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

+ **CRL.REV.P. 667/2024**

SHOBHIT TYAGI

..... Petitioner

Through: Mr. Harshit Shishodia, Mr.
Deepanshu Rana and Mr.
Vishal Chauhan, Advs.

Versus

THE STATE (GOVT. NCT OF DELHI)
& ANR & ANR.

..... Respondents

Through: Mr. Satinder Singh Bawa,
APP for the State with SI
Amit Bariwal, PS Vivek
Vihar.
Mr. Kuldeep Singh and
Mr. Sammeer Vatts, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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17.05.2024

CRL.M.A. 15347/2024 (exemption from filing certified copy of the annexures)

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

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1. The present petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 29.02.2024, passed by the learned Additional Sessions Judge ('ASJ'), Shahdara District, Karkardooma Courts, Delhi, in Crl. Appeal No. 159/2023. The

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petitioner has also challenged the order dated 07.08.2023, passed by the learned Trial Court, in Ct No.1607/2021.

2. The learned ASJ, by the impugned order dated 29.02.2024, has dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**') against the order dated 07.08.2023, whereby the learned Trial Court, considering the social status, assets and liabilities of the parties, had directed the petitioner to pay an amount of ₹7,000/- per month as interim maintenance to Respondent No.2 from the date of filing of the case till its disposal.

3. The learned Trial Court, in the impugned order dated 07.08.2023, had noted that the parties were admittedly spouses who had shared a domestic household and noted that a perusal of the complaint and the Domestic Incident Report *prima facie* shows that Respondent No.2 was a victim of domestic violence and deserved monetary compensation under the DV Act.

4. The learned ASJ and the learned Trial Court categorically recorded their observation in the impugned orders that it seems that both the parties were underplaying their income and assets. The monthly income of the petitioner was assessed to be ₹30,000/- per month on the basis of the petitioner's submissions without analysing the nitty-gritties of the amount credited in the account of the petitioner. The Courts also took into account the fact that the petitioner's mother was dependent on him before awarding the interim maintenance to Respondent No.2.

5. The learned ASJ further noted that if Respondent No.2 had been staying with the petitioner, the petitioner would have had to incur some expenses to maintain her. It was noted that a similar standard of living as Respondent No.2 would have enjoyed in her matrimonial home is to be ensured while granting interim



maintenance.

6. The learned counsel for the petitioner submits that the learned Trial Court erroneously and mechanically granted an interim maintenance of ₹7,000/- to Respondent No.2.

7. He submits that the learned Trial Court failed to ask Respondent No.2 to file the complete 3 years of her bank statements and only the bank statements of 1.5 years are available on record. He submits that the same is against the guidelines as set out in the judgment passed by the Hon'ble Apex Court in the case of **Rajnish v. Neha : (2021) 2 SCC 324**.

8. He submits that Respondent No.2 worked in 'Satin Neo Dimensions Pvt. Ltd' from 16.09.2017 to 05.04.21. He submits that while Respondent No.2 has shown herself to be unemployed, however, she has furnished no reason for leaving the said job.

9. He also points to certain transactions in the account of Respondent No.2 where she has received ₹26,000/- and ₹27,000/- on 13.09.2021 and 11.10.2021 respectively. He submits that the amounts that have been credited to the account of Respondent No.2 clearly shows that Respondent No.2 was earning some kind of income which she has concealed from the Courts. He submits that the said transactions have not been taken into account by the learned Trial Court and the learned ASJ.

10. He submits that the working profile and professional qualification of both Respondent No.2 and the petitioner are the same.

11. He submits that the learned Trial Court and the learned Appellate Court failed to appreciate the discrepancy in the pleadings filed by Respondent No.2 wherein while she has stated in her income affidavit that her parents are dependent on her, she has stated in her petition that she is dependent on her parents.



12. The petitioner has not rebutted his assessed income in the present case. Two transactions have been pointed out wherein Respondent No.2 has received ₹26,000/- and ₹27,000/- in her account in the year 2021. At this stage, *prima facie*, in the opinion of this Court, the said transactions are insufficient to show that Respondent No.2 has a regular and continuing source of income or that she is in a position to maintain herself. No evidence has been filed to this effect by Respondent No.2.

13. Insofar as the issue regarding non-compliance of **Rajnesh v. Neha** (*supra*) is concerned, it is pertinent to note that it is not the case of the petitioner that no affidavit has been filed at all by Respondent No.2. The infirmity is in regard to the duration for which Respondent No.2 has given her bank statements. The learned Trial Court has adequately appreciated that it seems that both the parties are underplaying their income and has thus proceeded with caution and granted an interim maintenance on the lower side due to the same. The present impugned orders are in regard to interim maintenance. The infirmity in the affidavit of Respondent No.2 can be redressed before an order of final maintenance is granted. Needless to say, in case it is found that Respondent No.2 is concealing any income, the interim maintenance paid by the petitioner would automatically be adjusted in the final order. To set aside the impugned orders after noting that Respondent No.2 has no source of income to maintain herself due to a procedural anomaly would defeat the very purpose of Section 23 of the DV Act.

14. It is further contended that as Respondent No.2 has the same qualifications as the petitioner, she is capable of earning an income to maintain herself.

15. It is relevant to note that Section 23 of the DV Act



empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the respondent is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person. Any woman who proves that she has suffered domestic violence at the hands of her spouse/ partner, is entitled for interim relief.

16. In the present case, learned Trial Court as well as the appellate Court have explicitly recorded that *prima facie* it appears from the complaint that the respondent was subjected to domestic violence.

17. This Court is in agreement with the observation of the learned Trial Court that unlike Section 125 of the CrPC, maintenance under the DV Act is not tethered on the inability of the wife/ victim to maintain herself. Moreover, *prima facie*, in the absence of cogent proof of Respondent No.2 being gainfully employed or earning a sufficient income to maintain herself, the mere fact that Respondent No.2 is qualified does not disentitle her from getting an award of interim maintenance.

18. Even otherwise, the petitioner is an able-bodied man and a maintenance of ₹7,000/- per month, in the opinion of this Court, is not unreasonable at the interim stage.

19. This Court does not deem it necessary to address the argument of the petitioner *qua* the inconsistency in the averments of Respondent No.2 regarding her parents being dependent on her or her being dependent on them. The learned Trial Court had adequately appreciated the material on record and taken note of the contrary stand taken by Respondent No.2. The learned Trial Court had also taken note of the extra amounts credited to the account of the petitioner for which he had adduced no explanation. In view of



the same, the learned Trial Court had categorically observed that it appeared that the parties had not disclosed their true income but left the question open for trial.

20. The defences raised by the petitioner, including the one about the discrepancy in the averments of Respondent No.2, along with the allegations and counter allegations, would be the subject matter of the trial, and would have to be decided after the parties have led their evidence.

21. It is not disputed that the impugned order dated 07.08.2023 is only in relation to interim maintenance. The learned Trial Court would pass a final order in regard to maintenance after considering the evidence on record.

22. In view of the above, this Court finds no reason to interfere with the impugned orders and the petition is dismissed in the aforesaid terms.

23. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the order dated 29.02.2024 or in this order.

AMIT MAHAJAN, J

MAY 17, 2024