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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 17th September, 2018

+ CRL.M.C. 2621/2016 and Crl. M.A nos. 11228/2016 and
11230/2016

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..... Petitioner

Through: Mr. Ashok Kumar Arya, Advocate

versus

THE STATE (GNCT OF DELHI) & ANR Respondents

Through: Mr. Mukesh Kumar, APP for the
State

Mr. Pradeep Kumar, Mr. Javed Ahmed and
Mrs. Syed Maria A., Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the petition (CC no.V-313/13) of the first respondent presented before the Metropolitan Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "Domestic Violence Act"), proceedings were taken out leading to the judgment dated 30.10.2014 being passed in terms of which the petitioner was burdened with the responsibility to pay compensation in the sum of Rs.5,000/- and maintenance allowance in the sum of Rs.4,000/- p.m. from the date of the filing of the said petition till the

second respondent continued to be legally entitled to for such maintenance, this in addition to Rs.1,000/- p.m. towards right to residence, it being equivalent to the amount payable by her as rent.

2. The petitioner challenged the said order by criminal appeal presented on 22.12.2015 in the court of Sessions, it being registered as Crl. A 1112/2016. The first appellate court, referring to the law laid down in *Rajeev Preenja vs. Sarika*, 159 (2009) DLT 616 called upon the petitioner to deposit the arrears of maintenance and since he did not make any such deposit, *inter alia*, taking the plea that the second respondent is not legally wedded wife, the appeal was dismissed by order dated 11.03.2016.

3. The aforesaid orders are sought to be assailed by the petition at hand invoking the inherent powers of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC)

4. The prime contentions urged by the petitioner at the hearing are that the second respondent had failed to show *Nikahnama* and, therefore, she has failed to prove that she is his legally wedded wife. He also contends that the *ex parte* judgment was rendered without service of notice, the counsel who had appeared on his behalf having never been formally authorized or instructed to do so.

5. A perusal of the record would show that on 31.07.2013, the first respondent had entered appearance through counsel who had sought time from the Metropolitan Magistrate to file written submission. A number of opportunities were taken and granted. Eventually, the right

to file reply was closed on 12.05.2014. On account of non-appearance, the petitioner was set *ex parte* and it is on the basis of the *ex parte* evidence led by the second respondent that the impugned judgment of the Metropolitan Magistrate was rendered, it having been found that the first respondent is the legally wedded wife of the petitioner, her case of domestic violence at his hand leading to the monetary relief in the nature of maintenance, compensation and right to residence being accepted.

6. On being asked, the counsel for the petitioner submitted that no complaint has been lodged with the Bar Council against the advocate who had appeared in the court of the Metropolitan Magistrate on his behalf. From this, it has to be inferred that the advocate would have appeared on being instructed to do so. From this, it also naturally follows that the petitioner had due notice and knowledge of the proceedings arising out of the petition under Domestic Violence Act before the Metropolitan Magistrate.

7. The petitioner, inspite of notice, failed to appear or to contest the petition under the Domestic Violence Act by way of pleadings or evidence. In these circumstances, the pleadings and evidence of the second respondent had gone unimpeached and unchallenged. The same, thus, have been rightly accepted by the courts below. The finding about the relationship of husband and wife between the petitioner and the second respondent have been reached on the basis of evidence and cannot be termed to be perverse.

8. The petition is devoid of substance and is dismissed. The pending applications also stand dismissed.

R.K.GAUBA, J.

SEPTEMBER 17, 2018

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