



2024:DHC:7942



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

Date of decision: 08<sup>th</sup> OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2732/2022 & CRL.M.A. 11312/2022, CRL.M.A. 1212/2024**

SEEMA LAL

.....Petitioner

Through: Mr. Pranav Gupta, Mr. Anil Kumar,  
Mr. Siddhant Verma, Mr. Purva  
Popli, Mr. Sushal Tripathi, Mr. Arya  
Tripathi, Mr. Himanshu Kalra, Mr.  
Shankar Kant Nirala, Mr. Saraswat,  
Mr. Saurabh Kumar, Mr. Rishi Raj  
Singh, Mr. Sambhav Shekhar, Mr.  
Anant Bhardwaj, Mr. Satyananand  
and Mr. Kunal Awana, Advocates.

versus

PAWAN KUMAR LAL & ANR.

.....Respondents

Through: Mr. Kuldeep Rana, Advocate.  
Mr. Shoaib Haider, APP for the State.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court challenging an Order dated 23.02.2022 passed by the learned Additional Sessions Judge, Dwarka Courts, Delhi setting aside the Order dated 07.04.2021 passed by the learned Metropolitan Magistrate.
2. Shorn of unnecessary details, the facts of the case reveal that the marriage between the Appellant and the Respondent was solemnized on 18.06.1998 as per Hindu rites and customs at Delhi. Out of the wedlock,



2024:DHC:7942



there are two children, a son who is about 18 years of age and a daughter aged 14 years.

3. Material on record discloses that disputes arose between the husband and wife and on 30.01.2018, the husband filed a petition for divorce under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 on the ground of cruelty against the Appellant herein. The Appellant herein filed a case for domestic violence under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*in short* 'DV Act').

4. Since the Appellant herein was not in a position to maintain herself, she filed an application under Section 23 of the DV Act, 2005 for grant of interim maintenance and demanded a sum of Rs. 20,000/- towards maintenance. Pleadings and income affidavits by both the parties were filed.

5. On 07.04.2021, when the matter came up for hearing, an adjournment was sought by the Proxy Counsel for the Respondent herein. A perusal of the order shows that the case was adjourned. However, after adjourning the case, upon enquiry by the learned Metropolitan Magistrate the Respondent herein, who was appearing in person, undertook to pay Rs.20,000/- per month towards maintenance of the Complainant along with the medical expenses. On the said statement, the learned Metropolitan Magistrate passed an order directing the Respondent herein to pay Rs.20,000/- per month and take care of the medical expenses.

6. Aggrieved by the Order dated 07.04.2021, the Respondent herein preferred an appeal before the learned Additional Sessions Judge, Dwarka Courts, New Delhi. After hearing arguments from both sides, the learned Additional Sessions Judge has taken note of the fact that on perusal of the order of the learned Magistrate it is apparent that that the Proxy Counsel on



behalf of the Respondent sought an adjournment from the learned Magistrate stating that the main Counsel is not available today and the Respondent was appearing in person. The learned Magistrate granted adjournment to the Respondent on this ground.

7. The learned Additional Sessions Judge while allowing the appeal and setting aside the impugned Order dated 07.04.2021 held that once adjournment was granted to the Respondent herein, the Court became *functus officio* at that very moment and it was not right for the learned Metropolitan Magistrate to ask him any further questions and more so, record his submissions and undertaking which were made after granting him an adjournment. The learned Additional Sessions Judge has then remanded back the matter to the learned Trial Court to decide the ad-interim maintenance application afresh after perusing the material on record. Relevant portion of the said Order reads as under:

*"7. From the perusal of the impugned order, prima facie it is reflected that none of the Counsels representing either of the parties were present before the Court to address arguments on the application seeking interim maintenance filed by the respondent herein under Section 23 of the D.V. Act. Perusal of the impugned order further reflects that the present appellant had sought an adjournment citing non-availability of his Counsel as a reason and Id. MM was also pleased to grant the same by mentioning in the order sheet "adjournment is granted".*

*8. However, I fail to understand that once the Id. MM had already granted the adjournment to the appellant who was the respondent before the Id. Trial Court, then what prompted Id. MM to start noting down his submissions instead of giving him the next date of*



*hearing as after adjourning the case, the Court ☐ becomes 'functus officio' in respect of the concerned matter on f that particular date itself.*

*9. Not only this, but also the fact that Id. MM kept on putting further queries to the appellant as is reflected from the*

*perusal of the impugned order and had also gone further to the extent of recording his undertaking without even explaining him the consequences of making such a statement/ undertaking before the Court on oath and on the basis of the said undertaking so recorded by the Id. MM, she had disposed of the interim maintenance application, which practice adopted by the Id. MM is alien to the established procedure as laid down by the Hon'ble Superior Court including our own High Court as well as Hon'ble Apex Court, which categorically provided that the issues pertaining to awarding the maintenance etc., have to be decided by Id. MM by keeping in view the respective claims of the parties as made by them in their affidavit(s) pertaining to their income and expenditure filed on record.*

*10. Hence, I am of the considered opinion that after adjourning the case, Id. MM was not right in proceeding any further with the matter in question and thus she had exceeded her jurisdiction by recording submissions and undertaking of the appellant and disposing of respondent's application for interim maintenance in the light of the said undertaking.*

*11. In view of my aforesaid discussion, the present appeal is allowed and the impugned order is hereby set aside and matter is remanded back to the Id. Trial Court with direction to decide the ad-interim maintenance application afresh keeping in view the*



*respective pleas and contentions raised by the parties in their pleadings as well as affidavits filed on record.”*

8. Pleadings are complete. Heard learned Counsels for the parties and perused the material on record.

9. It is stated by the learned Counsel for the Petitioner herein that the Order dated 23.02.2022 is perverse and bad in law as the learned Additional Sessions Judge has erred in not appreciating the fact that the Respondent herein had himself volunteered and made submissions and gave his undertaking in respect of his willingness to pay the maintenance to the Petitioner herein. It is also stated by the Petitioner that the court or the judge becomes *functus officio* only when the judge pronounces, signs and dates the final order.

10. Per contra, the learned Counsel for the Respondent states that the Respondent herein is a layman and is not aware of the procedures and consequences of law and the learned Metropolitan Magistrate acted bad in law when he himself granted adjournment to the Respondent and was still putting questions to him and recording his submissions. It is also stated that the learned Metropolitan Magistrate had failed to apply the law laid down by the Apex court in Rajnesh v. Neha, **2021 (2) SCC 324**, as the learned Magistrate did not appreciate the income affidavits and disclosures which were filed by both the parties and order passed by the learned Additional Sessions Judge remanding back the matter to the trial court is valid in law.

11. Material on record indicates that a divorce petition was preferred by the Respondent herein under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 against the Petitioner herein on the ground of cruelty. The Petitioner herein, after six months filed a case of domestic violence against the



2024:DHC:7942



Respondent herein under Section 12 of DV Act, 2005. The Petitioner herein further preferred an application for grant of interim maintenance under Section 23 of the DV Act, 2005 to the sum of Rs. 20,000/-. On 07.04.2021, the learned Magistrate passed an order for grant of interim maintenance on the voluntary statement of the Respondent herein. Appeal against the said order was filed by the Respondent herein before the learned Additional Sessions Judge wherein it was held that the learned Magistrate after granting an adjournment to the Respondent herein should not have recorded his statement.

12. At this juncture, it is pertinent to extract the Order dated 07.04.2021 passed by the learned Metropolitan Magistrate:-

*“It is submitted by proxy counsel for complainant that the complainant has complied with order dated 00.04.2019 and furnished details of the employer on the LDOH. Copy already supplied.*

*Respondent seeks adjournment stating that main counsel is not available today. Adjournment is granted.*

*Respondent submits that he was been paying monthly maintenance to the complainant and stopped to pay the same from August, 2017 as complainant did not allow him to enter the house.*

*Upon inquiry, respondent undertakes to pay a sum of Rs.20,000/-per month towards maintenance of the complainant and also undertake to bear the expenses towards electricity, gas bill, cable connection, water bill and other misc. expenses. Further, he is also willing to bear the medical expenses of the complainant.*

*Separate statement of respondent is recorded to this*



*effect.*

*In view of this, respondent is directed to pay a sum of Rs.20,000/- per month to the complainant towards interim maintenance from the date of this order. The respondent is also directed to bear all the expenses as undertaken by him in his statement.*

*Counsel for complainant submits that the same expenses and maintenance was being prayed by the complainant in interim maintenance application and he has no objection if the application for interim maintenance is disposed off on the basis of the statement of the respondent.*

*According the applications u/s 23 of the DV Act for grant of interim maintenance stand disposed off as satisfied.*

*At this stage, it is submitted by counsel for complainant the matter may be referred to the Mediation Cell on 04.05.2021 at 12.30 pm.*

*In view of this, parties are directed to appear in the court for 02.07.2021.”*

13. This Court is in agreement with the finding of the learned Additional Sessions Judge that once an adjournment has been granted, then the learned Metropolitan Magistrate ought not to have asked the Respondent, who was present in person, as to whether he is prepared to pay Rs.20,000/- or not. The matter ought to have been taken on the next date of hearing and the Court ought to have proceeded in the presence of the learned Counsel for the Respondent.

14. The view taken by the learned Additional Sessions Judge is a plausible one and this Court in exercise of its jurisdiction under Section 482 CrPC does not warrant any interference and cannot substitute the conclusion



2024:DHC:7942



arrived at by the learned Additional Session Judge which cannot be said to be perverse and contrary to the principles of natural justice.

15. The learned Additional Sessions Judge was right in holding that the learned Magistrate is erred in proceeding further with the proceedings in question after adjourning the same and remanding back the proceedings to the learned Trial Court to decide the interim maintenance application afresh. This Court, therefore, does not find any reason to interfere with the Order passed by the learned Additional Sessions Judge.

16. Since the application was filed in the year 2018, the learned Metropolitan Magistrate is requested to conclude the proceedings for fixing maintenance within a period of six months from today. The Petitioner and the Respondent are directed not to take unnecessary adjournments and the learned Trial Court is requested to ensure that unnecessary adjournments are not granted.

17. Accordingly, the petition is dismissed along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 08, 2024**

hsk/yc