

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

% **Date of Decision: 28th August, 2017**

+ CRL.M.C. 1615/2015 & CRL.M.A. 5881/2015

HITESH MOHAN NAGPAL Petitioner

Through: Mr.Umesh Suri, Advocate with Mr.
K.P. Singh, Advocate.

versus

RACHNA NAGPAL Respondents

Through: Mr.Pradeep Narula, Advocate with
Ms. Urmila Verma, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. Instant petition is preferred by the petitioner under Section 482 Cr.P.C. seeking setting aside of the impugned order dated 09.01.2015 passed by the learned Additional Sessions Judge-04 & Special Judge (NDPS) South East, New Delhi in Criminal Appeal No. 23 of 2014 whereby the learned ASJ dismissed the appeal filed by the petitioner challenging the interim maintenance order passed by the learned Metropolitan Magistrate (Mahila Court), SED/Saket, New Delhi vide order dated 24.07.2014 under Section 12 read with Sections 17(1), (2), 18, 19, (a), (c), (d), (e), (f), 20 (1b), (3) and 23 of the Protection of Women from Domestic Violence Act, 2005

(*hereinafter referred to as “the DV Act”*) in Complaint Case No. 115/3/13.

2. The brief facts stated are that the petitioner/husband and the respondent/wife got married on 22.01.1999 as per Hindu rites and customs and out of the wedlock three children were born to them. The petitioner in November 2009 moved to China then he went to Dubai where he is working till now. In the month of June 2013 the respondent filed a petition under Section 12 of the Protection of Women from Domestic Violence Act (*hereinafter referred as PWDV Act*) alleging therein domestic violence and economic violence against the petitioner before the Court of Chief Metropolitan Magistrate, Saket, New Delhi. It is further alleged that the respondent/wife has three children to take care of, was treated with cruelty and the petitioner/husband is not paying anything towards the maintenance of the respondent/wife and the children.
3. Consequently, vide order dated 24.07.2014 the learned MM/Mahila Court/SED/Saket Courts, New Delhi directed the petitioner to pay Rs. 8,000/- per month per child as well to be paid to the respondent/complainant by the petitioner/husband. The petitioner was further directed to pay maintenance of Rs. 10,000/- per month to the respondent/complainant and an amount of Rs. 12,000/- per month as rent which is to be paid from the date of the rent agreement.
4. The aforesaid order dated 24.07.2015 was challenged by the respondent by filing an appeal under Section 29 of the

Protection of Women from Domestic Violence Act, 2005 before the Court of District and Sessions Judge, South East District, Saket Courts, New Delhi and the learned ASJ vide impugned order dated 09.01.2015 dismissed the appeal filed by the petitioner for want of infirmity or illegality in the order dated 24.07.2015.

Hence the present petition.

5. The learned counsel for the petitioner has submitted that the order dated 09.01.2015 passed by the learned ADJ as well as the interim maintenance order dated 24.07.2014 passed by the learned MM is unjust, bias, arbitrary and without having any supporting documents in contrary and is liable to be set aside. It is against the law and facts and is based upon conjecture and surmises.
6. The learned counsel for the petitioner has further submitted that the respondent/wife has left the matrimonial house on her own will, without any fault of the petitioner/husband and has filed a petition just to satisfy personal grudge and to put financial pressure on the petitioner. Therefore, the impugned order is liable to be set aside.
7. On the other hand, the learned counsel for the respondent has submitted that the impugned order dated 09.01.2015 passed by the learned ADJ against the petitioner and in favour of the respondent has been rightly passed and does not suffer from any illegality or infirmity and the appeal has rightly been dismissed by the learned Sessions Court.

8. The learned counsel for the respondent has further submitted that the order under challenge in the present petition is an interim order and is not the final order. The pleadings of the petitioners in the present writ petition are false and the same raises disputed question of facts which cannot be adjudicated in the writ jurisdiction. The same are required to be proved in the evidence by the petitioners before the Trial Court and not before this Court. Hence, the present petition is meritless and deserves to be dismissed.
9. It is a settled principle of law that both the parents have a legal, moral and social duty to provide to their child the best education and standard of living within their means. The mere fact that the spouse with whom the child is living is having a source of income, even if sufficient, would in no way absolve the other spouse of his obligation to make his contribution towards the maintenance and welfare of the child.
10. It is an admitted fact coming on record that the main application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is pending before the Trial Court. The determination of the same will be done by the Trial Court after leading of evidence by the respective parties and on the basis of material documents and income affidavits of the parties.
11. The Apex Court in ***Noor Khatoon vs. Mohd. Quasim; 1997 Crl. L.J. 3972*** has made the observation that a father having sufficient means has the obligation to maintain his minor

children who are unable to maintain themselves till they attain majority and in case of females till they get married.

12. Furthermore, in the instant petition it is an admitted case on record that the children are staying with the respondent/mother, and since the respondent and her children are to be maintained by the petitioner and even the paternity is not disputed therefore, in the absence of denial of existence of the marriage and denial of paternity of the children, who are stated to be school going, the petitioner cannot shy away from his statutory obligation of maintaining his legally wedded wife and his children.

13. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds. Reliance is placed on the judgment of the Hon'ble Punjab and Haryana High Court in the case ***Dr. R.K. Sood vs. Usha Rani Sood; 1996 (3) 114 PLR 486*** and the relevant paragraph is reproduced as under:-

"17. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the

welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds."

14. In view of the aforesaid discussion, I find no infirmity in the impugned order dated 09.01.2015 passed by the learned Additional Sessions Judge-04 & Special Judge (NDPS) South East, New Delhi in Criminal Appeal No. 23 of 2014. The present petition filed by the petitioner is dismissed.

However, this judgment shall not affect the merits of the case, application under Section 12 of DV Act pending between the parties as the determination of the maintenance amount will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.

15. The present petition is disposed of in the above terms. Pending application(s) are also disposed of (if any). The Trial Court is directed to dispose of the maintenance petition as soon as possible and preferably within a period of six months from the date of this judgment.

16. Copy of this judgment be sent to the concerned Court(s).
No order as to costs.

I.S.MEHTA, J

AUGUST 28, 2017/sr