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

+ **CRL.REV.P. 1040/2024**

CHANCHAL KUMAR

.....Petitioner

Through: Mr. Nagmani Kumar &

Mr. Yogender Saini, Advs.

versus

AKRITI RAJ AND ORS

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.10.2024**

CRL.M.A. 24826/2024 (for exemption)

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

CRL.REV.P. 1040/2024, CRL.M.A. 24824/2024 & CRL.M.A. 24825/2024

3. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') *inter alia* challenging the judgment dated 13.02.2024 (hereafter '**the impugned judgment**'), passed by the learned Principal District and Sessions Judge ('PDSJ'), South District, Saket Courts, Delhi, in Criminal Appeal No. 111/2023.
4. The petitioner has also challenged the order dated 30.01.2023, passed by the learned Trial Court, in Ct Case 17103/2019.
5. The learned PDSJ, by the impugned judgment, 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 30.01.2023, whereby the



learned Trial Court, considering the facts and circumstances, had directed the petitioner to pay an amount of ₹19,000/- per month as interim maintenance to Respondent No.1 and the minor child of the parties from the date of filing of the application till its disposal.

6. The learned counsel for the petitioner submits that the learned Trial Court has mechanically granted an exuberant amount of ₹19,000/- as interim maintenance.

7. He submits that the petitioner had disclosed his true income in his affidavit as ₹47,000/-. He submits that the Courts below have failed to appreciate that the petitioner's parents and his brother is dependant on him. The said fact was also declared in his income affidavit that he is incurring substantial expenses towards their maintenance. He submits that the petitioner is also incurring medical expenses of his brother who is partially disabled.

8. He submits that Respondent No.1 is employed as an English Teacher and she is earning around ₹25,000/- per month. He submits that the account statement of Respondent No.1 reflects regular transactions of substantial amounts towards investment whereby she is thus not entitled towards any maintenance.

9. He submits that Respondent No.1 has claimed expenses on behalf of herself and the minor child of the parties on the basis of bogus heads.

10. He submits that the Courts below have also not considered that the petitioner is paying an EMI of around ₹12,600/- towards a personal loan.

11. 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.

12. In the present case, learned Trial Court has explicitly recorded that specific allegations of physical abuse, verbal abuse and mental abuse had been made and a *prima facie* case of domestic violence was established against the petitioner. It has also been categorically noted that the marriage between the parties and the fact that they shared a domestic household is admitted.

13. The learned Trial Court and the learned PDSJ have extensively dealt with the argument of the petitioner in relation to the dependence of his parents and brother. It has been noted that the petitioner has failed to show that his parents and brother are entirely dependant on him. It has also been noted that the petitioner has not disclosed anything regarding the income of his parents during their lifetime. Insofar as the medical expenses are concerned, the learned PDSJ has rightly observed that the petitioner is a government servant and he is entitled to reimbursement of medical expenses. Even in the present petition, the petitioner has disclosed nothing about the prior occupation and earnings of his parents. *Prima facie*, at this stage, in the absence of any material to show that the petitioner has incurred any expenses on behalf of his family members, the mere assertions of the petitioner to this effect are insufficient.

14. It has been argued that Respondent No.1 is employed as an English Teacher and she is earning ₹25,000/- per month. As



rightly noted by both the learned Trial Court and the learned PDSJ, no documentary evidence has been placed on record to show that Respondent No.1 is gainfully employed. It has been noted that the bank statements of Respondent No.1 don't show receipt of recurring income. The learned PDSJ has also observed that while there are some entries in the account of Respondent No.1, they are neither frequent nor identical. It is relevant to note that the impugned judgment records that it was argued on behalf of the petitioner that Respondent No.1 was working in her father's school in Sitamarhi, Bihar. It was rightly noted that the same was implausible as the minor child of the parties is studying in Delhi. Thus, the said argument is without merit.

15. The petitioner has admitted to an income of ₹47,000/- per month. The learned PDSJ has taken into account the dictum in the case of ***Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99***. In the said case, it was held 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.

16. The interim maintenance of ₹19,000/- is in line with the formula propounded in ***Annurita Vohra v. Sandeep Vohra (supra)***. Even otherwise, in the opinion of this Court, the interim maintenance of ₹19,000/- is reasonable at the interim stage.



17. The defences raised by the petitioner, 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.

18. It is not disputed that the impugned order dated 30.01.2023 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.

19. In view of the above, this Court finds no reason to interfere with the impugned judgment or the impugned order dated 30.01.2023 and the petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

20. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in the impugned judgment or in this order.

AMIT MAHAJAN, J

OCTOBER 8, 2024
“SS”