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

+ CRL.M.C. 4508/2015 and CrI.M.A.16047/2015, 6458/2017,
3069/2018

SANJAY KUMAR

..... Petitioner

Through: Mr. Kamal Kant Jha, Adv. with
Mr. Siddharth Jha, Adv. with
petitioner in person.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. K.S. Ahuja, APP for the State
Mr. Yogesh Sharma, Adv. with
Mr. Mahendra Pareek, Adv. with
respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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26.10.2018

The petitioner's wife, *i.e.*, the second respondent had instituted proceedings (V-71/14) in the court of Metropolitan Magistrate by a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005, *inter alia*, seeking maintenance allowance for self and for the minor child of the parties, the child being in her care and custody. The Metropolitan Magistrate, by order dated 02.06.2015, assessed the income of the petitioner in the sum of Rs.26,000/- per month and on that basis passed interim order directing the petitioner to pay Rs.12,000/- per month to the wife for her maintenance and also for the minor child from the date of filing

of the said petition till disposal on merits.

The petitioner challenged the said order by Crl. Appeal No.19./2015 before the court of Sessions which dismissed the same by order dated 21.09.2015 observing, *inter alia*, that the petitioner had concealed his own income, there being no proof, as was contended, that the wife, *i.e.*, the second respondent was not unemployed or earning.

Feeling aggrieved by the said two orders, the present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was filed seeking intervention by this court, prime submission made being that the second respondent had concealed her income. The petitioner was granted liberty and has filed some documents which indicate some income accruing to the second respondent during the relevant period from work carried out as agent in Postal Department. Whether or not such income in respect of which proof is sought to be adduced was sufficient for maintenance of the second respondent or the child of the parties is a question which also need to be gone into.

Be that as it may, after some hearing the counsel for the petitioner submitted, on instructions, that an application for modification of the interim order has already been moved before the Metropolitan Magistrate on the basis of material which has been dug out later.

The counsel submits that he may be permitted to withdraw the present petition, the petitioner reserving the right to raise all the contentions before the Metropolitan Magistrate at the time of consideration of application for modification of the order of interim maintenance.

The petition and the applications filed therewith stand dismissed as withdrawn.

All contentions of both sides are kept open.

Dasti under the signature of Court Master.

OCTOBER 26, 2018

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R.K.GAUBA, J.