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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 4362/2016 and CRL.M.A. 19938/2016

RAJESH DUBEY

..... Petitioner

Through

Mr. Attin S. Rastogi and Ms. Ruchi
Sharma, Advocates

versus

SEEMA DUBEY

..... Respondent

Through

Mr. Mahesh Tiwari and Mr. Bishnu
Tiwari, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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04.12.2018

The petitioner is the respondent before Metropolitan Magistrate in complaint case No. 338/1 instituted by respondent under Section 12 read with Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 for various reliefs. The petitioner had moved an application before the Metropolitan Magistrate seeking dismissal of the said petition primarily on the contentions that there is no domestic relationship between the parties; that the Metropolitan Magistrate in Delhi had no territorial jurisdiction; and that the case was time barred. By order dated 26.11.2015, the Metropolitan Magistrate did not accept the same and dismissed the said application. The order was assailed before the court of Sessions court in Criminal Appeal No. 13/2016, the Sessions Court affirming the view taken by

the Metropolitan Magistrate and dismissing the appeal by order dated 02.05.2016. The said order has been challenged by the petition at hand by invoking the inherent jurisdiction of this Court by a writ petition under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C.

Learned counsel for petitioner submitted and the counsel for respondent fairly conceded that the case before Metropolitan Magistrate is now at a mature stage, the respondent herein (who is the petitioner before the Metropolitan Magistrate) has already concluded her evidence, the case now being at the stage of recording of evidence of the petitioner (he being a respondent in those proceedings).

Learned counsel for petitioner submitted that he has raised these issues, besides other contentions on merits, in the petition under the Domestic Violence Act before the trial court, and though, he would like the decision on the issues raised to be rendered on the basis of evidence led by the said court, his only apprehension is that the observations of the Sessions Court in appeal may not influence the outcome of such decision.

The observations of the appellate court concededly were recorded on the basis of pleadings and not on evidence. Such observations, in this view, cannot be treated as final, conclusive or binding. The issues of limitation and territorial jurisdiction particularly are mixed questions of fact and law and, therefore, will have to be finally addressed on the basis of the evidence only.

With above observations, the prayer of the petitioner to withdraw the petition at hand with liberty to raise all the contentions for adjudication before the trial court is granted.

The petition and the application filed therewith are disposed off accordingly.

R.K.GAUBA, J

DECEMBER 04, 2018
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