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

+ **W.P.(CRL) 2652/2019**

SANJAY JAIN

..... Petitioner

Through Mr R.P.S. Yadav, Ms Renu Tyagi,
Mr Hira Singh Rawat, Advocates

versus

REEMA JAIN

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.09.2019

CRL.M.A. 36117/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 30.07.2019 passed by the learned Sessions Judge-05 (Shahdara District) Karkardooma Courts, Delhi in Appeal No. 20/2019.
4. The above captioned appeal was preferred by the respondent against an order dated 22.03.2019 passed by the learned Metropolitan Magistrate (Mahila Court) KHD/KKD. The controversy in the present case relates to non-payment of maintenance, as directed by the learned Trial Court. By an order dated 27.07.2009, the petitioner was directed to pay maintenance at

the rate of ₹6,000/- per month to the respondent and at the rate of ₹4,000/- per month to their daughter. The said maintenance was subsequently enhanced to ₹20,000/- per month; and thereafter, by an order dated 28.06.2017, it was enhanced to ₹60,000/- per month.

5. Admittedly, the petitioner had defaulted in making payment of the said maintenance. It is also relevant to note that the orders directing the petitioner to pay the said amount were not challenged and have attained finality. Since the petitioner had failed to pay the said maintenance, the learned Metropolitan Magistrate had directed that the petitioner be taken into custody. The petitioner had applied for being released from custody stating that if he is released, he would make arrangements for the payment of maintenance.

6. In view of the aforesaid contention, the learned Metropolitan Magistrate was persuaded to pass order dated 22.03.2019, thereby directing that the petitioner be released from jail for a period of one month. The learned Metropolitan Magistrate had also granted one month's time to the petitioner to make the required payment. Admittedly, the petitioner failed to make the payment and consequently, the learned ASJ has passed an order setting aside the order dated 22.03.2019, whereby the petitioner was released from custody.

7. It is the petitioner's case that he does not have the wherewithal to pay the maintenance as directed and he has defaulted in making the payment for reasons beyond his control.

8. This Court finds no infirmity with the order passed by the learned ASJ. The question whether the petitioner has the ability to pay the maintenance or whether the default is wilful, is a question that is required to

be considered by the executing Court. All contentions of the parties in this regard are reserved. The Learned Metropolitan Magistrate had released the petitioner on a representation that he would arrange for payment of the said maintenance. Since that commitment has not been complied with, the order releasing him has been rightly set aside.

9. The petition is disposed of with the aforesaid observations.

SEPTEMBER 18, 2019

pkv

VIBHU BAKHRU, J