

\$-

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+

CRL. REV. P. No. 1274 of 2019

Between:-

**GEETA @ REETA MISHRA D/O LATE SHRI
S.R. SHARMA, R/O WZ – 61-A, JWALA
HERI, PASCHIM VIHAR, NEW DELH -
110063**

.....PETITIONER

*(Through: Shri Arush Khanna and Ms. Muskan Maheshwari,
Advocates.)*

AND

**AJAY MISHRA
S/O MR. PREM KISHORE MISHRA
R/O F - 426, VIKAS PURI,
NEW DELHI - 110018.**

.....RESPONDENT NO.1

**PREM KISHORE MISHRA
R/O F-426, VIKAS PURI,
NEW DELHI - 110018.**

.....RESPONDENT NO.2

*(Through: Shri Amit Ahlawat, Additional Public Prosecutor
for the State)*

%

Pronounced on : 09.11.2022

J U D G M E N T

1. This revision under Section 397 read with Section 401 of the Code of Criminal Procedure 1973, (Cr.P.C.) is directed against impugned judgment dated 31.07.2019, passed by the learned District and Sessions Judge, Tis Hazari (West) Courts in CA No.268/2018 whereby the appeal preferred by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act (DV Act, 2005) against the order dated 18.10.2018, passed by the learned Metropolitan Magistrate-02, West, Delhi, rejecting application of the petitioner under Section 12 of the DV Act, 2005, has been allowed in part.

2. A detailed narration of the facts is not necessary for the reason that the petitioner confines her submissions only to the extent of inadequacy of the maintenance awarded in her favour by the court below. However, some of the facts relevant for adjudication of the issue raised would be referred as and when they are required.

3. The date of marriage of the petitioner with respondent No.1 is 06.05.1996. In the year 2008, on account of certain matrimonial differences, the petitioner filed a complaint against the respondents before the Station House Officer, Vikas Puri, Delhi. On 23.03.2009, the petitioner moved an application under Section 12 of the DV Act before the court of learned Metropolitan Magistrate. After calling a Domestic Incident Report (DIR) on 09.02.2010, interim maintenance was awarded in favour of the petitioner and her children. A sum of Rs.1,500/- per month towards maintenance of the petitioner and an amount of Rs.1,400/- and Rs.2,000/-, maintenance towards children was directed.

4. On 18.10.2018, the learned Metropolitan Magistrate dismissed the application of the petitioner under Section 12 of the DV Act. The

petitioner challenged the order passed by the learned Metropolitan Magistrate before the Court of Sessions, who *vide* impugned order dated 31.07.2019, allowed appeal in part and directed for a lump-sum maintenance of Rs.2 lakhs in favour of the petitioner.

5. On 20.09.2019, decree of divorce was also passed whereby the marriage between the petitioner and respondent No.1 was annulled/dissolved. The learned counsel appearing on behalf of the petitioner submits that once the learned Sessions Judge found that the petitioner was subjected to domestic violence at the hands of respondent No.1, it was incumbent upon him to award adequate maintenance so as to run her livelihood. A sum of Rs.2 lakhs, which was awarded as a lump-sum maintenance, is highly inadequate and no person can be expected to maintain himself/herself only with a meager amount of Rs.2 lakhs.

6. According to him, respondent No.1 himself disclosed his income of Rs.5 lakhs per annum, while filing an affidavit/declaration dated 04.02.13 with *Swarg Ashram Mandir*. He, therefore, states that in the year 2019, in no case, his income could be said to be less than Rs.5 lakhs. He therefore prays that appropriate interference is called for and the order passed by the appellate court needs to be modified.

7. Respondent No.1 appeared in person and opposed the submissions made by learned counsel appearing on behalf of the petitioner. According to respondent No.1, he would bear all expenses of marriage of his children, if the custody of the children is handed over to him. He however, submits that the order passed by the appellate court does not call for any interference and he is not in a position to make the payment of more than the amount which has been directed to be paid to the petitioner.

8. Respondent No.1 while filing his reply to the revision petition has raised various issues which, however, are not relevant for the reason that the learned counsel appearing on behalf of the petitioner has confined his submissions only to the extent of enhancement of the amount of maintenance.

9. I have heard the learned counsel appearing on behalf of the petitioner, respondent No.1 in-person and perused the record. The appellate court in paragraph Nos.17 & 18 of the impugned judgment has recorded a categorical finding that the petitioner was subjected to domestic violence at the hands of respondent No.1. The appellate court found it appropriate to grant a sum of Rs.2 lakhs to the petitioner as a lump-sum maintenance within a period of 3 months from the date of passing of the judgment. The appellate court however, failed to appreciate the disclosure/affidavit of respondent No.1 dated 04.02.2013, wherein, he categorically disclosed his income to be Rs.5 lakhs per annum. Respondent No.1 in the instant revision has not denied the aforesaid disclosure/affidavit placed on record as *Annexure P-2*. He, however, has offered various explanations/reasons as to why no further maintenance should be awarded to the petitioner.

10. Taking into consideration the overall facts and circumstances of the case, including the affidavit, as stated above, this court under the facts of the present case finds it appropriate to enhance the amount of Rs.2 lakhs, awarded by the appellate court to the extent of total sum of Rs.7 lakhs, meaning thereby in addition to already awarded maintenance of Rs.2 lakhs, the petitioner is entitled to a further sum of Rs.5 lakhs. Respondent No.1 is directed to make the payment of the entire amount within a period of 6 months from the date of

passing of this order, failing which the aforesaid amount would carry interest @ of 6% per annum till the date of its realization.

11. The instant revision is allowed with the aforesaid modification in the impugned judgment.

PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 09, 2022

