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

+ CRL.M.C. 3172/2016 & Crl.M.As. 13579/2016 (stay),
3858/2017 (by R-2)

RISHI KAPUR

..... Petitioner

Represented by: Ms. Kamlesh Mahajan, Adv.

versus

STATE & ANR.

..... Respondent

Represented by: Ms. Rajni Gupta, APP.
Ms. Deepti Kathpalia, Adv. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.05.2017

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1. By this petition the petitioner challenged the order dated 8th August, 2016 passed by the learned Additional Sessions Judge dismissing his appeal and confirming the order dated 23rd March, 2016 passed by the learned Metropolitan Magistrate disposing of an application under Section 25(2) of the Protection of Women from Domestic Violence Act (in short the PWDV Act) directing the petitioner to pay sum of ₹35,000/- per month each for the respondent as well as the two minor children from the date of filing of the application till the pendency of the trial towards interim maintenance of the respondent No.2 and the minor children which would include all educational as well as other ancillary expenses.

2. Learned counsel for the petitioner submits that the petitioner's income

CRL.M.C. 3172/2016

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after deduction comes to around ₹90,000/- per month. The respondent No.2 and the two minor children are staying in the matrimonial home which is a duplex house with a single kitchen which is being run by the mother of the petitioner. Thus all expenses of the kitchen are being borne by the petitioner. Even as per the Trial Court the income assessed of the petitioner is around ₹1,50,000/- per month. Thus from that income maintenance of ₹1.05 lakhs per month awarded to the respondent No.2 and the two children is on the higher side when all the basic amenities and insurance etc., are borne by the petitioner.

3. When the petition came up before this Court this Court issued notice to the respondent and directed that in the interregnum the petitioner would pay a sum of ₹60,000/- per month as undertaken by him in lieu of the interim maintenance of the respondent No.2 and the two children. Reply affidavit and an application seeking vacation of the interim order have been filed.

4. Learned Metropolitan Magistrate by the order dated 8th August, 2016 drawing an adverse inference came to the conclusion that the petitioner was having an income of more than ₹1,00,000/- per month. Further by the impugned order dated 8th August, 2016 the learned Appellate Court noted that the learned Trial Court presumed that the income of the appellant was not less than ₹1,50,000/- per month and upheld the interim maintenance of ₹35,000/- per month to all the three i.e. respondent No.2 and two minor children.

5. Before this Court, learned counsel for the respondent No.2 strenuously argued that with the written submissions filed before the learned

Trial Court she has placed on record material to show that the income of the petitioner was far above ₹1,00,000/- and he has concealed material facts. Even as per the learned counsel for the respondent No.2 the documents so relied upon have been filed not along with the affidavit but with the written submissions.

6. This Court has gone through the detailed tabulation produced by the respondent No.2 in respect of the expenses incurred on the education and extra-curricular activities of the two children. Even accepting the expenses as shown on the education and extra-curricular activities of the two children, the same are approximately ₹50,000/- per month. It is not disputed by the respondent No.2 that she and the two children continue to live in the same shared household and thus she is not required to pay any rent or any other miscellaneous expenses like the electricity or water charges.

7. Considering the observations of the two Courts and the fact that the petitioner has his own expenses to meet and parties are yet to file their detailed affidavits along with the documents, this Court is of the considered opinion that an interim maintenance for a sum of ₹75,000/- consolidated for the respondent No.2 and the two children from the date of filing of the application till the disposal of the petition would serve the purpose. Consequently, the order dated 23rd March, 2016 passed by the learned Metropolitan Magistrate and the appellate order dated 8th August, 2016 are modified and the petitioner is directed to pay a sum of ₹75,000/- per month to the respondent No.2 for her maintenance and that of the two children till modified by Trial Court.

8. Petition and applications are disposed of.

CrI.M.A. 2913/2017 (u/S 340 Cr.P.C.)

Since the parties will be filing their detailed affidavits before the Trial Court, this Court finds no ground to entertain this application at this stage.

Application is dismissed.

MUKTA GUPTA, J.

MAY 09, 2017
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