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

+ CRL.M.C. 4472/2016 and Crl. M.A. 18702/2016

SUDHIR KUMAR KHANNA

..... Petitioner

Through: Mr. Jeevesh Nagrath, Ms. Kanika  
Baweja, Mr. Ashish Dhingra nad Mr. Chitwan  
Singhal, Advocates

versus

REKHA RANI

..... Respondent

Through: Respondent in person

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER**

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**28.11.2018**

By order dated 18.04.2018, Ms. Rakhi Dubey, advocate from Delhi High Court Legal Services Committee was appointed to assist the court. She has not appeared for assistance. Given the responsibility that was entrusted to a legal-aid panel counsel, such absence is not acceptable. The Secretary, Delhi High Court Legal Services Committee shall take appropriate action in this regard.

On the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 instituted by the respondent against the petitioner (CC no.69/4) while dealing with the application under Section 23, the Metropolitan Magistrate, by her order dated 25.05.2016, directed the petitioner (husband) to pay Rs.30,000/- p.m.

as interim maintenance allowance to her in addition to Rs.20,000/- as expenses for alternative accommodation from the date of filing of the said application i.e. 13.12.2014 till final decision of the case, this direction having been passed on the basis of conclusion reached from perusal of “bank statement” according to which he was “running into lakhs” and further that the respondent (petitioner before the Metropolitan Magistrate) was unable to earn her livelihood. The case of the respondent / wife has been that the petitioner was employed as General Manager in multinational company in Sharjah where he was earning handsome amount to the extent of Rs.10 Lakh p.m., his income being exempt from tax liability.

The petitioner / husband challenged the said order by Crl. A. 49822/2016 which was dismissed by the court of Sessions by its order dated 01.10.2016, the impression created at that stage being that the respondent though well qualified was “not able to work” on account of medical condition.

Aggrieved by the above mentioned orders of the two courts below, present petition was filed under Section 482 of the Code of Criminal Procedure, 1973, the contention of the petitioner / husband being that true facts have been concealed by the respondent / wife.

By order dated 30.11.2016, the petitioner was directed to continue making the payment of interim maintenance allowance to the respondent / wife regularly in terms of the order of the Metropolitan Magistrate without prejudice to his rights and contentions. On 18.04.2018, when the matter came up before the

court, the question of compliance with the said direction came up. The petitioner was directed to deposit a sum of Rs.5 Lakh in the court of the Metropolitan Magistrate within a period of three days from the date of the said order which amount upon deposit was to be released to the respondent / wife, there being a stay against coercive action pursuant to the orders which are impugned. The said order has continued to be operative till date.

After some hearing on 05.07.2018, the petitioner was directed to discover on oath documents having a bearing on his income. An additional affidavit with supportive documents in compliance has been submitted by the petitioner.

During the course of hearing, the counsel for the petitioner submitted that the respondent / wife has withheld and concealed the material facts from the courts below, this being substantiated by a certificate issued on 03.07.2018 by the Headmistress of Himalaya International School in Sector-9, Rohini, indicating that the respondent / wife had served as Acting Head Mistress-cum-Manager in the said institution from 02.05.2016 to 31.03.2018 at a consolidated salary of Rs.50,000/- p.m. On being asked, the respondent /wife fairly conceded that she had been so engaged by the said school, though adding that the salary paid to her for initial period was only Rs.45,000/- p.m., it having been later increased to Rs.50,000/- p.m.. On being further asked, she conceded that she had not disclosed such employment or the earnings for such period either to the court of the Metropolitan Magistrate before the impugned order dated 25.05.2016

had been passed or to the first appellate court during the period the criminal appeal of the petitioner had remained pending from 22.07.2016 till it was decided by order dated 01.10.2016.

The learned counsel for the petitioner submitted that the application of the petitioner seeking modification of the interim maintenance has been pending on the file of the Metropolitan Magistrate but on account of the order of the first appellate court and pendency of this petition, the Metropolitan Magistrate has not been able to take it up for adjudication.

From the material which has come on record with the additional affidavit submitted on 22.11.2018 as noted above and which also include a certificate purportedly issued on 06.03.2018 indicating the respondent / wife is no longer under regular or acute treatment for cancer, she only reporting to the said hospital for OPD follow-ups, it appears there may have been some concealment of facts. At the same time, opportunity would need to be given to the respondent /wife to explain her position and show facts to the contrary.

In these circumstances, the appropriate course would be to suspend the order dated 25.05.2016 passed by the Metropolitan Magistrate on the application under Section 23 of the Domestic Violence Act till a decision is taken on the application for modification by the petitioner / husband. In view of the nature of the proceedings, however, it is desirable that such application is decided expeditiously. The case before the Metropolitan Magistrate is stated to be listed tomorrow. The Metropolitan Magistrate is directed to

hear both the parties and take a decision on the pending application for modification of the interim maintenance order at an early date preferably within two months of the date next fixed. Till then, the impugned order dated 25.05.2016 of the Metropolitan Magistrate shall remain suspended. The payments made till date will be liable to be adjusted against the directions that are hereafter passed in the matter.

The documents submitted by the petitioner on oath in terms of the aforementioned order dated 05.07.2018 shall be submitted, on oath, by the petitioner before the Metropolitan Magistrate alongwith further documents, if any. The respondent would also have the liberty to file additional documents, if any, on which she wishes to rely. Such additional material will be taken into consideration by the Metropolitan Magistrate while dealing with the aforesaid pending application.

The petition and the application filed therewith stand disposed of in above terms.

*Dasti* under the signatures of the Court Master.

**R.K.GAUBA, J**

**NOVEMBER 28, 2018**

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