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

+ **CRL.M.C. 2291/2016**

SUMIT KAUR

..... Petitioner

Represented by: **Mr. Aditya Aggarwal,**
Advocate.

versus

TAJENDER PAL SINGH & ORS.

..... Respondents

Represented by: **None.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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21.10.2016

1. The petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act') along with an application under Section 23 of the Act before the learned Metropolitan Magistrate on 8th April, 2014. One of the prayers in the application under Section 12 of the Act was for directions to respondent No.1 to pay monthly maintenance of ₹70,000/- for the petitioner and her daughter and compensation. On 3rd June, 2015 the learned Trial Court heard arguments on interim maintenance. On 8th September, 2015 the learned Trial Court decided the two applications, one under Section 31 of the Act filed by the petitioner and other under Section 25 (2) of the Act filed by the respondent No.1. Since no interim maintenance was awarded the petitioner filed an application under Section 23 of the Act read with Section 28 (2) of

CRL.M.C. 2291/2016

Page 1 of 3

the Act seeking interim maintenance. Subsequently, coming to know of the legal position that a separate interim application was not required under Section 23 of the Act as in the application under Section 12 of the Act itself the petitioner had sought maintenance, the petitioner filed an application to withdraw her earlier application under Section 23 read with Section 28 (2) of the Act.

2. Despite arguments having been heard number of times till date no interim maintenance has been awarded.

3. A report was called from the learned Trial Court to find out the reasons for delay. As per the reply received from the learned Trial Court, the petitioner filed an application under Section 23 of the Act for interim relief of protection of herself and her daughter and to be released from the matrimonial home along with her articles and streedhan which relief was granted by the Trial Court vide order dated 9th May, 2014 and 13th May, 2014. Thereafter it appears that the Trial Court was on leave for some time and the matter had to be taken up by the Link Magistrate for three dates. On the next date, learned counsel for the petitioner was not present and thus it could not be clarified whether the petitioner wanted to press the application under Section 23 of the Act for interim maintenance or withdraw the same.

4. The report sent by the learned Trial Court fails to note the legal position as decided by the Kerala High Court in 2007 Cri.L.J. 2328 P. Chandrasekhara Pillai vs. Vatsala Chandran and Anr. and the Bombay High Court in 2009 Cri.L.J. 107 Vishal Damodar Patil vs. Vishakha Vishal Patil that if a prayer for maintenance is made in the application under Section 12 of the Act, a separate application under Section 23 (2) of the Act

CRL.M.C. 2291/2016

seeking interim relief is not necessary. Thus even if the petitioner seeks to withdraw her application under Section 23 read with Section 28 (2) of the Act, the learned Trial Court is still duty bound to consider the prayer for interim relief in terms of the prayer in the application under Section 12 of the Act. With these observations the petition is disposed of requesting the learned Trial Court to expedite the matter and decide the issue of interim maintenance between the parties expeditiously.

MUKTA GUPTA, J.

OCTOBER 21, 2016

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

+ **CRL.M.C. 2215/2016**

SUMIT ARORA

..... Petitioner

Represented by: **Mr. Suhail Malik, Advocate.**

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Represented by: **Mr. Ashok K. Garg, APP for
the State with SI Bishambar
Dayal, PS Connaught Place.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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21.10.2016

1. The petitioner filed a complaint before the learned Metropolitan Magistrate being CC No. 384/1/14 titled as 'Sumit Arora vs. State of NCT of Delhi & Ors' along with an application under Section 156 (3) Cr.P.C. seeking direction to the SHO, PS Connaught Place, New Delhi to investigate the complaint dated 20th November, 2012. The said application was dismissed by the learned Metropolitan Magistrate vide order dated 15th July, 2015 which was challenged in a revision petition.

2. The learned Additional Sessions Judge noting that there was no sufficient cause to condone the delay, dismissed the application for condonation of delay and the revision petition being barred by limitation. Hence the present petition.

CRL.M.C. 2215/2016

Page 1 of 3

3. The allegations of the petitioner in the complaint are that the accused persons approached him for investing money to start chain of restaurants by the name of 'Soya Express' and 'Handi Chadiyan Di'. The petitioner was promised that he would be paid profit out of the commission, for which two agreements dated 31st August, 2011 and 29th December, 2011 were executed. Despite having taken ₹35 lakhs from the petitioner, the two restaurants were not started and the accused even refused to refund the money.

4. Considering the facts required to prove the offence were within the knowledge of the petitioner and no investigation thereon was required to be done to collect the evidence, the learned Trial Court dismissed the application under Section 156 (3) Cr.P.C. granting liberty to the petitioner to lead pre-summoning evidence.

5. Agreeing with the finding of the learned Additional Sessions Judge that sufficient cause to condone the delay was not explained as the order of the learned Metropolitan Magistrate dated 15th July, 2015 had been uploaded on the website of Patiala House Court along with the other orders and after the said date presence of the petitioner's counsel was also recorded in the order sheet, thus he could not have shown ignorance of the order dated 15th July, 2015, this Court notes that even on merits no fault can be found with the order of the learned Metropolitan Magistrate noting that the evidence was in possession of the petitioner and the complaint could be proceeded as per the complaint case procedure and no direction for registration of the FIR was required.

6. Consequently, finding no merit in the present petition, the same is dismissed. However, in case the petitioner so wishes he can lead the pre-summoning evidence before the learned Trial Court on the date fixed by the learned Metropolitan Magistrate.

MUKTA GUPTA, J.

OCTOBER 21, 2016
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