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

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*Reserved on: 02.11.2023
Pronounced on: 01.12.2023*

+ **CRL.REV.P. 298/2023 & CRL.M.A. 7428/2023, 7429/2023
& 15927/2023**

ANISH PRAMOD PATEL Petitioner
Through: Mr. Prabhjit Jauhar, Mr.
Gautam Panjwani and Ms.
Himanshi Nagpal, Advocates.

versus

KIRAN JYOT MAINI Respondent
Through: Mr. Gaurav Bhatia, Sr.
Advocate with Mr. Utkarsh
Jaiswal, Mr. Vikas Tiwari, Ms.
Shubhangi Negi & Mr. Pawan
Shree Agrawal, Advocates.

**CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Sections 397 and 401 read with Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the petitioner seeking the following **prayers**:

- i. Setting aside of Impugned Order dated 10.05.2018 passed by learned Judicial Magistrate, Gautam Budh Nagar in Complaint



Case bearing no. 4622 of 2016 (new Case No. 691 of 2022) titled as 'Kiran Jyot Maini v. Anish Pramod Patel'.

- ii. Setting aside of Impugned Order dated 01.02.2019 passed by learned Additional Sessions Judge-IV, Gautam Budh Nagar in Appeals bearing No. 39 & 62 of 2018 preferred against the order dated 10.05.2018.

2. In the present case, **the case of the respondent-wife**, as per the counter affidavit filed on behalf of her, is that she had met the petitioner in Canada where the petitioner had proposed to her and the behaviour of the petitioner had been very cordial and friendly during the courtship period. Further, both the petitioner and the respondent had been divorced at that time and the respondent had a daughter from her previous marriage. The marriage between the petitioner-husband and respondent-wife was solemnized on 30.04.2015. It is stated that soon after the marriage, the parties had left for their honeymoon where the petitioner had revealed about his intimate relations as well as live-in relations with other women and how he expected the respondent to be normal with him continuing with those relations. As per respondent, she was shocked to hear all these things but she was afraid of having another failed marriage and thus, she continued in this relation for her and her daughter's sake. Thereafter, the behavior of the petitioner had started getting worse towards both the respondent and her daughter, and the petitioner had also started demanding dowry so that he could live a luxurious life. The respondent had thereafter found out about petitioner's second divorce and when she had confronted him, he had started abusing and beating



her. Since then, the relationship between the parties had kept on worsening as the petitioner would beat and abuse the respondent every day. As per respondent, she had to run from pillar to post to meet the daily expenses as well as the school fees of her daughter since the petitioner had failed to look after the needs of respondent and her daughter. As stated by respondent, on 19.03.2016, the petitioner had handed over the divorce papers to the respondent and had forced her to settle the same amicably and after handing the divorce papers, he had left the matrimonial home and had not returned for days with no information as to where he had gone. The respondent had then pleaded the petitioner to stay with her and her daughter but he had asked the respondent to leave the matrimonial home. The situations deteriorated to an extent that the respondent was forced to leave the matrimonial home with her daughter and she had come back to Delhi from her matrimonial home in Mumbai.

3. Thereafter, an FIR bearing no. 34/2016 was registered on the complaint of respondent at Police Station Mahila Thana, Gautam Buddh Nagar, U.P. under Sections 498A/323/504 of Indian Penal Code, 1860 and Sections 3/4 of Dowry Prohibition Act, 1961. Thereafter, the petitioner had filed a Criminal Miscellaneous Writ Petition before the High Court of Allahabad for stay on arrest and quashing of the FIR. Pursuant to the same, on 06.05.2016, the High Court of Allahabad had passed the order by way of which the matter was referred to mediation and an order of stay of arrest of petitioner was passed. However, on 22.09.2016, the High Court of Allahabad had dismissed the writ petition due to lack of merits. Thereafter, the



respondent had filed an **Application No. 4622 of 2016** under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('PWDV Act') before the learned Judicial Magistrate, Gautam Budh Nagar, wherein an application seeking interim maintenance had also been filed by her under Section 23 of the Act. The learned Judicial Magistrate vide **order dated 10.05.2018** had directed the petitioner to pay interim maintenance of Rs. 35,000/- (Rupees Thirty-Five Thousand Only) to the respondent. Against the said order, appeals had been preferred by both the parties and the learned Additional Sessions Judge, Gautam Budh Nagar vide **order dated 01.02.2019**, had modified the order dated 10.05.2018 and had directed the husband to pay Rs.45,000/- per month to the wife as well as Rs.55,000/- per month to the daughter. Aggrieved by these orders granting interim maintenance, the husband had preferred an **Application bearing No. 12860/2019** under Section 482 of Cr.P.C. before the High Court of Allahabad and the matter was again referred to mediation vide order dated 09.04.2019 and the counsel for the respondent at that time had given an undertaking that during the course of mediation, they will not initiate any action against the husband. However, the mediation between the parties had failed on 06.07.2019. Subsequently, the respondent had moved a Criminal Application No. 41/2019 under Section 31(1) of PWDV Act against the petitioner for non-compliance of order dated 01.02.2019 i.e. for non-payment of interim maintenance and summons were issued by the Court concerned, but these summons were challenged by the husband before High Court of Allahabad vide Application No.



33533/2019 under Section 482 of Cr.P.C. and the summons were stayed vide order dated 16.09.2019 till next date of hearing. Vide order dated 13.12.2019, the High Court of Allahabad had directed expeditious disposal of application filed by the respondent under Section 12 of PWDV Act which was pending before learned Judicial Magistrate as there was no stay of proceedings. Thereafter, the petitioner had ultimately preferred transfer petitions before the Hon'ble Supreme Court seeking transfer of all criminal cases and complaints filed by the wife as well as applications filed by him under Section 482 of Cr.P.C. before High Court of Allahabad, to the Courts in Delhi. The Hon'ble Supreme Court vide order dated 06.11.2020 had referred the matter to Supreme Court Mediation Centre and thereafter had also allowed transfer petitions vide order dated 13.08.2021 by transferring all the cases to Tis Hazari Court, Delhi, except applications under Section 482 of Cr.P.C. which were pending before the High Court of Allahabad since the prayer in this regard was not made. After the cases were transferred to Delhi, they were registered on 02.04.2022, and while Case No. 41/2019 was registered at Delhi as Case No. 882/2022, **Case No. 4622/2016 was registered as Case No. 691/2022.** On 04.04.2022, notices were issued to both the parties by the concerned Court at Tis Hazari. Further, the Mahila Court, Delhi vide order dated 15.09.2022 had sought clarification regarding stay on Criminal Case No. 882/2022, i.e. original Case No. 41/2019 filed under Section 31(1) of PWDV Act, by the High Court of Allahabad. On 14.03.2023, the High Court of Allahabad vide two separate orders dated 14.03.2023 has



dismissed the applications filed by respondent under Section 482 Cr.P.C. being Application No. 33533/2019 and Application No. 12860/2019 as infructuous on the statement made by the counsel for petitioner.

4. After having withdrawn the Application No. 12860/2019 under Section 482 of Cr.P.C. from the Hon'ble High Court of Allahabad pursuant to transfer of cases from Uttar Pradesh to Delhi, the petitioner has now approached this Court assailing the orders dated 10.05.2018 passed by learned Judicial Magistrate, Gautam Budh Nagar, Uttar Pradesh and 01.02.2019 passed by learned Additional Sessions Judge, Gautam Budh Nagar, Uttar Pradesh, vide which interim maintenance awarded to the respondent-wife, in the application filed under Section 12 of PWDV Act, which is now pending before learned Mahila Court, Tis Hazari Courts, Delhi as Case No. 691/2022.

5. By way of this petition, **the petitioner contends that** he had first met the respondent in September, 2014 when she had just moved from Delhi to Toronto, Canada, to find a job and settle down with her daughter. Since the petitioner wanted to know the respondent well before entering into a marital relationship with her, he had flown to Toronto on 24.12.2014 and had spent time with the respondent till 30.12.2014. It is stated that at their first meeting, the respondent had consumed tremendous amount of alcohol, and the petitioner had to carry her back to hotel room since she had passed out. It is stated that during this period, both of them were communicating with each other telephonically as the petitioner had



to come back to Mumbai, where he lived and worked. The petitioner had also fully disclosed his past relationships to respondent including the fact that he had been divorced twice. Thereafter, the Respondent had decided to come back to India, and eventually, she had decided to get married to him. It is stated that the petitioner and the respondent had flown to Thailand for their honeymoon on 01.05.2015 and had returned back to India on 07.05.2015 and during their honeymoon, the petitioner had come to know that the respondent had been messaging a man, with whom she had a sexual affair post her first divorce and before her marriage with the petitioner. On coming back to India, between the period 07.05.2015 to 16.05.2015, when the respondent had been receiving acupuncture therapy at home for her back and neck problems, the respondent had started abusing the petitioner physically and verbally, and she had insisted that they should only be a couple for the society. As per petition, the respondent used to force him to spend heavily on their foreign trips. It is stated that in Noida, the respondent's daughter used to study in a regular Delhi Board School, but when she had moved to Mumbai, she had got her daughter admitted in Ed-Bridge International School, Mumbai, and the respondent had deposited/transferred the fees directly to the school as she had received alimony and child support from her previous marriage to pay for daughter's education. It is also submitted that the respondent had conceived in July, 2015, however, the respondent had made unilateral decision for abortion as she did not want another child, and the petitioner had to eventually fulfill the respondent's demand. The



abortion was carried out on 07.07.2015, and the Petitioner had to undergo tremendous trauma. It is stated that on 27.08.2015, the respondent had accepted a job offer from the school where her daughter was studying, for salary of Rs.80,000/-. However, since August 2015, the respondent and petitioner had not engaged sexually as the respondent had refused the same on the pretext that she was not attracted to the petitioner. As per petitioner, he had paid Rs.45,000/- per month to the respondent between September, 2015 to February, 2016, besides taking care of other expenses. Between 27.11.2015 to 30.12.2015, both the petitioner and the respondent had gone through psychiatric profiling and counselling, and the petitioner had then planned a vacation to Sri Lanka from 20.12.2015 to 24.12.2015, alongwith her daughter, as well as their family friends. It is stated that on the said vacation, the respondent had humiliated the petitioner in front of their friends and had told that she wanted divorce from the petitioner. Eventually, as stated, while the respondent was in Delhi from 20.03.2016 to 26.03.2016, her father had made threatening calls to the petitioner and his family. On 30.03.2016, the respondent's mother had come to Mumbai without informing and on 31.03.2016, the respondent had packed all her personal belongings and had taken cash amounting to Rs. 60,000/- from the petitioner's drawer and had left without informing him, leaving the house-keys with the neighbour. Thereafter, the respondent had got the FIR bearing no. 34/2016 registered at Police Station Mahila Thana, Gautam Buddh Nagar, U.P.



6. **Learned counsel for the petitioner**, while assailing the orders granting interim maintenance under provisions of PWDV Act passed by the Courts below, argues that the learned Trial and Sessions Court have passed the impugned orders dated 10.05.2018 and 01.02.2019 in the most mechanical manner and without appreciating the facts and circumstances of the case. It is stated that the Courts have failed to appreciate the fact that the respondent-wife has a Canadian Citizenship and is well-educated, holding a degree of MBA-HR from NIBM, India and Project Management Professional qualification from PMI Institute Pennsylvania, U.S.A. Also, the respondent has diverse work experience in the field of HR Management, Project Coordination, Consultancy, Office Management and has worked for renowned Organisations like Cambridge (UK), Accenture (Canada), Lehman Brothers (Canada), Calgary Health Region. It is argued that the respondent is a lady of means and she is proficiently working at the post of Head-Talent Acquisition & Management with Pathways International School, Noida and she is earning approximately Rs, 3,00,000/- per month. It is stated that the respondent has deliberately concealed her Job status in order to procure palatable orders from the learned Trial Court and this Court.

7. It is also contended by learned counsel for the petitioner that the learned Trial and Sessions Court have failed to appreciate the fact that the petitioner has no assets whereas the respondent owns several properties under her name. It is also argued that both these Courts have failed to appreciate that till date, the respondent has neither been able to bring on record any proof or evidence that she is



incapable of maintaining herself, nor she has filed any Income Affidavit/Affidavit of Disclosure of Assets and Liabilities to prove her inefficacy. It is submitted that there is not even a single proof or evidence on record to believe that the story of respondent is true.

8. It is also argued that the learned Sessions Court has failed to appreciate that the petitioner is not a natural father of minor daughter of respondent and she was never adopted by the petitioner, and the respondent had already been granted an alimony amount of Rs.40,00,000/- from her previous marriage for not only the maintenance of the respondent but also her minor daughter. It is further submitted that the Hon'ble Apex Court *vide* order dated 06.12.2020 had only directed the petitioner to pay maintenance towards the respondent till the pendency of the Transfer Petition and had denied the maintenance for minor daughter. It is submitted in this regard that as held by the Hon'ble Apex Court in catena of judgments, if a minor child is born out of previous wedlock and the natural father has paid an amount with regard to his or her maintenance, then the step father is not liable to pay any maintenance amount for the child. It is also argued that in the appeal filed by the respondent under the PWDV Act seeking enhancement of interim maintenance, the respondent-wife had nowhere prayed for grant of interim maintenance to the minor daughter and had only sought enhancement of the interim maintenance granted to her, however, the learned Sessions Court erred in awarding interim maintenance to the minor daughter without there being any such prayer in the appeal filed before it.



9. Learned counsel for the petitioner further argues that the respondent fraudulently projected herself to be unemployed and concealed her job status in complaint under Section 12 read with Section 23 of PWDV Act and also in appeal under Section 29 of PWDV Act and wrongly claimed to be completely dependent on her parents for her day-to-day needs. It is stated that the respondent in her cross-examination dated 25.03.2019 conducted in ‘State v. Anish Pramod Patel’ deposed falsely and stated under oath that she’s not working anywhere and stated that “*Now I am not employed*”. However, the petitioner had filed the bank statement of the respondent wherein it could be seen that she was drawing a monthly salary of about Rs. 84,350/- per month, and based upon such false representations, the impugned orders dated 10.05.2018 and 01.02.2019 were passed by learned Trial Court and Sessions Court.

10. Therefore, it is prayed that since the impugned orders are contrary to settled principles of law, they be set aside.

11. **Learned Senior Counsel for the respondent**, on the other hand, seeks to sustain the order passed by the learned Sessions Court, and argues that the petitioner herein has filed this petition after his similar petition seeking similar relief bearing Application No.12860 of 2019, under Section 482 of Cr.P.C., has been dismissed as infructuous by the Hon’ble High Court of Judicature at Allahabad *vide* its order dated 14.03.2023. It is stated that the petitioner has not sought liberty from the Hon’ble High Court of Allahabad to approach this Court and file the present petition. Therefore, in view of dismissal of the similar petition of the petitioner from another



High Court, the petitioner has wrongly invoked jurisdiction of this Court.

12. It is stated on behalf of respondent that the maintenance order has been in operation since last 5 years (approximately) and the petitioner has never complied with the terms of the orders, and till date, the petitioner had to pay an amount of about Rs. 65,00,000/- to the respondent and her daughter in pursuance to the order dated 10.05.2018 & 01.02.2019. However, out of Rs. 65,00,000/-, the petitioner has only paid an amount of Rs. 4,05,000/- on his own and Rs. 5,45,000/- after indulgence of this Hon'ble Court *vide* interim order dated 08.05.2023 passed in Crl.M.C. No. 406 of 2023. It is submitted that as on date, an amount of Rs. 55,55,000/- is still to be paid by the petitioner to the respondent and her daughter in view of the impugned orders dated 10.05.2018 and 01.02.2019.

13. It is further submitted that the petitioner herein is a man of means, who is working as an investment banker and has earnings of more than Rs.10,00,000/- per month i.e., Rs. 1.2 crore per annum, and the respondent on the other side is a single mother who is working as a HR in a contractual job, having no assurance of regular employment or income. It is submitted that the salary certificate of the respondent will show that she is earning an annual amount of Rs. 14,50,000/- i.e. about Rs. 1,20,000/- per month, which is 1/10th of the salary which is earned by the petitioner. Moreover, the respondent has to take care of the needs of her child who is currently pursuing education at school. It is further argued that the petitioner has mentioned in this petition that he is not a biological father of the



daughter of the respondent and he is not liable to pay maintenance of the child. However, it is submitted that the Hon'ble Division Bench of this Court has held *vide* its judgment dated 01.03.2023 passed in MAT. APP. (F.C.) No. 62 of 2023 that it shall be presumed that at the time of marriage, the husband has undertaken the responsibility of the child from previous marriage of the wife, and later he cannot contend that the child is not her responsibility.

14. Therefore, it is prayed that present petition be dismissed and the impugned order dated 01.02.2019 passed by learned Sessions Court be upheld.

15. This Court has **heard** arguments addressed by learned counsel for the petitioner as well as learned Senior counsel for the respondent, and has carefully gone through the material placed on record.

16. At the outset, this Court would address the argument of maintainability raised on behalf of the respondent. In the present case, learned Senior counsel for the respondent had vehemently argued that the present petition under Section 482 of Cr.P.C. was not maintainable before this Court since the petitioner had earlier filed a similar petition seeking same relief before the High Court of Allahabad and he had not pressed for the transfer of the same to this Court before the Hon'ble Supreme Court and further that the petitioner had withdrawn the said petition from the High Court of Allahabad without taking any liberty or leave to approach this Court for the same relief i.e. challenging the orders dated 10.05.2018 and



01.02.2019 passed by the learned Trial Court and Sessions Court respectively.

17. This Court notes that in the present case, it is not in dispute that the orders dated 10.05.2018 and 01.02.2019 passed by the learned Trial Court and Sessions Court respectively, with respect to grant of interim maintenance under the provisions of PWDV Act, were assailed by the petitioner herein before the High court of Allahabad in an application filed under Section 482 of Cr.P.C. i.e. Application No.12860 of 2019.

18. The Hon'ble Apex Court, while hearing the transfer petitions filed by the petitioner, *vide* order dated 13.08.2021 had directed transfer of three cases pending before the Courts at Uttar Pradesh i.e. (i) the complaint under Section 12 of PWDV Act, (ii) FIR bearing no. 34/2016, registered at Police Station Mahila Thana, Gautam Buddh Nagar, U.P. under Sections 498A/323/504 of IPC and Sections 3/4 of Dowry Prohibition Act, and (ii) the complaint under Section 31 of PWDV Act, to the competent courts in Delhi. However, at that stage, the counsels for the petitioner had not pressed for transfer of applications under Section 482 of Cr.P.C. pending before the High Court of Allahabad. The relevant portion of order dated 13.08.2021 of the Hon'ble Apex Court in *Transfer Petition (Criminal) Nos. 76-80 of 2020*, reads as under:

“The petitioner before me is the husband involved in a matrimonial dispute with his wife. In this set of petitions he seeks transfer of three cases registered as Criminal Case No. 4622 of 2016, Criminal case No.151 of 2017 and Criminal Case No. 41 of 2019, all pending before the Courts of appropriate jurisdiction in Gautam Budh Nagar, State of Uttar



Pradesh. The first of these cases has been instituted under the Protection of Women from Domestic Violence Act, 2005 and is pending before the Civil Judge (Junior Division), Gautam Budh Nagar whereas the second case has been filed under Sections 498A, 323, 504 IPC read with Sections 3 and 4 of the Dowry Prohibition Act, 1961. This proceeding is pending before the Fast Track Court. The third case is under Section 31(1) of the Protection of Women from Domestic Violence Act, 2005 and Section 498A of the Indian Penal Code pending before the Additional Civil Judge (Senior Division-III)/ACJM, Gautam Budh Nagar

There are also two applications under Section 482 pending before the High Court of Judicature at Allahabad but learned counsel appearing for the petitioner herein has not pressed for transfer of those two cases at the time of hearing. Thus, the plea for transfer of the said two cases registered as Transfer Petition (Crl.) Nos. 79-80 of 2020 shall stand dismissed.

I have considered submissions of the learned counsel for the parties. I choose to direct transfer of the aforesaid three proceedings from the respective Courts at Gautam Budh Nagar, Uttar Pradesh to the Tis Hazari Court, Delhi. Such transfer, in my opinion would serve the ends of justice mainly for two reasons.

First is that the Suit for divorce already stands transferred to the said Court.

Secondly, distance between the Courts at Gautam Budh Nagar and Tis Hazari Court is negligible and no major inconvenience would be caused to the respondent-wife in commuting from NOIDA to Tis Hazari for the purpose of prosecuting the said cases. I also direct that the Courts to which the aforesaid cases are allocated at the Tis Hazari Court by the District and Sessions Judge, Head Quarters shall proceed with the matters from the stages the proceedings have reached at present in the Courts where these cases are pending.

The District and Sessions Judge, Head Quarters shall allocate the three cases to the Courts of jurisdiction within the said judgship and effort shall be made to hear out the cases on day to day basis, as far as practicable and if possible, simultaneous hearing of these cases shall be undertaken. The concerned Courts shall make an attempt for early conclusion of the trial of these cases.



There is dispute as regards payment of maintenance and the respondent-wife's complaint is that there are sums due on that account. It has been asserted on behalf of the respondent wife that without paying the entire sum, the petitioner ought not to be permitted to approach this Court for transfer of a case, which is a discretionary relief. While hearing Transfer Petition, however, I would be lacking in my jurisdiction to direct release of the sum, if any, is due to the respondent-wife. It shall be open to the respondent to apply before the appropriate Court for relief on this count."

19. However, the petitioner herein had thereafter withdrawn the two applications, including the application in controversy in the present case i.e. Application No.12860 of 2019 wherein the petitioner had then challenged the orders dated 10.05.2018 and 01.02.2019 and the Hon'ble High Court of Allahabad had dismissed the said application vide order dated 14.03.2023 and the relevant portion of the order reads under:

"...Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the private parties.

Learned counsel for the applicant submits that in light of the order passed by Hon'ble Apex Court in Transfer Petition (Criminal) Nos. 76-80 of 2020 vide order dated 13.08.2021, the case bearing Complaint Case No.4622 of 2016 (Kiran Jot Maini Vs. Anish Pramod Patel), under Section 12 Domestic Violence Act, 2005 and Section 498-A I.P.C., Gautam Budh Nagar, which is pending before Judicial Magistrate, Gautam Budh Nagar was transferred from Gautam Budh Nagar, Uttar Pradesh to Tis Hazari Court, Delhi, hence, the matter has become infructuous and the same may be dismissed as infructuous.

Accordingly, the present application u/s 482 Cr.P.C. is dismissed as infructuous.

Learned A.G.A. for the State as well as learned counsel for the private parties has no objection to the same.

Interim order, if any, stands vacated.



Let the matter be consigned to records...”

20. Having perused the aforesaid order, this Court notes that the petitioner had withdrawn the application under Section 482 pending before the High Court of Allahabad on the premise that the proceedings, in which the order impugned therein had been passed, had already been transferred from the jurisdiction of Courts of Gautam Budh Nagar, Uttar Pradesh to the jurisdiction of competent Courts in Delhi by the Hon’ble Apex Court and therefore, those applications under Section 482 had become infructuous since the High Court of Allahabad was not the competent High Court to adjudicate upon such *lis* since the subject matter i.e. the impugned orders herein and the proceedings emanating therefrom were all transferred to Trial Court in Delhi.

21. In these circumstances, this Court finds merit in the argument of the learned counsel of petitioner that the petitioner cannot be rendered remediless by accepting the arguments raised on behalf of respondent that the petitioner cannot approach this Court assailing the order passed by learned Sessions Court and should now approach the Hon’ble Apex Court challenging the same, since the petitioner had withdrawn similar petition under Section 482 of Cr.P.C. from the High Court of Allahabad because the said High Court could not have adjudicated upon the issue in question, since the Hon’ble Apex Court had transferred all the pending cases between the parties to Delhi for all effective and future hearings and proceedings, and this Court is now vested with the jurisdiction to entertain the challenge to the



impugned orders vide which the petitioner had been directed to pay certain amount of interim maintenance to the respondent and her daughter.

22. In this Court's opinion, the present case is not a case where litigant had withdrawn a petition from a High Court without obtaining the liberty to file afresh and had thereafter again filed a petition seeking same relief before the same High Court. To the contrary, the present case is one where due to transfer of cases from one State to another, a pending application under Section 482 of Cr.P.C., having become infructuous, was withdrawn from one High Court and was immediately thereafter filed before another High Court i.e. this Court.

23. Therefore, in this Court's view, the present petition is maintainable.

24. In the present case, the learned Judicial Magistrate, Gautam Budh Nagar, while adjudicating upon a complaint/application filed under Section 12 of PWDV Act by the respondent-wife, had passed an interim order under Section 23 of the Act whereby the learned Magistrate had directed the petitioner to pay interim maintenance of Rs. 35,000/-, vide order dated 10.05.2018. The concluding portion of this order reads as under:

“In the present case, it has been clearly admitted on the part of opposite party that presently the complainant is not employed in any Institute and the complainant has not any source of income. Contrary to it, on viewing the highly qualification and experiences of complainant, it seems relevant that the complainant is competent to maintain herself. Though, the complainant is in need of immediate



protection and admittedly at present, she has left her service/job. In such situation, the complainant is entitled for interim maintenance. On view the above facts and established principles in produced judicial citations and placed evidences in record file, in view of Court the complainant is entitled to get a sum of Rs. 35,000/- per month (Rupees Thirty Five Thousand Only) from the date of presenting the application.”

25. Thereafter, upon appeals being filed under Section 29 of PWDV Act by both the parties, the learned Sessions Court enhanced the amount of interim maintenance payable to respondent wife from Rs.35,000/- to Rs.45,000/- per month and had also directed the petitioner to pay Rs.55,000/- towards the maintenance of daughter of respondent. The concluding portion of this order dated 01.02.2019 reads as under:

“The Appeal is admitted partially. The impugned order dated 10.05.2013 passed by Ld. Lower Court is amended to this extent that the complainant shall be entitled to get maintenance amount for herself a sum of Rs. 45,000/- per month (Rupees Forty Five Thousand Only). In addition to above, the Minor Daughter Anya of complainant shall be entitled to get the maintenance amount of Rs. 55,000/- per month (Rupees Fifty Five Thousand Only). This amount shall be provided/given to both in accordance of application dated 05.02.2018 under section 23 Domestic Violence Act. The opposite party might to be paid in three equal installments within the period of three months to the balance amount of till date and after complying this order, the opposite party shall pay/give the amount of maintenance to the complainant to her daughter on every 07th day of English Calander in future. The remaining order of Ld. Magistrate shall be effective/ maintained.”

26. Having gone through the contents of impugned orders, this Court is constrained to note that both the impugned orders were passed by the Courts below, in absence of any Affidavit of



Disclosure of Income/Assets filed by the parties. Though these orders were passed prior to the decision of Hon'ble Apex Court in case of ***Rajnesh v. Neha*** (2021) 2 SCC 324, the cardinal principle of law laid down in this case by the Hon'ble Apex Court is that prior to passing any interim order of maintenance, the Court concerned must consider the Affidavit of Disclosure of Income/Assets filed by both the parties. In this regard, following portion of the decision in ***Rajnesh v. Neha*** (*supra*) can be referred to:

“...Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India :

- (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate's Court, as the case may be, throughout the country;
- (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;
- (c) The respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the applicant and the pleadings on record;



(d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC; On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so; The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court.

(i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

(k) A professional Marriage Counsellor must be made available in every Family Court..."



27. Thus, the learned Trial Court as well as the Sessions Court had failed to direct the parties to file their Affidavits of Disclosure of Income/Assets, prior to deciding the quantum of interim maintenance payable to respondent.

28. In the present case, this Court has also taken note of the argument raised on behalf of the petitioner that the respondent had made no prayer before the learned Sessions Court for award of interim maintenance to the minor daughter. In view of the same, this Court has gone through the contents of both the impugned order dated 01.02.2019 passed by learned Sessions Court as well as of the appeal filed under Section 29 of PWDV Act filed by the respondent herein i.e. Appeal No. 39 of 2018. Though the order dated 01.02.2019 records that the primary grievance of the respondent-wife was that the learned Trial Court had erred in not granting interim maintenance to the minor daughter, the contents as well as the prayer clause of the appeal, however, does not reflect any such grievance. In the entire appeal filed by the respondent-wife, there is no mention of the minor daughter whatsoever and it has only been averred that the learned Trial Court did not pass a correct order in light of the income expenditure and assets of petitioner-husband. Further, the relief sought in this appeal before the learned Sessions Court was also that the interim maintenance of Rs. 35,000 awarded to the respondent wife be enhanced to Rs. 2,50,000/- to enable her to meet requirements of accommodation, livelihood, etc. However, no specific relief was sought qua the award of interim maintenance to



the minor daughter, neither were any such averments made in the contents of appeal.

29. Therefore, in light of such facts and circumstances, where the interim maintenance orders were passed by the learned Trial Court and Sessions Court without directing both the parties to file their Affidavits of Disclosure of Income/Assets, and further that no prayer for granting maintenance to the minor daughter was made in the Appeal filed under Section 29 of PWDV Act by the respondent-wife, and also considering the fact that the respondent had later informed the Courts that she was earning Rs.1,20,000/- per month, this Court deems it appropriate that the present case be remanded back to the learned Trial Court i.e. learned Metropolitan Magistrate, Mahila Court, Central District, Tis Hazari Court where Case No. 691/2022 is pending, to decide afresh the issue of interim maintenance payable to the respondent-wife by the petitioner-husband under Section 20 read with 23 of PWDV Act, after directing both the parties to file their Affidavits of Disclosure of Income/Assets and hearing arguments afresh from both sides, and in accordance with law including the guidelines laid down in case of *Rajnesh v. Neha (supra)* by the Hon'ble Apex Court. The learned Trial Court shall also decide afresh as to whether any amount of maintenance is payable to the daughter of respondent herein, as per law.

30. The aforesaid issue shall be decided by the learned Trial Court within a period of 3 months from date of receipt of this order.

31. In the meanwhile, this Court is also of the opinion that the respondent cannot be denied payment of maintenance, and therefore,



the petitioner herein is directed to pay Rs.45,000/- per month to the respondent herein, till the learned Trial Court decides the issue of interim maintenance afresh. This amount has been decided keeping in mind that the learned Sessions Court in the present case had fixed the interim maintenance of Rs.45,000/- for the respondent, and the Hon'ble Apex Court had also directed the petitioner to pay the same amount to the respondent during the pendency of transfer petitions.

32. It is however clarified that in case the Trial Court awards interim maintenance which is lesser than the amount of interim maintenance already decided in this case, the amount paid in excess will be adjusted in the future amount of maintenance/interim maintenance to be paid by the petitioner herein.

33. With these directions, the present petition stands disposed of, alongwith all pending applications.

34. Copy of this judgment be forwarded to the learned Trial Court i.e. Metropolitan Magistrate, Mahila Court, Central District, Tis Hazari Court where Case No. 691/2022 is pending adjudication, for information and compliance.

35. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/kd