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

% *Date of decision: September 26, 2023*

+ **CRL.M.C. 4797/2019 & CRL.M.A. 36574/2019**

AMITH A. DUMRA

..... Petitioner

**Through: Mr. Dhanesh Relan and
Mr. Arindam Dey, Advocates.**

versus

PREETI DUMRA

..... Respondent

**Through: Mr. S.K. Nanda and Ms. Monalisa
Mishra, Advocates.**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present petition is filed under section 482 Cr.P.C. read with Article 227 of the Constitution to set aside the order dated 23.08.2019 passed by the court of Dr. Neera Bharihoke, ASJ-06, South-East District, Saket Courts, New Delhi in the appeal filed under section 29 of the Protection of Women from Domestic Violence Act, 2005 bearing CA no. 123/2019 titled as **Amith A. Dumra V Preeti Dumra**.
2. The respondent filed a petition under section 12 of the Protection of Women from Domestic Violence Act, 2005 titled as **Preeti Dumra V Amith Dumra** bearing CC no. 11698/2017 and in the said petition, the court of Ms. Sheetal Chaudhary Pradhan, MM-02(Mahila Court), South-East



District, Saket Courts, New Delhi vide order dated 24.01.2019, directed the petitioner to pay Rs.50,000/- per month as interim maintenance after assessing the income of the petitioner as Rs.1,50,000/- per month.

3. The petitioner being aggrieved, filed the criminal appeal bearing no.123/2019 titled as **Amith A. Dumra V Preeti Dumra**. The court of Dr. Neera Bharihoke, ASJ-06, South-East District, Saket Courts, New Delhi vide order dated 23.08.2019, directed the petitioner to deposit at least 50% of the maintenance amount in view of the judgment titled as **Rajeev Preenja V Sarika and others** passed in CRL. M.C. 1859/2008 decided on 26.02.2009. The order dated 23.08.2019 reads as under:-

“As laid down by Hon'ble Delhi High Court in case titled Rajeev Preenja versus Sarika and others, CRL MC 1859/2008 decided on 26 February 2009, arguments on appeal will not be heard till the appellant deposits at least 50% of the maintenance amount awarded in favour of the respondent computable till today within 4weeks from today with Ld. Trial Court. As an interim measure, respondent is permitted to withdraw said amount within one week of depositing of the same by the appellant and thereafter the arguments on appeal shall be heard.

Copy of the order be given dasti.

Let TCR be sent back with copy of today's order and be requisitioned at least two days prior to the date of hearing.

List the matter for further proceedings on 28.09.19.”

4. The counsel for the petitioner argued that the decision in **Rajeev Preenja V Sarika and others**, which was referred by the appellate court in



order dated 23.08.2019 has already been overruled by the Division Bench of this court in case titled as **Sabina Sahdev & Ors. V Vidur Sahdev** (2018) SCC OnLine Del 9747 and referred para no. 30 of this judgment, which reads as under:-

“30. Thus, we answer the reference by holding that the general direction issued in Rajeev Preenja (supra) in paragraphs 15, 16 and 20 are not sustainable. The said directions could not have been issued by the learned Single Judge as they seek to curtail the statutory remedy of revision available under Section 399 read with Section 401 of the Cr.P.C, and of appeal under Section 29 of the DV Act, against orders granting interim maintenance under Section 125 Cr.P.C. and Section 23 of the DV Act respectively. The direction in question over steps into the legislative field, which was impermissible for the Court to do. We agree with the view taken by the learned Single Judge in Brijesh Kumar Gupta (supra), that there cannot be an absolute rider that the entire maintenance amount, as granted by the Trial Court, should be deposited prior to the entertainment of the statutory remedy, because it would leave the remedy of statutory revision/ appeal illusory. Accordingly, we hold that a revision under Section 399 read with Section 401 Cr.P.C. and an appeal under Section 29 of the DV Act, against the order granting maintenance under Section 125 Cr.P.C. and under Section 23 of the DV Act respectively, would be maintainable, and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the Ld. MM. We further hold that the pendency of such a Revision or Appeal- as the case may be, shall not operate as a stay of the operation of the order granting interim maintenance. The reference is answered accordingly.”

5. Accordingly, in view of the judgment titled as **Sabina Sahdev & Ors. V Vidur Sahdev** (2018) SCC OnLine Del 9747 passed by the Division



Bench of this Court, the order dated 23.08.2019 passed by the appellate court in criminal appeal bearing no. 123/2019 cannot be sustained and is accordingly set aside. The concerned appellate court earlier presided over by Dr. Neera Bharihoke, ASJ-06, South-East District, Saket Courts, New Delhi is directed to decide the criminal appeal bearing no. 123/2019 on merits.

6. However, till the disposal of the criminal appeal bearing no. 123/2019, the petitioner is directed to pay Rs.25,000/- as maintenance to the respondent, for the period as directed by the court of Ms. Sheetal Chaudhary Pradhan, MM-02(Mahila Court), South-East District, Saket Courts, New Delhi. The payment of maintenance as already paid by the petitioner shall be adjusted. Accordingly, the petitioner is also directed to clear the entire arrears of maintenance for the period in terms of order dated 24.01.2019 passed by the court of Ms. Sheetal Chaudhary Pradhan, MM-02(Mahila Court), South-East District, Saket Courts, New Delhi within three equal monthly installments commencing from October, 2023 which shall be payable on or before the last day of each English calendar month. The petitioner is also directed to pay maintenance @ Rs.25,000/- on or before 10th day of each English calendar month either by paying directly to the respondent or by depositing in her account.



7. The appellate court is directed to re-consider criminal appeal bearing no. 123/2019 within 03 months from the date of receipt of this order without being influenced by any observation made in this order.
8. The present petition along with pending application, stands disposed of.
9. Copy of this order be sent to the trial court for information and compliance.

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 26, 2023

N/AK/SD