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

+ **CRL.REV.P. 63/2014**

MONIKA SHARMA

..... Petitioner

Through : Ms. Anisha Banerji, Adv.

versus

HARISH CHAND SHARMA & ANR

..... Respondents

Through :Mr. Mahavir Sharma and Mr.
Kanwarpreet Singh, Advs. for
respondent no. 1
Ms. Neelam Sharma, APP with SI
Avesh Kumar, P.S. Vivek Vihar for
respondent no. 2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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25.10.2016

Petitioner filed an application under Section 125 Cr.P.C. against the respondent no.1 for grant of maintenance to her and her school going child alongwith an application in the month of February, 2009 for interim maintenance. Vide order dated 15th May, 2013 application for interim maintenance was disposed of whereby interim maintenance of ₹2,500/- per month to petitioner and ₹1,500/- per month to her child was awarded from the date of filing of the application.

Respondent no.1 preferred a revision petition before the Additional

Sessions Judge, which has been disposed of vide order dated 14th August, 2013 and the order of the learned Metropolitan Magistrate has been modified to the extent that the interim maintenance has been ordered from the date of order.

That is how petitioner is before this Court by way of present revision petition.

The only grievance of the petitioner is that learned Additional Sessions Judge ought not have restricted the interim maintenance from the date of the order. It is contended that petitioner was entitled to interim maintenance from the date of filing of the application as she cannot be made to suffer for the delay in disposal of the application by the court. Petitioner has placed reliance on Vinod Kumar Jolly vs. Sunita Jolly, 147 (2008) Delhi Law Times 326 (Division Bench), to contend that in ordinary course, the maintenance has to be awarded from the date of application and not from the date of order.

In Vinod Kumar Jolly (supra), the Division Bench has observed that the normal rule is that the maintenance is to be allowed from the date of filing of the petition. If this rule is to be deviated, there has to be special reasons for adopting such course. In this case, the only reason, which

weighed in the mind of learned Additional Sessions Judge for awarding maintenance from the date of order is that the school fee of the minor child was paid by the respondent. This ground was also considered by the learned Metropolitan Magistrate, while awarding maintenance from the date of application. Learned Metropolitan Magistrate has observed that monthly salary of the respondent no. 1 in the month of July, 2012 was ₹8,528/- and the same is assumed to have increased in the year 2013. Learned Metropolitan Magistrate has also noted that besides the school fee, other expenses have also to be incurred for upkeep of a minor child such as nutrition, medical expenses etc. It was also noted that petitioner was suffering from health problems. Keeping in view that school fee was paid, interim maintenance to the child was awarded ₹1,500/- only.

During the course of hearing, learned counsel for the petitioner has brought to the notice of this Court that child had to quit his further education after 12th class for financial constraints. He could not pursue his studies any further for the lack of finances. This itself shows that only deposit of school fee was not sufficient for the welfare of child. In my view, maintenance ought not to have been ordered by the learned Additional Sessions Judge from the date of order, merely because at some stage, respondent no. 1 had

paid the school fee. Learned Additional Sessions Judge failed to consider that a child requires other expenses including food, clothing, books, etc. In my view, payment of school fee alone was not a special reason to order for payment of maintenance from the date of order and not from the date of application. Impugned order of learned Additional Sessions Judge is, accordingly, set aside and the order dated 15th May, 2013 of the learned Metropolitan Magistrate is restored.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

OCTOBER 25, 2016

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