

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

% Order delivered on: 28th January, 2015

+ **Crl. M.C. No.5809/2014 & Crl. M.A. No.19776/2014**

RUPEN RAJ PAHWA Petitioner
Through Mr.Kapil Gupta, Adv.

versus

KAAJAL PAHWA Respondent
Through None

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The application of the respondent/wife for maintenance against the petitioner was disposed of by order dated 13th August, 2014 passed by MM, Mahila Court, Saket, New Delhi, the relevant portion whereof reads as under:-

“In the circumstances, where complainant earning only Rs.28,000/- per month, she cannot be burdened with the responsibility of children during their stay in Delhi. Hence respondent is directed that during their stay in Delhi he will deposit a sum of Rs.10,000/- per month in the bank account of each of the child which will be opened under the guardianship of the complainant. Hence, he will be making payment of Rs.40,000/- per year, per child in their bank account for their expenses during their stay in Delhi. Beside this, it is directed that he will keep on bearing their school expenses on actual basis which he claims to be bearing now. Respondent also claims to be bearing electricity and water expenses but he says

electricity expenses are too high due to excess electricity consumption by the complainant. Hence, it is directed that he shall pay electricity bill to the extent of actual basis or Rs.5,000/- per month to the complainant or to the authorities directly, whichever is lower.

Further, he will also bear water bill on actual basis.

As far as right of residence is concerned, admittedly, complainant is at present residing at matrimonial home on first floor hence, she will keep on residing there and shall not be dispossessed except by due process of law. I am not passing any orders towards the rent for the complainant as she is residing in the matrimonial home at this stage. Complainant at present is working and is earning Rs.28,000/- per month. Respondent admits to be residing in the same house.

Since he admits to be residing in the same house and there are miscellaneous expenses in the house to be taken care of like cleaning etc. for which he shall make payment of Rs.5,000/- per month to the complainant towards the upkeep of the house.

I am not passing any orders towards the maintenance of complainant at this stage as admittedly she is earning Rs.28,000/- per month which as per my opinion is sufficient for her. She will get Rs.5,000/- per month for upkeep of the house as respondent admits that he is residing in the same house.

Maintenance be paid by 10th day of every month. Order be effective from the date of filing of the petition. Arrears be cleared within 6 months. Dasti, as prayed.”

2. The said order was challenged by the petitioner by filing of an appeal, being Criminal Appeal No.31/14, under Section 29 of the

Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the Act”). The said appeal was dismissed after hearing the parties, by order dated 5th November, 2014.

3. The present petition has been filed under Section 482 Cr.P.C. read with relevant provisions of the Act challenging both the impugned orders dated 13th August, 2014 and 5th November, 2014 with a prayer to set-aside the said orders.

4. The scope of Section 482 Cr.P.C. has been discussed in various cases including the case of ***State of Bihar v. Murad Ali Khan***, reported in AIR 1989 SC 1 where the Apex Court held as under:-

“It is trite jurisdiction under Section 482 Cr.P.C. which saves the inherent power of the High court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not.”

5. In the case of ***Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr.***, reported in (2005) 1 SCC 122, the Apex Court held that there may not be any straight jacket formula for exercising power under Section 482 Cr.P.C. but the same has to be exercised sparingly and in rarest of rare cases. Similar view was taken by the Apex Court in the case of ***Popular Muthiah v. State represented by Inspector of Police***, reported in (2006) 7 SCC 296.

6. In the present case, admittedly, the petitioner has exhausted the statutory remedy of appeal under Section 29 of the Act. I am of the view that the orders passed by both the Courts are neither arbitrary nor contrary to law or against the procedure. Therefore, there is no scope of interference in the order passed in the appeal unless the Appellate Court has passed the order which is perverse on the face of the record. I do not find that the present case is a fit case in which any interference is called for.

7. The present petition is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JANUARY 28, 2015