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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7991/2023, CRL.M.A. 29817/2023 & CRL.M.A.
23590/2024
JAINENDER SINGH BAGHELPetitioner

Through: Appearance not given.

versus

SMITA SINGH BAGHELRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
16.10.2024

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1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C" hereinafter) [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" hereinafter)] has been filed on behalf of the petitioner seeking the following reliefs:

"In view of the above facts and circumstances, it is humbly requested that this Hon'ble Court may kindly be pleased to set aside the impugned Orders dated 23.04.2019 passed by Ld. Court of MM (Mahila Court no. 03) in the CC no. 20627 of 2017 and impugned order dated 05.08.2023 passed by Ld. Court of Shri Gautam Manan, ASJ in CA No. 252/2019, in the interest of justice.

Any other or further order this Hon'ble Court deem fit and proper infact and circumstances of the case may kindly be passed infavour of the petitioner and against the respondent. Prayed accordingly;"

2. Brief facts of the case that led to the filing of the instant petition are



as follows:

- (i) The marriage between the parties got solemnized on 6th May, 2007 according to Hindu rites and rituals at Village Palhan, District Rewa, Madhya Pradesh and a boy was borne out of the said wedlock. However, due to temperamental differences, various disputes arose between the parties, as a result of which, the respondent wife filed a claim bearing CC No. 20627/2017 for maintenance under the provisions of Protection of Women from Domestic Violence Act, 2005, (“DV Act” hereinafter) in the month of November, 2017, and subsequently, she allegedly deserted the petitioner along with the minor child and started living separately from May, 2018 onwards.
- (ii) Thereafter, in the aforesaid complaint filed by the respondent wife, the learned M.M., Mahila Court, (“learned Trial Court” hereinafter) vide order dated 23rd April, 2019, directed the petitioner to pay a sum of Rs. 40,000/- per month as interim maintenance to the respondent wife.
- (iii) Subsequently, the petitioner challenged the order dated 23rd April, 2019 by filing a criminal appeal bearing CA No. 252/2019 under Section 29 of the DV Act as well as a petition seeking custody of the minor child before the Family Court, Dwarka.
- (iv) During the pendency of the aforesaid Court proceedings,



the parties entered into a settlement/Memorandum of Understanding dated 16th November, 2019 (“MoU” hereinafter).

- (v) It has been stated by the petitioner that due to certain alleged breaches of the said MoU, by the respondent wife, he filed an application for revival of his appeal and the same was partly allowed as the learned ASJ, *vide* order dated 5th August, 2023, reduced the interim maintenance fixed at Rs. 40,000/- per month to Rs. 30,000/- per month.
- (vi) Being aggrieved, the present petition has been filed seeking setting aside of the order dated 23rd April, 2019 passed by the learned Trial Court as well as order dated order dated 5th August, 2023 passed by the learned ASJ.

3. Learned counsel appearing on behalf of the petitioner submitted that both the Courts below failed to appreciate that the respondent wife is employed as a teacher and earning a salary of about Rs. 55,000/- to Rs. 60,000/- per month, therefore, she is very well capable of maintaining herself as she has chosen to live separately.

4. It is submitted that the petitioner duly complied with the terms and conditions of the aforesaid MoU and paid a sum to the tune of Rs. 4,00,000/- to the respondent wife at the time of the first motion of divorce.

5. It is submitted that the learned Appellate Court failed to appreciate that the respondent wife breached the terms of the MoU by not withdrawing the pending cases filed against the petitioner and also by not complying with the formalities of the second motion in terms of the MoU, instead, she



prohibited the petitioner to interact with their minor child and further filed execution petitions against him.

6. It is submitted that the present petition has been filed assailing the impugned order dated 5th August, 2023 as the learned Appellate Court failed to appreciate that the MoU is legally enforceable and executable, and the respondent wife is not entitled for any maintenance as she left the matrimonial home without any cogent reasons.

7. It is submitted that the learned Appellate Court ignored the legality of the MoU and the learned Appellate Court ought to have set aside the impugned maintenance order passed by the learned Trial Court in terms of the said MoU as the same had become null and void upon settling the dispute between the parties.

8. It is further submitted that the learned Appellate Court erred in passing the impugned order as the respondent wife had no cogent reasons and basis to live separately, and the same does not confer upon her any right to claim monthly maintenance from the petitioner.

9. It is also submitted that the respondent wife is well capable of earning, whereas, the petitioner, who declared his income to be Rs. 60,000/- per month, faced financial hardship from the month of January, 2020 till June, 2022 as his business of tour and travels of foreign tourists was highly affected due to the then Covid-19 pandemic.

10. It is submitted that the learned Appellate Court failed to consider that the impugned maintenance order passed by the learned Trial Court is bad in law as the income of the petitioner was wrongly assumed to be Rs. 80,000/- per month and his loan liability to the tune of Rs. 25 lakhs was also ignored while computing his monthly income.



11. Therefore, in view of the foregoing submissions, it is prayed that the present petition be allowed and the reliefs be granted as prayed.

12. Heard learned counsel for the petitioner and perused the material placed on record.

13. The petitioner has assailed the impugned orders passed by the learned Appellate Court as well as by the learned Trial Court. It has been contended that the impugned order passed by the learned Appellate Court whereby the appeal filed on behalf of the petitioner was partly allowed and the petitioner was directed to pay interim maintenance to the respondent in the sum of Rs. 30,000/- per month. It has been argued that while passing the said order, the learned Appellate Court failed to take into consideration the fact that a MoU was entered into between the parties and in accordance with the terms of the said MoU, the petitioner had already paid a sum of Rs. 4,00,000/- to the respondent at the time of first motion of divorce. It has been contended that the respondent failed to adhere to the terms of the said MoU and the said fact was ignored by the learned Appellate Court.

14. At this juncture, this Court deems it apposite to peruse the material findings of the learned Appellate Court in the impugned order dated 5th August, 2023 which reads as follows:

“10. Ld Trial Court has assessed monthly income of appellant at Rs. 80,000 on the basis of a guess work based on Diary Farts and Travel Agency businesses of appellant, whereas, in his affidavit appellant has mentioned his profit as Rs. 6,94,190/ per annum that is about Rs. 58,000/- per month. Though respondent has mentioned that appellant has income from other sources as well but there is no such material on record to indicate so.



11. *If we go through affidavit of appellant, we would find that appellant has mentioned that he is spending around Rs 30,000/- per month to maintain himself and is paying that much amount as EMI on a loan. These facts demonstrate that appellant is man of means. It is the settled preposition of law that husband is required to maintain his wife with such dignity and with such status which she is already enjoying.*

12. *After appreciating rival contentions, Ld Trial Court fixed the interim maintenance in the sum of Rs. 40,000/- per month for the maintenance of respondent and the child which in facts of the case seems to be on higher side as the monthly income of respondent is about Rs. 58,000/- only.*

13 *Keeping in view of the fact that appellant himself claims to be spending at about Rs 30,000/- per month, as such, respondent is entitled for such an amount on the maintenance, if not more, for herself and minor child. Thus, keeping in view of monthly income of appellant, the order dated 23.04.2019 passed by Ld. Trial Court is required to be modified.*

14. *Accordingly, appellant is directed to pay a sum of Rs 30,000/- (Rs. Thirty Thousand) per month to respondent and minor child towards their maintenance from the date of filing of petition i.e. 25.10.2017 as there is no material to indicate that appellant paid any money to respondent for her maintenance after 25.10.2017."*

15. The aforesaid extracts reflect that the order of maintenance which was passed by the learned Trial Court was under challenge before the learned Appellate Court. It is observed that the learned Appellate Court placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rajnesh v. Neha*, (2021) 2 SCC 324** wherein the Hon'ble Court took note of the legal principles to be considered while computing the quantum of maintenance as enumerated in the judgment passed by a Coordinate Bench of this Court in ***Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622**



16. In view of the abovementioned judgments as well as all the facts and circumstances, the learned Appellate Court found that the learned Trial Court wrongly assumed the petitioner's income and did not take into consideration various factors to compute the interim maintenance. Further, the learned Appellate Court observed that the petitioner husband is a man of means as he is earning good and paying EMI. In view of the same, the interim maintenance fixed in the sum of Rs. 40,000/- per month by the learned Trial Court was at a higher side. Accordingly, the order of interim maintenance passed by the learned Trial Court *vide* order dated 23rd April, 2019 was modified to the extent that the petitioner herein was directed to pay a sum of Rs. 30,000/- per month as interim maintenance to the respondent wife.

17. In the instant case, the petitioner has invoked Section 528 of the BNSS (earlier Section 482 of the Cr.P.C) which is the inherent power of a High Court and the relevant portion of the same reads as follows:

“528. Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

18. At this stage, it is imperative to state the power of a High Court under Section 528 of the BNSS in indulging with the findings of the Courts below.

19. The law *qua* the aforesaid principle is clear that a High Court under its inherent jurisdiction has the power to supervise the proceedings pending before the Court below. These inherent powers may be exercised by interfering with the findings of the Court below in case of patent illegality in the same which has led to miscarriage of justice. It is noted that the powers



granted under Section 528 of the BNSS is discretionary as well as extremely wide and thus, the said power needs to be exercised sparingly and with great precautions, without indulging with the merits of the case by appreciating the evidence.

20. Therefore, it is clear that the aforesaid provision is a saving clause and if the High Court is *prima facie* satisfied that the Courts below have passed a well-reasoned order by meticulously examining the evidence placed before it and there are no errors which are apparent on the face of it, the High Court is not required to further go into the comprehensive analysis of the material on record and may uphold the orders passed by the Courts below.

21. The aforesaid section envisages certain situations wherein the inherent jurisdiction of a High Court may be exercised. It is trite to mention that the Hon'ble Supreme Court in ***Sushil Suri vs. Central Bureau of Investigation***, (2011) 5 SCC 708 has categorically observed that interference of the High Court is warranted in cases where an order passed under the provisions of Cr.P.C. (now BNSS) is required to be given effect, or to prevent an abuse of process of Court, or to otherwise meet the ends of justice.

22. With respect to the matter in hand, the limited question before this Court is whether any interference is warranted under Section 528 of the BNSS with the findings of the impugned order passed by the learned Appellate Court.

23. In the instant petition, the learned counsel appearing on behalf of the petitioner has challenged the impugned order dated 5th August, 2023 on certain grounds. *Firstly*, the learned Appellate Court ought to have



considered the MoU between the parties, by virtue of which, the interim maintenance order dated 23rd April, 2019 passed by the learned Trial Court became null and void. *Secondly*, the respondent wife is not entitled to the relief of monthly maintenance as she is the one who deserted the petitioner husband without giving any cogent reasons.

24. At this juncture, it is pertinent to note that the law *qua* grant on interim relief of maintenance has been clarified by a Coordinate Bench this Court in ***Rajat Johar v. Divya Johar*, 2017 SCC OnLine Del 11790** and it was held as follows:

“15. The object of The Protection of Women From Domestic Violence Act, 2005 is to provide for more effective protection of the rights of women

guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

16. The object of awarding maintenance/interim maintenance qua the aggrieved person is to provide speedy remedy to the aggrieved person(s) who are unable to support themselves and are in distress. It is intended to achieve a social purpose, and maintenance cannot be denied to the children on the premise that their mother is employed or has enough means to maintain them or that they are in the custody of their mother.”

25. Moreover, a Coordinate Bench of this Court in ***Pradeep Kumar v. Bhawana*, (2022) 4 HCC (Del) 595** also affirmed the aforesaid principle and held that no husband or father shall deny a fair standard of living to a wife as well as a child who is of a tender age.

26. In the impugned order, the learned Appellate Court while assessing the monthly income of the petitioner at Rs. 58,000/-, categorically observed that he is a man of means as he has an expenditure of about Rs. 30,000/- per



month to maintain himself as well as paying a like amount towards EMI on loan.

27. It is suffice to note that the learned Appellate Court applied the principle enunciated in the judgment passed by a Coordinate Bench of this Court in ***Bharat Hegde vs. Saroj Hegde (Supra)*** and took into consideration the relevant factors as enumerated in paragraph no. 8 therein and computed the *ad interim* maintenance to be paid to the respondent wife in accordance with the facts and law.

28. In view of the aforesaid facts and circumstances, and considering the settled position of law that the husband is bound to maintain his wife, the learned Appellate Court, reduced the interim maintenance fixed at Rs. 40,000/- by the learned Trial Court and directed the petitioner to pay an *ad interim* maintenance in the sum of Rs. 30,000/- to the respondent wife and their minor child.

29. This Court is of the view that denial of maintenance to a wife and minor child by a petitioner husband is unacceptable, even at an interim stage. In view of humanitarian prospective as well as under the provisions of the Section 23 of the DV Act, the learned Appellate Court rightly decided the interim maintenance in favour of the respondent wife in accordance with the settled position of law as enunciated by the Hon'ble Supreme Court as well as various High Courts.

30. It is relevant to mention herein that the petitioner has challenged the aforesaid impugned order by contesting that the parties entered into a MoU and upon signing of the same, the interim maintenance order passed by the learned Trial Court became futile.

31. In light of the aforesaid issue raised on behalf of the petitioner, this



Court is of the considered view that at the stage of fixing of interim maintenance, this Court need not delve into the merits of the case in great detail. As already mentioned above, the purpose of granting interim maintenance under Section 23 of the DV Act is remedial in nature and the same has been enacted for the purpose to ensure that a man performs his obligations towards his wife as well as his child. The aforesaid provision is a social measure and therefore, broader perception of facts is required to be considered.

32. It is observed by this Court that in the impugned order of the learned Appellate Court, the grounds for challenging the order of the learned Trial Court only pertain to the petitioner's income and the extent of economic hardship the petitioner is facing. As per the contents of the impugned order, it is noted that the petitioner has not advanced any submissions with regard to the existence of MoU and since there is no discussion of MoU in the impugned order, this Court cannot travel beyond the contents of the said impugned order.

33. This Court is of the opinion that the petitioner herein has failed to show any illegality in the impugned order passed by the learned Appellate Court while modifying the order of interim maintenance passed by the learned Trial Court, thereby, awarding a sum of Rs. 30,000/- per month.

34. Therefore, in view of the above facts and circumstances, and the aforesaid discussion on law, this Court finds no cogent reason to interfere with the impugned order passed by the learned Appellate Court under Section 528 of the BNSS (earlier Section 482 of the Cr.P.C).

35. Accordingly, the order dated 5th August, 2023 passed in CA No. 252/2019 by the learned Additional Sessions Judge-02, District- South-



West, Dwarka Courts, Delhi is hereby upheld and the instant petition being devoid of any merits, alongwith pending applications, if any, stands dismissed.

CHANDRA DHARI SINGH, J

OCTOBER 16, 2024

Rk/sm

[Click here to check corrigendum, if any](#)