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

+ **CRL.M.C. 260/2024**

SACHIN KUMAR DAKSH AND ORS. Petitioners

Through: Ms. Aarushi Desai and
Ms. Shivansh B. Pandya,
Advs.

versus

MAMTA GOLA AND ANR. Respondents

Through: Mr. Satyaarth Sinha and
Ms. Charu, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.01.2024

CRL.M.A. 1039/2024 (*exemption from filing certified copy / true typed copy of impugned order, as well as pleadings, and documents*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed under Section 482 read with Section 483 of the Code of Criminal Procedure, 1973 (CrPC) seeking quashing of the orders dated 08.12.2023 and 10.04.2023 (hereafter '**impugned orders**'), passed by the learned Metropolitan Magistrate (Mahila Court)-1, South-West District, Dwarka Courts, New Delhi, in MC 913/2022, titled as *Mamta Gola @ Mamta Daksh v. Sachin Kumar Daksh & Ors.*
4. A complaint was filed by Respondent No. 1 under Protection of Women from Domestic Violence Act, 2005 (hereafter '**DV Act**') in the year 2021 before the Courts at Aligarh, Uttar Pradesh. The complaint was transferred along



with the other case between the parties to Dwarka Courts, Delhi, by order dated 22.07.2022, passed by the Hon'ble Apex Court. This included a petition filed by Respondent No.1 for maintenance, and was numbered as MT Case No. 391/2022.

5. The petitioners allege that the income affidavit filed by Respondent No. 1 mention false particulars, and the affidavit also lacks necessary information. It is further alleged that the material facts were suppressed in the said affidavit. The petitioners have also stated to have filed an application under Section 340 of CrPC in that regard.

6. By the order dated 10.04.2023, the learned Family Court, Dwarka, in MT Case No.391/2022, directed Respondent No.1 to file a fresh affidavit of income and expenditure in compliance with the judgment passed by the Hon'ble Apex Court in the case of **Rajnesh v. Neha and Another : (2021) 2 SCC 324**. Petitioner No.1 challenged the said order dated 10.04.2023 before this Court in Crl. M.C. 3752/2023. The same was disposed of by this Court by order dated 23.05.2023, noting as under:

*“6. Learned counsel for the petitioner states that this is not in consonance with the directions passed by Hon'ble Supreme Court in **Rajnesh v. Neha**.*

7. Be that as it may, and without adverting to merits of the matter, learned Trial Court may not grant any further time to the respondent No.1 wife for filing a reply to interrogatories and it be filed within the period directed by Learned Family Court.

8. Further, the petitioner will be allowed to file their objections for allowing the application for amendment of the income affidavit, together with the legal submissions in support. Learned Family Court may decide the same before proceeding ahead further.

9. No further directions are required in the said petition.”

7. The objection filed by Respondent No.1 was disposed of by the learned MM observing that she did not have any power to



recall or review her own orders, when there is no error apparent on record. This led to filing of the present petition.

8. The learned counsel for the petitioners submits that the liberty to file a fresh affidavit would enable Respondent No.1 to overcome the falsehoods and suppressions in her first income affidavit.

9. He further submits that the application filed by the petitioners under Section 340 of the CrPC would become infructuous if Respondent No.1 is allowed to file a fresh affidavit of income and expenditure.

10. The arguments raised by the learned counsel for the petitioners are insubstantial. This Court also finds no infirmity with the order passed by the learned Trial Court.

11. The only ground for objecting to Respondent No.1 filing a fresh affidavit of income and expenditure is that the affidavit filed on an earlier occasion allegedly contains false information, for which the petitioners have filed an application under Section 340 of the CrPC.

12. The learned MM, specifically noted that the affidavit filed on an earlier occasion was admittedly not in compliance of the judgment passed by the Hon'ble Apex Court in the case of ***Rajnesh v. Neha*** (*supra*). Thus, the learned MM rightly directed the complainant/ Respondent No.1 to file a fresh affidavit. The apprehension that the fresh affidavit would nullify or adversely affect the application filed under Section 340 of the CrPC, is without any merits.

13. Section 340 of the CrPC provides for an inquiry and filing of a complaint in case the party is found to have committed offences referred in Section 195(1)(b) of the CrPC, which relates to filing of false evidence in any judicial proceedings. The



affidavit filed by Respondent No.1 on an earlier occasion is admittedly on record, in the judicial proceedings before the learned MM. Any direction by the learned Court to file a fresh affidavit will not obliterate from its record, the affidavit filed on an earlier occasion. Undoubtedly, if a false affidavit has been filed, appropriate proceedings will be initiated by the concerned Court after recording such findings. The same cannot be overcome by filing a subsequent affidavit.

14. The allegation made by the petitioners that the earlier affidavit contained false information, would have to be adjudicated in the appropriate proceedings as has been initiated by the petitioners, and will not get affected by any subsequent affidavit. When the petitioners admit that the affidavit filed on earlier occasion was not in compliance with the directions passed by the Hon'ble Apex Court in *Rajnish v. Neha* (*supra*), any direction to file an affidavit in compliance of the said judgment cannot be faulted with.

15. No prejudice, in my opinion, has been caused to the petitioners, the argument raised is unmerited.

16. This Court also finds no infirmity in the order passed by the learned MM to the extent that it does not have any power to recall or review its own order, when there is no error apparent on record.

17. In view of the above, I find no merit in the present petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

JANUARY 11, 2024

'KD'/'SS'