

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

% **Judgment delivered on: 17th November, 2017**

+ **CRL.M.C. 1728/2015**

RAJAT JOHAR

..... Petitioner

Through: Mr.Prashant Mendiratta, Advocate
with Mr.Harshvardhan Pandhey and
Ms.Malvika Choudhary, Advocates

versus

DIVYA JOHAR

..... Respondent

Through: Mr.Biji Rajesh and Ms.Shipra Garg,
Advocates

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. By way of the instant petition, the petitioner invoke the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 for setting aside the impugned orders dated 17.03.2015 passed by the learned Additional Sessions Judge-03, Patiala House Courts, New Delhi in Criminal Appeal No. 131/14.
2. The brief facts stated are that, a petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005 was filed

by the respondent-Divya Johar against the petitioner-Rajat Johar before the Court of Chief Metropolitan Magistrate, Saket, Delhi. Admittedly, the marriage between the parties was solemnized on 16.05.2009 in accordance with Hindu rites and rituals at Hotel Lutyen's, Mehrauli-Gurgaon Road, Delhi. The respondent before marriage was working as a Manager, Quality Assurance in a reputed MNC in Gurgaon and was earning a decent salary in the year 2008-09, but she was forced to quit the same after marriage to join the petitioner at Hyderabad in the month of May 2009. Thereafter, in the month of August 2010, the respondent was short listed for final interview for the post of full-time faculty (Asst. Professor) with NIFT, Hyderabad but the petitioner was completely against of taking up a full-time job by the respondent therefore, she did not attend the final interview on the instances of her husband/petitioner.

3. Out of the said wedlock one baby boy (Master Avin Johar) was born on 02.02.2011. He was born about nine weeks prematurely and was diagnosed for blood pressure and kidney problem. As a result of which the minor child is suffering from severe medical ailment since his birth and requires constant medical treatment and supervision. Thereafter, on 03.04.2012, the respondent along with her minor child were thrown out of the matrimonial home and on being harassed by the petitioner and her family members the respondent filed a domestic violence case against the petitioner and other family members. It has been alleged by the respondent that the petitioner has neither taken her and her minor child back nor has made any provision for their maintenance. It has been further

alleged that the petitioner has refused the respondent to stay in the matrimonial home and have further refused to hand over the Stridhan articles including jewellery to the respondent despite repeated requests.

4. Subsequently, on 17.07.2012 the respondent filed a petition under Section 12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner, father-in-law and mother-in-law, along with an application for interim maintenance under Section 23 of DV Act in the Court of Chief Metropolitan Magistrate, Saket Courts, New Delhi.
5. The learned Metropolitan Magistrate after hearing the arguments of both the parties and after considering the complaint, affidavit and other material on record, passed an order dated 12.11.2014 thereby directing the petitioner herein to pay an interim maintenance of Rs. 2,00,000/- per month to the respondent and her minor child which shall be payable from the date of filing of the petition, i.e. 17.07.2012 till further directed the petitioner herein to pay a sum of Rs. 55,000/- per month as rent in lieu of an alternate accommodation to the respondent and her minor child.
6. Aggrieved by the aforesaid order dated 12.11.2014, the petitioner herein preferred an appeal under Section 29 of the DV Act being Criminal Appeal No. 131/14 before the Court of Sessions Judge, District Courts, Saket, New Delhi on 11.12.2014.
7. Consequently, the learned Additional Sessions Judge-03, Patiala House Courts, New Delhi vide impugned judgment dated

17.03.2015 disposed of the said appeal filed by the petitioner by modifying the interim maintenance amount by reducing it to Rs. 1,80,000/- per month and further reduced the amount for alternate accommodation to Rs. 45,000/- per month.

Hence, the present petition.

8. The learned counsel for the petitioner has submitted that the petitioner is ready to pay any amount if factually requires but the respondent is in the habit of falsely putting allegations against the petitioner. It is further submitted that the impugned order is bad in law and liable to be set aside on the following grounds:-

- i. The calculation is against the income of the petitioner.
- ii. The respondent and her mother is joint owner of a commercial property and she for herself and her minor daughter could contribute from the rent which is coming from the aforesaid property. The document indicating 20% of the rental is of the respondent & 80% of her mother.
- iii. As per the record the mother of the respondent and the respondent share 50% but as per the rent deed 20% is shown in favour of the respondent and 80% is in favour of her mother which is not tenable in law as she is concealing her income.

9. The learned counsel for the petitioner has submitted that the interim order is totally illegal and is against the settled principal of law as it shows no consideration to the documents filed by the petitioner and further submitted that the petitioner as got no monthly income therefore, the impugned order be set aside.

10. The learned counsel for the petitioner has submitted that the appellate Court's order is patently illegal therefore, the present matter be remanded back to the appellate Court to decide the appeal of the petitioner afresh and give reasons of coming to the conclusion of reduction and upholding the findings of the Trial Court. He further submits that till then let maintenance be not awarded and relied upon the following judgments:-

1) *Akanksha Jain vs. Manish Jain*; CM(M) No. 910/2010 decided on 21.02.2014.

2) *R.K. Sharma vs. NDMC*; (2006) 1 567.

11. On the contrary the learned counsel for the respondent has submitted that the impugned order passed by the Sessions Court does not require any interference by this Court as the petitioner has not complied with the orders passed by the Trial Court as well as the Sessions Court therefore, the petitioner be directed to comply with the orders and submits that the present petition be rejected for want of merit.

12. The learned counsel for the respondent in support of its contentions has relied upon the following judgments:-

1) *Nayanika Thakur Mehta vs. Mohit Mehta*; MANU/DE/0841/2017.

2) *Shalu Ojha vs. Prashant Ojha*; (2012) 2 SCC 99.

3) *Rajeev Preenja vs. Sarika & Ors*; 2009 (V)AD (DELHI) 497.

4) *Durga Prasad Ray vs. Meenu*; 191 (2012) DLT 275.

13. In rebuttal the learned counsel on behalf of the petitioner has submitted that the learned Additional Sessions Judge though reduced the maintenance amount, without going into the reasons came up with the imaginary figure, this determination of the interim maintenance has to be based on certain documents to reach to the conclusion as per the new affidavit in compliance to the judgment of this Court in *Kusum Sharma vs. Mahinder Kumar Sharma*; FAO-369/1996 decided on 29.05.2017.
14. The object of The Protection Of Women From Domestic Violence Act, 2005 is to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.
15. The object of awarding maintenance/interim maintenance qua the aggrieved person is to provide speedy remedy to the aggrieved person(s) who are unable to support themselves and are in distress. It is intended to achieve a social purpose, and maintenance cannot be denied to the children on the premise that their mother is employed or has enough means to maintain them or that they are in the custody of their mother.
16. 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, even if, the means/income/salary of that spouse may be less than the means/income/salary of the other spouse.

17. 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.
18. It is an admitted fact coming on record that the main maintenance petition under Section 12 of DV, Act is pending before the Trial Court. The determination of the maintenance amount 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.
19. Furthermore, in the instant petition it is an admitted case on record that the minor child is staying with the mother/respondent who needs medical attention/care on regular basis and even the paternity is not disputed. 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."

20. Since the respondent and her minor son are to be maintained by the petitioner, in the absence of denial of existence of the marriage and denial of paternity of the minor son, who is stated to be requires constant medical treatment and supervision, the petitioner cannot shy away from his statutory obligation of maintaining his legally wedded wife and his minor son.
21. The monetary relief as provided under the Protection of Women from Domestic Violence Act, 2005 is different from maintenance, which can be in addition to an order of maintenance under Section 125 Cr.P.C. or any other law, and can be granted to meet the expenses incurred and losses suffered by the aggrieved person and

child of the aggrieved person as a result of the domestic violence, and the question whether the aggrieved person, on the date of filing of the application under Section 12 of DV Act was in a domestic relationship with the respondent is irrelevant.

22. Sub-clause 2 of Section 23 of DV Act empowers the Magistrate to pass such interim order as he deems just and proper therefore, it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief, if the Magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence.
23. Furthermore, an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.
24. The Apex Court in ***V.D. Bhanot v. Savita Bhanot; (2012) 3 SCC 183***, has observed that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 of DV Act thereof. The relevant paragraph is reproduced as under:

"12. We agree with the view expressed by the High Court that in looking into a complaint Under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order Under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

25. Therefore, in view of the submissions made by the learned counsel for the petitioner and reliance placed by him on the judgment of this Court in ***Kusum Sharma vs. Mahinder Kumar Sharma***; FAO-369/1996 decided on 29.05.2017, the parties are directed to file a fresh income affidavit in view of the said judgment before the Trial Court on or before 15.12.2017 and the Trial Court shall pass a fresh order within a month thereof.
26. In the meanwhile the petitioner is directed to keep on making the payment in favour of the respondent as well as her minor child as per the order dated 17.03.2015, without prejudice to the rights and contentions of the parties till a fresh order of maintenance is passed by the Trial Court and any amount if paid in excess the same shall be adjusted in future.
27. Consequently, the impugned order dated 17.03.2015 passed by the learned Additional Sessions Judge-03, Patiala House Courts,

New Delhi in Criminal Appeal No. 131/14 is modified to this extent only.

28. The present petition is disposed of in the above terms. The parties are directed to appear before the Trial Court on or before 15.12.2017.
29. Let LCR be sent back forthwith along with a copy of this judgment.
30. All the pending applications (if any) are also disposed of.
31. No order as to costs.

I.S.MEHTA, J.

NOVEMBER 17, 2017



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