w.e.f.1.01.2013. None of the parties has challenged the said order. Apparently, this order was not taken into consideration by the courts below to ascertain the income of petitioner No.1.

6. Considering the facts and circumstances of the case and the fact that respondent is getting ₹4,000/- p.m. as Anganwari worker even after passing of the order dated 17.07.2013, the petitioner No.1 cannot be asked to pay maintenance at the rate of ₹5,000/- p.m. from the date of filing of the petition. Of course, responsibility to maintain the child is of both the parents and petitioner No.1 will have to make contribution towards it.

7. In the light of the above discussion, considering the facts and circumstances of the case, the amount of maintenance to be paid by the petitioner No.1 to the respondent shall be ₹1,000/- p.m. and ₹2,000/- p.m. for herself and the child respectively from the date of order dated 24.04.2014. Any other amount received by the respondent in any other proceedings shall be adjusted towards this amount.

8. The revision petition stands disposed of in the above terms.
All pending application(s) also stand disposed of. Trial Court record be sent back along with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 01, 2015
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