

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 544/2021**

Date of decision: 22nd FEBRUARY, 2021

IN THE MATTER OF:

BHARAT SINGH RAWAT Petitioner
Through Petitioner in person

versus

POONAM SINGH RAWAT Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition filed under Section 482 Cr.P.C. is directed against the order dated 05.07.2019 passed by the learned Additional Sessions Judge-03(East), Karkardooma Courts, Delhi in Criminal Appeal No.80/2019 wherein the learned Additional Session Judge has dismissed the criminal appeal upholding the judgment dated 16.03.2019 passed by the Metropolitan Magistrate (Mahila Court -02) East Karkardooma Courts, Delhi, directing the petitioner to pay an interim maintenance of Rs.10,000/- per month.
2. The present proceedings arise out of an application filed by the respondent/wife under Sections 12, 18, 19, 20, 22, 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred at "The DV Act") against the petitioner before the Metropolitan Magistrate,

Karkardooma Courts. The learned Metropolitan Magistrate (Mahila Court - 02) East Karkardooma Courts, Delhi by an order dated 16.03.2019 passed the following order:

“R-1 has not disputed the marriage with the petitioner as well as the fact of birth of two minor children from this wedlock who are in custody of the Petitioner and has voluntarily undertaken to pay Rs. 10,000/- per month to the petitioner as ad-interim. In view of undertaking of R-1, he is directed to, Pay Rs. 10,000/- per month to the petitioner towards ad-interim maintenance of the petitioner as well as two minor children from the date of order till further orders.

Counter claim filed by respondent. Copy supplied.

Part arguments heard on maintainability of counter claim filed by respondent seeking relief u/s 18, 19 & 22 of Protection of Women from Domestic Violence Act.

Let amended income, assets and income affidavit along with all relevant documents be filed by respondent within seven working days.

Put up for arguments on maintainability of counter claim of, respondent on 24.07.2019”

3. This order has been assailed by the petitioner by filing an appeal under Section 29 of the DV Act before the Additional Session Judge, Karkardooma Courts. In the appeal, it is stated as under:

“2. That the Ld. Trial Court while passing impugned order vide dated 16.03.2019 committed an error apparent on the face of record by using the word ‘Voluntarily’ while deciding the ad-interim application,

without any express volition of the appellant and without going into the merit of the case.

3. That as mentioned in the impugned order, appellant has not made any undertaking to pay Rs. 10,000/- per month to the petitioner towards ad-interim maintenance of the petitioner as well as two minor children. Respondent is getting a good amount of rent from four properties in her possession, purchased by the husband in name of wife.”

4. Before the learned Sessions Judge, the petitioner argued that he has not given any voluntary undertaking to pay Rs.10,000/- per month as interim maintenance to the wife and two minor children. The petitioner has further stated in his appeal that since there was no voluntary undertaking on his part the learned Metropolitan Magistrate ought to have conducted an inquiry to ascertain as to whether the petitioner had the means to pay a sum of Rs.10,000/- per month and whether the respondent/wife was in necessity of that amount. It is also stated that the respondent/wife is getting a good amount of rent from four properties which are in her possession which had been purchased by the petitioner in her name.

5. The learned Additional Session Judge issued notice on the appeal and the Trial Court record were also summoned. The Additional Session Judge noticed that both parties argued in person. The petitioner claimed that he is an advocate enrolled with the Bar Council and the respondent claimed that she has appeared in the final year L.L.B examination. The fact that two children have been born out of the wedlock has not been disputed before the Additional Session Judge. The respondent contended that during the course

of the hearing the petitioner herein had voluntarily offered to pay the amount and on his oral undertaking the Metropolitan Magistrate had passed the order dated 16.03.2019 and the petitioner herein is now trying to wriggle out on the oral undertaking given in the court. The Additional Session Judge dismissed the appeal holding that there is no legal perversity or error in the order dated 16.03.2019 passed by the Metropolitan Magistrate (Mahila Court -02) East Karkardooma Courts, Delhi.

6. The order of the Additional Session Judge is assailed in this petition under Section 482 Cr.P.C. The petitioner appeared in person. The Court directed the petitioner to file his written submission. The petitioner contends that the Additional Session Judge erred in not appreciating the fact that the petitioner had not given any undertaking before the Metropolitan Magistrate.

7. Para 3.1 of the written submission reads as under:

“3.1 (para.11, pg.22) Session Court:- trial court has noted admission and undertaking. Reply: But the basis of the same is not mentioned by the Ld. Session Court. (1). Whose submission (i) in person or (ii) through counsel? (2). What was the mode of undertaking (i) oral or (ii) written? (3). Was the counsel of petitioner at the time of undertaking (i) present or (ii) absent? (4). Whether petitioner has capacity to pay to pay Rs. 10,000/- or not. (5). When husband earning capacity is not of Rs. 10,000/- how he can make voluntarily undertake for the same; no such discovery, inquiry or findings done by the Ld. Session Court. There is no document on record which shows husband is earning Rs. 10,000/-. Session Court:- Prices are sky rocketing. Reply: Ld. Session court is giving justification of Rs. 10,000/-, which is not the subject matter of appeal. How can justification be done

by Ld. Session Court without evaluating income, expenditure and assets of both the parties. Session Court failed to appreciate: (i) FIR is against wife and not husband on the date of order i.e. 16.03.2019 (P-4, pg.30-34). (ii) Wife has thrown husband out of matrimonial home and not the husband (iii) Wife has 4 flats in Delhi and 1 car whereas husband has not even a bi-cycle (P-5, pg.35 to 64). In DV complaint there is not even a single specific incident, no witness, no injury, no evidence (pg.65 to 71).”

8. The petitioner has also assailed the observation of the learned Sessions Court that the appeal was barred by time. This argument is unnecessary for the reason that the appeal has not been dismissed on the ground of limitation but on merits. The short question which arises for consideration is as to whether the order of the Metropolitan Magistrate, which has been passed on the basis of the undertaking given by the petitioner to pay a sum of Rs.10,000/- per month, which has been affirmed by the Additional Session Judge, requires interference of this Court while exercising its jurisdiction under Section 482 Cr.P.C.

9. The Metropolitan Magistrate has recorded that the petitioner has given an undertaking that he would pay Rs.10,000/- per month to the respondent/wife and two children as interim maintenance. If the petitioner had not given any undertaking, the petitioner should have approached the very same Court and filed an application for the recall of the order by contending that he had not given any undertaking. The bar under Section 362 Cr.P.C would not be attracted in such case.

10. This submission could not have been agitated in the appeal and more particularly when the respondent/wife had stated before the Additional Session Judge that an oral undertaking was given by the petitioner in the Court of Metropolitan Magistrate. There is no infirmity in the order of the Additional Session Judge in proceeding with the matter on the premise that the respondent has given a voluntary undertaking in the Court to pay a sum of Rs.10,000/-. Once the petitioner has given an undertaking to pay a sum of Rs.10,000/- then there is no necessity on the part of the Court to ascertain as to whether the petitioner has got the capacity to pay a sum of Rs.10,000/- per month or not. Further in his Memorandum of Appeal the petitioner himself has stated that the respondent/wife is getting rent from four properties which have been purchased by him in the name of his wife/respondent herein. This admission is sufficient for the Court to come to a conclusion that the respondent is a man of means and is capable of paying a sum of Rs.10,000/- per month as maintenance to his wife and two children.

11. It is contended by the petitioner that an FIR has been filed against the respondent/wife, being FIR No. 601/2018 dated 15.09.2018 registered at Police Station Kunnammangalam, Kozhikode, Kerala for offences under Sections 323, 341, 353, 379 and 506 IPC. The fact that an FIR has been filed against the respondent/wife by the petitioner/husband is not relevant to the facts of the present case. The allegation in the FIR is that the respondent/wife came to the office of the petitioner, threatened him and took away his mobile phone and purse and stopped him from doing his official duty. It is stated in the FIR that the wife has made the allegation regarding

the complainant/petitioner herein having relationship with some other lady professor and she had pasted the posters regarding the same. It is stated in the FIR that the respondent/wife and one other person locked the petitioner in his room and injured him by beating by hand.

12. The petitioner has also placed reliance on Ram Narang v Ramesh Narang & another, (2009) 16 SCC 126 and Robin Thapar v Rohit Dora, (2019) 7 SCC 359. The two judgments are not applicable to the facts of this case.

13. Needless to say that the amount granted by the Metropolitan Magistrate is only an interim maintenance which is subject to the final amount of the maintenance that will be determined by the court after the parties lead evidence and the amount paid by the petitioner towards interim maintenance is always adjustable towards the final amount that will be determined by the Metropolitan Magistrate after both sides adduce evidence. This Court does not find any infirmity in the order of the courts below.

14. Accordingly, the petition is dismissed along with the pending applications.

SUBRAMONIUM PRASAD, J.

FEBRUARY 22, 2021

Rahul