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

Judgment delivered on: 19th October, 2015

+ **CRL.M.C. No.4387/2015**

SEEMA SETH Petitioner

Represented by: Mr.Sunil Mittal, Adv

versus

NISHITH SETH Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No.15535/2015 (Exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 4387/2015

1. Vide the instant petition under Section 482 Cr P C, 1973 petitioner seeks direction thereby setting aside the order dated 21.09.2015 passed by learned Additional Sessions Judge, in Criminal Appeal No.16/2015 preferred by respondent.

2. The facts of the case are that the petitioner filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'the Act') wherein the interim maintenance was granted under Section 20/23 of the Act vide order dated 06.06.2015 by learned Trial Court and directed the respondent to pay a composite amount of Rs.40,000/- per month as interim maintenance from the date of

filing of the petition. It is further directed that the amount shall include all the incidental expenses such as maintenance charges etc. The petitioner filed the above noted petition on 17.01.2013 and total amount due on account of maintenance till the date of the passing of the impugned order was more than Rs.12.00 Lac. The respondent had filed before the Trial Court a compilation of amount paid by him to the petitioner. As per the calculation, the respondent had paid an amount of Rs.12,11,504/-. However, the case of the petitioner is that respondent has paid only an amount of Rs.1.40 Lac and balance amount to the tune of Rs.10.00 Lac is due.

3. Learned counsel appearing on behalf of petitioner submitted that an amount of Rs.10.00 Lac was deposited by respondent at the time of grant of bail. However, the said amount cannot be adjusted as maintenance. The learned Additional Sessions Judge, in the aforesaid appeal has directed contrary to the settled proposition of law.

4. But the fact remains that an amount of Rs.10.00 Lac were directed to be released to petitioner on account of interim maintenance which was mentioned in the order dated 24.05.2013 passed by learned Additional Sessions Judge, vide which the respondent was given interim protection and matter was referred to mediation.

5. The case of the petitioner is that aforesaid amount was released in favour of petitioner in lieu of claim of her jewellery and dowry articles lying in possession of the respondent.

6. On perusal of the order dated 21.09.2015, it is revealed that respondent was granted bail by this Court vide order dated 19.03.2014.

Before the aforesaid order, his bail application was heard on various dates by this Court and as per the order dated 30.07.2013 passed in Bail Application No.1354/2013 of the respondent, his counsel had submitted that to establish the bonafide, the respondent was ready to deposit a sum of Rs.10.00 Lac by way of fixed deposit receipt of the nationalised bank initially for a period of one year in the name of learned Trial Court within four weeks.

7. It is important to note that thereafter, vide order dated 19.09.2013, the Court directed to pay an amount of Rs.2.00 Lac to the petitioner, out of Rs.10.00 Lac deposited by respondent. Further vide order dated 17.12.2013, an amount of Rs.2.00 Lac more was released in favour of petitioner. The liberty was granted to the complainant to move the learned Trial Court for release of the amount lying deposited with learned Trial Court. Thus, the petitioner has received whole amount of Rs.10.00 Lac.

8. It cannot be disputed that if the amount deposited in lieu of the dowry articles while granting bail, the said amount cannot be adjusted for the purpose of maintenance. However, if at the subsequent stage, the complainant received the said amount, the position would be otherwise. In the present case, the respondent is facing trial under Sections 498A/406 of the IPC and the amount of Rs.10.00 Lac deposited at the time of grant of bail, which has already been released in favour of petitioner on different dates.

9. In the present situation, if learned Additional Sessions Judge, vide impugned order dated 21.09.2015 has directed that abovesaid sum shall be adjusted against the maintenance against respondent, I find no error

therein.

10. In view of above, finding no merits in the instant petition, same is hereby dismissed with no order as to cost.

Crl.M.A.15534/2015 (for Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

OCTOBER 19, 2015

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