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

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Judgment delivered on: 27.02.2019

+ CRL. REV. P. 343/2018 & Crl. M.A. 7320/2018

GAURAV MANCHANDA

..... Petitioner

versus

NAMRATA SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ranjan Bajaj, Adv. with petitioner in person.

For the Respondent: Mr. Varun Chawla, Adv. with Respondent in person.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 08.03.2018 whereby the revision petition filed by the petitioner impugning order dated 01.12.2017 was dismissed.
2. Trial court by order dated 01.12.2017 disposed of the application filed by the respondent under Section 23 of the Protection of Women from Domestic Violence Act (in short DV Act) and awarded maintenance to the respondent (petitioner before the trial court) of Rs. 15,000/- and Rs. 15,000/- for the minor daughter.
3. Learned counsel for the petitioner submits that the trial court has erred in awarding maintenance from the date of filing of the petition under

Section 12 of the DV Act and has not restricted the same to the date of filing of the application under Section 23 of the DV Act.

4. The petition under Section 12 of the DV Act was filed on 10.09.2014. The petitioner, who appeared in response to the notice issued, volunteered that he shall pay a sum of Rs. 15,000/- for the maintenance of the minor daughter.

5. Trial court while assessing the interim maintenance noticed that the petitioner in his income affidavit stated that he was earning Rs. 1,35,000/- per month. Trial court on noticing the bank statement and Form 12 B A and Annexure to Form – 16 of the petitioner found that the petitioner had received a salary of Rs. 23,35,687/- before tax and net annual salary he had received of Rs. 19 lakhs which was approximately Rs. 1.5 lakhs per month.

6. The petitioner had raised the plea that respondent was earning Rs. 50,000/- per month.

7. On the other hand, respondent had submitted that she was earlier working as an Air Hostess, but had to quit her job post the birth of the child and thereafter had even worked in a company and was earning merely about Rs. 15,000/- per month.

8. Trial court also noticed that the petitioner was paying Rs. 15,000/- for the child, whereas the stand of the respondent was that monthly expenditure of child was appropriately Rs. 25,000/- per month. The trial court was of the view that respondent being the mother was responsible to bear half of the expenses of the child. The trial court after assessing the

income affidavit of the petitioner directed the petitioner to pay another sum of Rs. 15,000/- per month to respondent for her maintenance.

9. The trial court also noticed that respondent was occupying a flat which belonged to the father of the petitioner. Trial court further directed that the respondent would bear the society maintenance charges of the flat which was being occupied by the respondent and her daughter whereas electricity and water charges of the flat were to be borne by her.

10. Perusal of the record shows that the Trial court has duly assessed the income affidavit of the petitioner and taken into account the expenditure on the minor child and in my view correctly assessed the maintenance for both – respondent as well as her child at Rs. 15,000/- per month each.

11. Learned counsel for the petitioner submits that in April, 2015 after filing of the petition under DV Act, there was a settlement between the parties and the parties had resided together and the petitioner has undertaken to bear all the expenses for both – respondent and the minor child. Learned counsel for the petitioner submits that during the period that they were cohabiting after the settlement in the year 2015, petitioner had regularly been depositing Rs. 15,000/- into the account of the respondent towards maintenance of the daughter.

12. Per contra, learned counsel for the respondent submits that though the settlement has been arrived at between the parties and the parties had even attempted to live together, however, petitioner has violated the settlement and failed to bear the expenses and even left the company of the respondent and the daughter leaving substantial dues towards electricity

and society maintenance charges.

13. The Trial Court has taken into account all factors while assessing interim maintenance. Petitioner has admitted his income to be about Rs. 1,50,000/- per month. Respondent has stated that she earns Rs. 15,000/- from freelance work. Nothing has been produced to contradict the same. Father of the petitioner is a pensioner. Maintenance assessed is on the conservative side. There is no infirmity in the order assessing the maintenance @ Rs. 30,000/- per month passed by the trial court.

14. The trial court has, with effect from 22.09.2018, enhanced the maintenance amount awarded to the child to Rs. 30,000/- from the date of the order while granting maintenance @ Rs. 15,000/- for the respondent. Said order of enhancement is not subject matter of these proceedings and as such no observation is being made with regard to the same.

15. I also do not find any merit in the arguments of learned counsel for the petitioner that maintenance could not have been awarded from the date prior to the date of filing of application under Section 23 of the DV Act. In the application filed under Section 12 of the DV Act, respondent has specifically stated that the petition under Section 12 is to be read with Section 19, 20 and 23 of the DV Act and she has specifically claimed maintenance from the petitioner.

16. Section 23 of the DV Act does not provide a substantive right to parties but is a provision which empowers the trial court to pass an order granting interim maintenance in a petition filed under Section 12 of the DV Act. Merely because the trial court has not exercised the power under

Section 23 of the DV Act, when a substantive petition under Section 12 of DV Act was filed and chose to pass an order only when a separate application under Section 23 of the DV Act was filed, does not mean that a Magistrate does not have the power to pass an order with effect from the date of filing of the substantive petition under Section 12, which in this case had also been filed read with Section 23 of the DV Act and also claimed maintenance.

17. I find no merit in the petition. The petition is accordingly dismissed. Interim order dated 23.04.2018 is vacated.

18. Order *dasti* under signatures of the Court Master.

FEBRUARY 27, 2019
'rs'

SANJEEV SACHDEVA, J