



2024:DHC:1409



\$~30

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

Date of decision: 21.02.2024

+ **CRL.M.C. 3165/2022 & CRL.M.As. 13345/2022 & 31527/2023**

SHRI VIPIN PRAKASH AGGARWAL

..... Petitioner

Through: Mr.Sudhir Vats & Mr.Naveen
Kumar, Advs.

versus

THE STATE & ANR.

..... Respondents

Through: Ms.Priyanka Dalal, APP.
Mr.Ankit Rana, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 11.05.2022 passed by the learned Additional Sessions Judge-04, North District, Rohini Courts, Delhi (hereinafter referred to as the 'ASJ') in Criminal Appeal No. 70/2022, titled *Vipin Prakash Aggarwal v. Ruchi Aggarwal*, dismissing the appeal filed by the petitioner herein under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act').



2024:DHC:1409



2. The above appeal was filed by the petitioner challenging the order dated 05.04.2022 passed by the learned Metropolitan Magistrate, Mahila Courts-02, North District, Rohini Courts, Delhi (hereinafter referred to as the 'Metropolitan Magistrate') in Complaint Case, being Ct. Cases No. 2172/2021, titled ***Ruchi Aggarwal v. Vipin Prakash Aggarwal & Ors.***, by which the learned Metropolitan Magistrate had directed as under:-

“One week’s time is given to the parties to mutually decide upon the time and place where the complainant shall meet the children failing which R1 is directed to ensure the appearance of the children in Children Room, Rohini Court on every working Saturday at 03:00 pm to enable the complainant to meet them.”

3. The learned counsel for the petitioner submits that the learned Metropolitan Magistrate had interacted with the children, who are aged around 15 years. He submits that the learned Metropolitan Magistrate in the order dated 01.10.2021 recorded that the children did not want to meet the respondent, complaining that they were not treated well by her and she used to beat them. He submits that the learned Metropolitan Magistrate further recorded that even upon repeated asking, the children declined to have any interest in meeting the respondent. The learned counsel for the petitioner submits that in spite of the said observation, by the subsequent Order dated 05.04.2022, the learned Metropolitan Magistrate directed the meeting of the children with the respondent.



2024:DHC:1409



4. He submits that aggrieved of the said order, the petitioner had challenged the same by way of an appeal under Section 29 of the DV Act, which has been dismissed by the learned Additional Sessions Judge by the Impugned Order, without appreciating the fact that the children are on the verge of attaining majority and do not wish to meet or have any interaction with the respondent.

5. Placing reliance on the judgment of the Supreme Court in ***Gaytri Bajaj v. Jiten Bhalla***, (2012) 12 SCC 471, he submits that in such circumstances, the Court cannot force the children to meet the respondent No.2 as this may also have a psychological impact on them.

6. On the other hand, the learned counsel for the respondent No.2 submits that merely because the respondent No.2 is having a matrimonial dispute with the petitioner, she cannot be denied, at least, the visitation rights over her children. He submits that the children have been in the custody of the petitioner and, therefore, for re-establishing the bond, at least, some interaction is required and an attempt in that regard has been made by the learned Metropolitan Magistrate by way of the Order 05.04.2022.

7. Placing reliance on the judgment of the Supreme Court in ***Manoj Anslem Rebeiro v. Candace Elizebath Rebeiro***, 2016 SCC OnLine SC 537, he submits that no fault can be found in the directions issued by the learned Metropolitan Magistrate and



2024:DHC:1409



as upheld by the learned ASJ, which are merely of the visitation in the Family Room attached with the Family Court.

8. I have considered the submissions made by the learned counsels for the parties.

9. As has rightly been observed by the learned Metropolitan Magistrate, merely because there is a matrimonial dispute between the respondent and the petitioner, the children should not be denied the chance of re-establishing a bond with their mother. Equally the mother also cannot be denied the right of establishing such bond with her children. The children have been in the custody of the petitioner and, therefore, the possibility of some tutoring of the children cannot be completely ruled out. It cannot be said that they would not be influenced by any tutoring which might have occurred from the end of the petitioner. In any event, at least an attempt to re-establish the bond has to be made.

10. From the petition itself, it is apparent that the parties had started living separately only on 25.06.2021; and the application under Section 23 of the DV Act was filed by the respondent on or about 17.08.2021, that is, immediately after the separation.

11. In **Gaytri Bajaj** (Supra), the parties had been separated in December 2001. The parties then filed an application seeking divorce by mutual consent, one of the terms whereof was that the custody of the children will remain with the husband and the wife will not insist on any visitation rights. Divorce was granted to the parties on 03.06.2003. After the expiry of almost three



years, the wife therein filed a suit seeking a declaration that the decree of divorce dated 03.06.2003 is null and void on the ground that her consent was obtained by acts of fraud and deceit committed by her husband. Taking note of such peculiar circumstances and as much water had flown even thereafter, the Supreme Court observed as under:-

“15. In the present case irrespective of the question whether the abandonment of visitation rights by the wife was occasioned by the fraud or deceit practised on her, as subsequently claimed, an attempt was made by this Court, even by means of a personal interaction with the children, to bring the issue with regard to custody and visitation rights to a satisfactory conclusion. From the materials on record, it is possible to conclude that the children, one of whom is on the verge of attaining majority, do not want to go with their mother. Both appear to be happy in the company of their father who also appears to be in a position to look after them; provide them with adequate educational facilities and also to maintain them in a proper and congenial manner. The children having expressed their reluctance to go with the mother, even for a short duration of time, we are left with no option but to hold that any visitation right to the mother would be adverse to the interest of the children. Besides, in view of the reluctance of the children to even meet their mother, leave alone spending time with her, we do not see how such an arrangement i.e. visitation can be made possible by an order of the court.”

12. The above judgment, therefore, can have no application to the facts of the present case.



2024:DHC:1409



13. In *Manoj Anslem Rebeiro* (Supra), the Court held that even though the relationship between the parties had become acrimonious, it cannot be so destroyed for not letting the father to see his daughter. The Court, therefore, made adequate arrangements for visitation rights.

14. The Order dated 05.04.2022 of the learned Metropolitan Magistrate, as noted hereinabove, is only an attempt by the Court to see if there can be a possibility of re-establishment of a bond between the children and their mother. The Court is yet to take a final decision on the same, which will be taken after seeing/analysing how these visitation rights pan out.

15. In view of the above, I find no infirmity in the Impugned Order. The petition is, accordingly, dismissed. The pending applications are also disposed of as infructuous.

NAVIN CHAWLA, J

FEBRUARY 21, 2024/rv/AS

Click here to check corrigendum, if any