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

+ CRL.M.C. 5830/2023

KIRAN

..... Petitioner

Through: Mr.Piyush Sharma, Mr.Shivam D. and
Mr.Anuj Kumar Sharma, Advocates

versus

VIMAL SINGH HARIT & ORS.

..... Respondents

Through: Mr. Akshay Bhandari, Advocate for
respondent No.1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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27.05.2024

1. By way of present petition filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C., the petitioner seeks to assail the order dated 15.05.2023 passed by learned ASJ-03, Central District, Tis Hazari Courts, Delhi whereby petitioner's appeal against the order dated 13.03.2023 passed by learned MM (Mahila Court-04), Tis Hazari Court, Delhi came to be partly allowed.

2. The facts relevant for adjudication of the present petition are that the marriage between petitioner and respondent No.1 was solemnized on 22.02.2008, whereafter a male child was born out of their wedlock. The petitioner alleges that respondent No.1 used to beat and harass her and resultantly, she (alongwith the minor son) started living separately from respondent No.1 from 28.05.2019. Subsequently, a case under Section 23 of



the Protection of Women from Domestic Violence Act ('DV Act') came to be filed.

3. During the course of proceedings before the learned MM, the petitioner contended that she is a 12th pass and currently unemployed, whereas respondent No.1 was working as a Traffic Inspector in the Indian Railways and drawing a monthly salary of Rs.1,30,000/-. She further contended that he had no other liability.

Respondent No.1, on the other hand, while acknowledging that he is working as a Traffic Inspector (Planning), contended that he is earning a monthly salary of Rs.70,000/-. In this regard, he referred to his payslip for July 2022. He further stated that he was paying a sum of Rs.14,000/- per month towards ad-interim maintenance in terms of the order dated 07.09.2019 and further Rs.20,647/- per month towards Home Loan. Qua the petitioner, he contended that she was trained in tailoring and boutique and was earning sufficiently and that there were some unexplained credit-debit entries in her account.

4. After hearing the submissions from both the sides, learned MM came to the conclusion that the petitioner was an aggrieved person under the DV Act. As regards respondent's contention that the petitioner was trained and earning sufficiently, it was noted that no proof/document had been placed on record to substantiate the same and since she had no regular income, she was entitled to maintenance.

On the aspect of quantum, assessing respondent No.1's income to be Rs.75,000/- and upon apportionment of the same, and also considering that the petitioner was already availing the accommodation facility and other amenities, directed respondent No.1 to pay an amount of Rs.20,000/- per



month from the date of the order towards maintenance and all miscellaneous expenditure.

5. Aggrieved by the said order, the petitioner preferred an appeal and raised two contentions: firstly that the interim maintenance was granted from the date of order and not from the date of filing of the application, and secondly, upon the quantum of maintenance. In the impugned order, learned ASJ observed that since respondent No.2 was already paying Rs.14,000/- per month since the date of filing of the application and since she was receiving the aforesaid amount till the date of the order, therefore, the order granting maintenance @ Rs.20,000/- per month cannot be made applicable from the date of filing of application. On the aspect of quantum, after noting that salary of respondent No.1 was steadily increasing and that his liability towards education of child was also increasing, learned ASJ enhanced the interim maintenance amount to Rs.27,500/- per month.

6. In the present proceedings, the petitioner has challenged the impugned order to the limited extent that the grant of interim maintenance be payable from 13.03.2023 and not from the date of filing of the application. Learned counsel for the petitioner contends that the said aspect of the impugned order is contrary to established legal principles and further that the learned ASJ has failed to assign any reasons for denying the payment of enhanced interim maintenance from the date of application.

7. Learned counsel for the respondent, on the other hand, has defended the impugned order and contends that the same was passed after due consideration of the entire facts and circumstances of the case.

8. Admittedly, after noting that the petitioner had no regular income, the learned MM directed payment of Rs.20,000/- per month as interim



maintenance. The said amount was enhanced to Rs.27,500/- by the learned ASJ in the appeal filed by the petitioner. Both the learned MM as well as the learned ASJ directed the payment of said amount (as enhanced) from 13.03.2023 (date of order passed by learned MM) and not from the date of application. Interestingly, while the learned MM has provided no reason for grant of interim maintenance from the date of the order, learned ASJ observed that since respondent No.1 was already paying ad-interim maintenance till the passing of the order (which was found to be reasonable at that time), thus, the interim maintenance could not have been granted from the date of filing of application.

9. On this aspect, positive reference may be drawn from the decision of the Hon'ble Supreme Court in Rajnesh v. Neha reported as **(2021) 2 SCC 324**, wherein it was observed that:-

“111. The rationale of granting maintenance from the date of application finds its root in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependent from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

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113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”



10. In light of the categorical view of the Supreme Court, as extracted hereinabove, this Court is of the considered opinion that the challenge of the petitioner, to the extent that the maintenance be granted from the date of order, must succeed. While the learned MM did not assign any reason, learned ASJ only considered the aspect that the petitioner was receiving ad-interim maintenance during the period from date of application to date of order (which was found to be reasonable) and thus, refused to grant maintenance from the date of application. Even so, the reason assigned by the learned ASJ does not find favour with this Court.

The ideal course in this situation would be that the interim maintenance is granted to the petitioner from the date of application, as mandated by the Supreme Court in Rajnesh (Supra), and adjustment of Rs.14,000/- paid by respondent No.1 to petitioner as ad-interim maintenance during the period from date of petition to date of order be also granted.

11. In view of the aforesaid, the present petition is allowed and it is directed that interim maintenance @ Rs.27,500/- per month, as fixed by learned ASJ, be paid from the date of application filed under Section 23 of the DV Act. The amount paid towards ad-interim maintenance amount shall be adjusted.

12. The petition is disposed of in the above terms.

MANOJ KUMAR OHRI, J

MAY 27, 2024

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