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

+ **CRL.REV.P. 172/2024**

DEEPAK KUMAR MISHRA Petitioner

Through: Mr. Abhishek K. Suman,
Mr. Sandeep Kr. Singh,
Mr. Sachin Verma, Mr.
Dharmender Kumar & Ms.
Kanchan, Advs.

versus

PRIYA MISHRA Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
07.02.2024

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CRL.M.A. 3758/2024 (for exemption)

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

CRL.REV.P. 172/2024 & CRL.M.A. 3757/2024 (for stay)

3. The present petition is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 25.10.2023, passed by the learned Principal District and Sessions Judge ('PDSJ'), North District, Rohini Courts, Delhi, in Criminal Appeal No. 118/2023, titled as *Deepak Kumar Mishra v. Ms. Priya Mishra* (hereafter '**the impugned order**').
4. The petitioner's appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, challenging the order dated 12.04.2023, passed by the Metropolitan Magistrate, Mahila Court, North District, Rohini Courts, Delhi, was



dismissed by the impugned order.

5. The learned Metropolitan Magistrate, by the order dated 12.04.2023, had awarded the interim maintenance for a sum of ₹50,000/- per month to the respondent and the minor child.

6. The learned PDSJ dismissed the appeal filed by the petitioner against the order dated 12.04.2023, specifically noting that the gross salary of the petitioner is ₹2,90,000/-.

7. The learned counsel for the petitioner submits that the petitioner has to pay a monthly EMI of approximately ₹70,000/-, out of which approximately ₹60,000/- is paid for the home loan taken for the property which is jointly owned by the petitioner as well as the respondent.

8. He submits that the petitioner is, thus, not only been directed to pay the maintenance of ₹50,000/-, but is also paying ₹30,000/- per month as an EMI which is required to be paid by the respondent. He further submits that the petitioner is also incurred expenditure of approximately ₹15,000/- per month on his old parents.

9. The learned PDSJ noted that, even though an EMI of approximately ₹11,000/- is paid on a personal loan, the said amount taken as a loan, is used by the petitioner himself. It further noted that the petitioner, as per the settlement dated 28.04.2018, had agreed to pay a sum of ₹25,000/- per month to the respondent for household expenses. Pursuant thereto, the minor child has also started going to school and, at this stage, a sum of ₹50,000/-, is not unreasonable.

10. The petitioner has not disputed that he is earning approximately ₹2,90,000/- per month as gross salary. Even though a sum of approximately ₹60,000/- is stated to be paid as an EMI towards the home loan, the petitioner on being asked,



stated that he, himself is staying in the said house. In such a scenario, the payment of EMI cannot be taken as an additional burden for which any benefit can be granted to the petitioner.

11. Moreover, when the petitioner had himself agreed to pay a sum of ₹25,000/- per month in the year 2018. An award of maintenance for a sum of ₹50,000/- per month after more than five years of such *ad interim* payment of maintenance, in the opinion of this Court, is not unreasonable. This Court in the case of ***Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99*** had observed that the court should initially determine the net disposable income of the Husband or the primary earner within the family. If the other spouse is also employed, those earnings should be taken into consideration. This collective income forms the Family Resource Cake, which is then distributed among the family members. The allocation of this "cake" should align with the financial needs of each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members.

12. Considering the above, it cannot be said that the learned PDSJ erred in awarding the interim maintenance of ₹50,000/- to the respondent and the minor child. Needless to say that the final maintenance will be decided by the learned Trial Court after considering the evidence produced by both the parties.

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

AMIT MAHAJAN, J

FEBRUARY 7, 2024
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