

\$~11

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

+ CRL.REV.P. 22/2018

ROHIN PAUL

..... Petitioner

Through: Ms. Deepika V. Marwaha and
Ms. Raunika Johar, Advs.

versus

SAPNA PAUL

..... Respondent

Through: Mr. M.K.Shah, Adv.

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

%

14.11.2018

1. Learned counsel for the parties submitted that the settlement could not be effected between the parties before the Mediation Cell.
2. The petitioner has filed the present petition under Section 401 read with Sections 397 & 482 of the Code of Criminal Procedure, 1973 ('CPC') challenging the impugned order dated 23.12.2017, passed by the learned Additional Sessions Judge-06, South East, Saket Courts, New Delhi in Criminal Appeal No.60/2017, whereby the petitioner has been directed to deposit 50% of arrears of maintenance awarded by the learned Metropolitan Magistrate as a condition precedent for hearing the appeal on merits.
3. Learned counsel for the petitioner submitted that the judgments relied upon by the learned Additional Sessions Judge, while passing the impugned order dated 23.12.2017, were considered, in a reference, by this Court in CrI.M.C. 878/2018, titled *Sabina Sahdev & Ors. v.*

Vidur Sahdev wherein the judgment was delivered on 9.7.2018. Learned counsel for the petitioner relied upon the para 30 of the aforesaid judgment which is being reproduced herein for the sake of convenience:

“30. Thus, we answer the reference by holding that the general direction issued in *Rajeev Preenja* (supra) in paragraphs 15, 16 and 20 are not sustainable. The said directions could not have been issued by the learned Single Judge as they seek to curtail the statutory remedy of revision available under Section 399 read with Section 401 of the Cr.P.C, and of appeal under Section 29 of the DV Act, against orders granting interim maintenance under Section 125 Cr.P.C. and Section 23 of the DV Act respectively. The direction in question over steps into the legislative field, which was impermissible for the Court to do. We agree with the view taken by the learned Single Judge in *Brijesh Kumar Gupta* (supra), that there cannot be an absolute rider that the entire maintenance amount, as granted by the Trial Court, should be deposited prior to the entertainment of the statutory remedy, because it would leave the remedy of statutory revision/ appeal illusory. Accordingly, we hold that a revision under Section 399 read with Section 401 Cr.P.C. and an appeal under Section 29 of the DV Act, against the order granting maintenance under Section 125 Cr.P.C. and under Section 23 of the DV Act respectively, would be maintainable, and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the Ld. MM. We further hold that the pendency of such a Revision or Appeal- as the case may be, shall not operate as a stay of the operation of the order granting interim maintenance. The reference is answered accordingly.”

4. Learned counsel for the petitioner submitted that in view of the judgment in the matter of ***Sabina Sahdev & Ors. v. Vidur Sahdev*** (supra), the petitioner is not liable to pay 50% of the arrears of the maintenance amount awarded in favour of the respondent computable till the passing of the impugned order, as a condition precedent for hearing the appeal on merits.

5. Learned counsel for the petitioner further submitted that in view of the judgment in ***Sabina Sahdev & Ors. v. Vidur Sahdev*** (supra), the impugned order dated 23.12.2017 be set aside and matter may be remanded back to the concerned Appellate Court to decide the appeal on the basis of judgment delivered on 9.7.2018 in the matter of ***Sabina Sahdev & Ors. v. Vidur Sahdev*** (supra) with liberty to move an application before the concerned Court for the stay of the payment of the maintenance amount in terms of the order dated 16.11.2016.

6. Learned counsel for the petitioner further submitted that the petitioner has already paid a sum of Rs.10,00,000/- to the respondent and she may be allowed to move an application within 15 days before the concerned Court so that no precipitate action is taken by the respondent in terms of the order dated 16.11.2016.

7. Learned counsel for the respondent submitted that the judgment in the matter of ***Sabina Sahdev & Ors. v. Vidur Sahdev*** (supra) is not applicable to the facts of the present case, however, he has no objection if the impugned order dated 23.12.2017 is set aside and the appeal is decided in view of the law laid down in ***Sabina Sahdev & Ors. v. Vidur Sahdev*** (supra).

8. Learned counsel for the respondent further submitted that the respondent shall contest the application, if any, moved by the petitioner, as per law including maintainability of the same, in view of the facts and the circumstances of the matter.

9. Learned counsel for the parties further submitted that in view of the aforesaid facts, the petition may be disposed of and the impugned order dated 23.12.2017 be set aside and the Appellate Court may be directed to decide the appeal expeditiously.

10. Accordingly, the impugned order dated 23.12.2017 is set aside and the present petition is disposed of with the directions to concerned Appellate Court to take up the appeal for hearing following the law laid down in *Sabina Sahdev & Ors. v. Vidur Sahdev* (supra) and decide it as expeditiously as possible with the liberty to the petitioner to move an application for the stay of the payment of the maintenance amount in terms of the order dated 16.11.2016. The respondent may oppose the application, if any filed by the petitioner, as per law including maintainability of the same, in the facts and circumstances of the matter. However, no precipitated action shall be taken against the petitioner by the respondent in terms of the order dated 16.11.2016 for 15 days from the date of passing of this order to grant an opportunity to the petitioner to move an application as prayed for.

11. It is clarified that this Court has not expressed any opinion on the merits of the appeal or the application sought to be moved by the petitioner.

Dasti.

CHANDER SHEKHAR, J

NOVEMBER 14, 2018
rk