

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

Date of decision: 14th JUNE, 2021

+ **CRL.M.C. 1117/2021 & CRL.M.A. 5684/2021(stay)**

SUDHIR GUPTA

..... Petitioner

Through Mr. Gaurav Gupta, Advocate

versus

MANISHA KUMARI @ MANISHA GUPTA

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition under Section 482 Cr.P.C is directed against the order dated 28.02.2020, passed by the Additional Sessions Judge-03, West District, Tis Hazari Courts, Delhi in Criminal Appeal No. 55/2/19, affirming the order dated 31.08.2019 passed by the Metropolitan Magistrate, Mahila Court in an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the DV Act”) directing the petitioner herein to pay a sum of Rs.16,500/- as interim maintenance to the respondent herein/wife.

2. The facts, in brief, leading to the instant petition are as under:

- a) The petitioner and the respondent got married on 01.12.2014 according to Hindu rites and ceremonies. A child was born out of the wedlock but unfortunately the child expired. Differences arose between the petitioner and the respondent. It is stated that the

respondent herein left the matrimonial home on 22.02.2016. It is stated that the respondent filed a petition under Section 12 of the DV Act praying for direction to the petitioner herein to let the respondent herein reside in the shared household, granting injunction against the family members of the petitioner herein including his father, mother, sisters and their husbands, from repeating any acts of violence mentioned in the complaint and for grant of compensation of Rs.50,000/-. The respondent herein also filed an application under Section 23 of the DV Act for grant of maintenance of Rs.60,000/- per month.

b) Affidavits of income were filed by the petitioner and the respondent. In her affidavit, the respondent herein stated that she is a graduate and has done diploma course in fashion designing but after marriage she left her job. She also stated that the petitioner herein is working in a private firm and he is also running business and he is earning Rs.1,00,000/- per month. It is also stated that the petitioner herein is having credit cards and also has a car. It was contended by the respondent herein that the petitioner herein has concealed his income. The petitioner herein filed a reply denying all the allegations against him.

c) The learned Metropolitan Magistrate *vide* order dated 16.01.2018 declined to grant interim maintenance to the respondent herein on the ground that the respondent herein was working and that she, being a well qualified spouse, is not entitled to interim maintenance.

d) Against the order of the learned Metropolitan Magistrate, an

appeal, being Criminal Appeal No. 56/2018, was filed by the respondent herein before the learned Additional Session Judge. The learned Additional Session Judge after relying on the judgment of the Supreme Court in Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715, held that merely because the wife is qualified and has a potential for earning, cannot be a ground to reject her claim of maintenance. The order of the learned Metropolitan Magistrate was set aside and the matter was remanded back. On remand, the learned Metropolitan Magistrate analysed the bank statements of the petitioner herein. The learned Metropolitan Magistrate held that the statement of bank account of the petitioner herein shows that various transactions are being made in his account on a regular basis which he has failed to explain satisfactorily. The learned Metropolitan Magistrate also held that the income affidavit of the petitioner herein shows that he earns Rs.7,500/- per month, however, he is living in his own house and having FDRs to the tune of Rs.4 lakhs, he owns a motorcycle and a car. The learned Metropolitan Magistrate refused to accept the Income Tax Returns of the petitioner as his true income on the ground that normally businessmen conceal their actual income in order to evade tax. After perusing the material on record the learned Metropolitan Magistrate directed the petitioner herein to pay a sum of Rs.16,500/- per month, from the date of the petition till the disposal of the case, to the respondent herein as interim maintenance.

e) The said order was challenged by the petitioner herein by filing an appeal being Criminal Appeal No. 55/2/19, before the Additional Sessions Judge. The learned Additional Sessions Judge vide order

dated 28.02.2020, once again after analysing the facts, upheld the order dated 31.08.2019, passed by the learned Metropolitan Magistrate.

f) It is this order which has been challenged in the instant petition.

3. Heard Mr. Gaurav Gupta, learned counsel for the petitioner and perused the material on record.

4. The learned counsel for the petitioner vehemently contends that the respondent has given contradictory statements in various forums and litigations between the same parties. He further states that the petitioner has passed only 12th standard and was earning a meagre amount of Rs.22,500/- per month whereas the respondent herein, who was pursuing post-graduate from IGNOU, has got a Diploma in Apparel Manufacturing Technology from ATDC Gurgaon and she is much more educated and capable of earning substantial amount of money. The learned counsel for the petitioner contends that the respondent herein is not working only to harass the petitioner. He contends that the Courts below erred in not going through the Income Tax Returns of the petitioner herein. He states that the observation of the learned Metropolitan Magistrate, that the petitioner herein is earning at least Rs.50,000/- per month, is only on the basis of conjectures and surmises.

5. Having gone through the records of the case, the conclusion drawn by the Courts below that the petitioner has not been able to explain the transactions in his bank accounts cannot be found fault with. It has not been denied that the petitioner has got fixed deposit, he owns a motorcycle, car and has also got credit cards. The fact that the respondent herein is more qualified than the petitioner and the fact that she was working as a

Merchandiser with Richa Group and was getting salary is no ground to deny maintenance to her as at present she is not earning any income.

6. The Supreme Court in Manish Jain v. Akanksha Jain, (2017) 15 SCC 801, has observed as under:

"16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial....."

(emphasis supplied)

7. The reasoning of the learned Metropolitan Magistrate, as affirmed by the learned Additional Session Judge, does not call for any interference. The reliance placed by the petitioner on the deposition of the respondent herein in proceedings initiated by her under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights vide HMA No. 1459/2018 does not help the petitioner in rejecting the claim of the respondent herein for maintenance. It cannot be said that the findings of the Courts below are so perverse that it requires any interference by the High Court under Section 482 Cr.P.C.

8. The scope of revision under Section 397/401 Cr.P.C read with Section 482 Cr.P.C is narrow. Courts do not go into excruciating details on facts and unless the judgments of the courts below are so perverse High Court does not interfere with concurrent findings.

9. The Supreme Court in State of Kerala v. Puttumana Illath Jathavedan Namboodiri reported as (1999) 2 SCC 452 has observed as under:-

"5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....."

10. In State v. Manimaran reported as (2019) 13 SCC 670 the Supreme Court has observed as under:-

"16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275], ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with

the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained"
(emphasis supplied)

11. The learned Metropolitan Magistrate and the learned Additional Sessions Judge have analysed the facts and the law in the correct perspective. The judgements are well reasoned. It cannot be said that the conclusions drawn by the Courts below are perverse or are based on nil evidence. The judgments of the Courts below do not warrant any interference.

12. Needless to state that the learned Metropolitan Magistrate has granted only interim maintenance to the respondent herein and the final maintenance is subject to the outcome of the proceedings.

13. Accordingly, the petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J

JUNE 14, 2021

Rahul