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

+ CRL.M.C. 367/2016

MOHD. SHAHID & ORS

..... Petitioners

Through: Mr. S.K. Bhalla, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

M. Hasibuddin, Adv. for R-2 with
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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13.09.2018

CrI.M.A.19452/2017 (for correction of order dated 04.11.2016) &
CrI.M.A.19453/2017 (stay) (both moved by the petitioners)

In the proceedings in a case (CC No.141/6/2008) instituted by the second respondent, *inter alia*, against the petitioner invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “the Domestic Violence Act”) on account of non-payment of interim maintenance allowance that had been directed to be paid, the defence of the petitioners was struck off.

The order to such effect was challenged invoking the inherent power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the petition registered as CrI.M.C.367/2016. The said petition came up for hearing before the learned Single Judge

(S.P.Garg, J.) for hearing and disposal on 04.11.2016. At the time of hearing, while making submissions grievance was also raised by the second respondent (complainant before the trial court) about the arrears not being paid for certain period. The learned Judge, by his order dated 04.11.2016 while setting aside the order striking off the defence and directing the application under Section 25(2) of the Domestic Violence Act, which was pending, to be considered, also directed the arrears to be paid at rate and from the date which was specified within the period which was indicated.

The petitioners had earlier moved an application, it being CrI.M.A.18919/2016 on 09.06.2016 for correction of the said order which was, however, withdrawn and dismissed accordingly by order dated 05.12.2016.

The present applications were moved on 18.11.2017 for correction of order dated 04.11.2016, primarily raising the contention that the only issue that had been brought before the court by petition under Section 482 Cr.P.C. concern the order dated 19.12.2015, whereby the defence had been struck off. The applications had earlier come up before the roster bench on 24.11.2017. The learned Judge then dealing with the matter found it proper that the applications at hand be considered by the same Hon'ble Judge who had passed the order dated 04.11.2016. The matters were, thus, made over to the appropriate bench presided over by the learned Judge (S.P.Garg, J.). It remained pending before him. But, the learned Judge having since demitted office, upon attaining the age of superannuation, the matter has come up before this court, it being the roster bench.

It is the submission of the petitioners/applicants that the court could and should not have issued directions about payment of arrears of maintenance as was done in the later part of the order after the order striking off the defence had been set aside.

The learned counsel for the second respondent points out, from his reply, that the petitioners had earlier approached the Supreme Court by Special Leave to Appeal (Crl.) No.199/2017. It is noted from the copy of the said order that the SLP was dismissed and directions were given to the petitioners to pay arrears within a period of one month of the said order, failing which they were put to notice that they would be liable for being proceeded against under the Contempt of Courts Act, further directions being for compliance report to be filed within the period specified.

The order dated 04.11.2016, the correction of which is sought, has thus since merged with the order of the Supreme Court, particularly on the issue of payment of arrears. There is no occasion for any correction to be made in the said order. The ruling in *State (CBI) vs. Ram Lal Narang, Etc., 1983 Rajdhani Law Reporter 245*, cited at bar by the petitioners is of no assistance.

The applications are dismissed.

R.K.GAUBA, J.

SEPTEMBER 13, 2018/vk