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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7005/2024 & CRL.M.A. 26735/2024, CRL.M.A.
26736/2024

INDERJEET PANDITAPetitioner

Through: Ms. Prachi Gupta, Advocate.

versus

RENU AND ANR.Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

05.09.2024

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By way of the present petition filed under section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India, the petitioner impugns order dated 06.06.2024 made by the learned Principal Judge, Family Court, East District Karkardooma Courts, Delhi made Ex/CRL No. 97/2021 and Ex/CRL No. 346/2023, whereby the learned Family Court has been pleased to reject the petitioner's plea to 'adjust' an amount of Rs. 5,08,670/-, which the petitioner claims he had paid to his elder son, against the amount of maintenance directed to be paid by that court.

2. Though the present petition has been filed under the provisions of the Cr.P.C., in the opinion of this court, on a plain but meaningful reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "*disposed of, continued, held or made*" in accordance with the Cr.P.C. *only* in cases where ***such proceedings***, viz. "*any appeal, application, trial, inquiry or*



investigation”, were already ***pending*** immediately before the date on which the BNSS came into force, *i.e.* 01.07.2024. It appears therefore, that while inserting the repeal and savings provision in section 531 of the BNSS, the intention of Parliament was to not disrupt on-going proceedings; and to therefore not change the governing law during the pendency of such proceedings.

3. Since the present petition is a fresh proceeding and has been *filed after 01.07.2024*, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 528 of the BNSS.
4. Briefly, the genesis of the matter is order dated 06.01.2021 made by the learned Principal Judge, Family Courts, Karkardooma Courts, Delhi in case M.T. No. 38/19 on application under section 126 of the Code of Criminal Procedure 1973, in which order the learned Family Court had been pleased to direct as follows :

*“In these circumstances, I direct the respondent to pay interim maintenance to the petitioners at the rate of Rs.25,000/- per month. Since the petitioner is availing the service of legal aid, she is not entitled for litigation expenses. The respondent shall pay the maintenance from the filing of the application. The respondent shall start paying the regular maintenance from January 2021. The arrears of maintenance shall be paid through bank draft/ directly in the account of the petitioner. The arrears shall be cleared within six months in six monthly instalments. The monthly maintenance and arrears of maintenance shall be transferred directly in the account of the petitioner no.1 between 1st to 10th day of every month. The maintenance already paid by the respondent to the petitioner, if any, in this case as well as before any other court, shall be adjusted. **The application of interim maintenance is disposed of accordingly. The***



opinion expressed herein shall not tantamount to expression of opinion on the merits of the case.”

*(underscoring supplied;
bold in original)*

5. Ms. Prachi Gupta, learned counsel appearing for the petitioner submits however, that during the period 2018-2020, even prior to the passing of order dated 06.01.2021, the petitioner had voluntarily paid the sum of Rs. 5,08,670/- towards the expenses of his family, which sum was remitted into the account of the petitioner's elder son Mr. Akshay Pandita, which sum is liable to be adjusted against the interim maintenance and arrears of interim maintenance of Rs. 25,000/- per month awarded by the learned Family Court.
6. Upon being queried, learned counsel for the petitioner submits, that the reason the petitioner had not remitted the said sum of Rs.5,08,670/- to the account of his wife/respondent No.1 but to the account of his son was because there were some technical issues with his wife's account, and therefore, the remittances were made to the account of the elder son, till the time that his wife opened a new bank account, into which the subsequent payments of maintenance were made.
7. Counsel submits that the petitioner was an Assistant Sub-Inspector with the Jammu & Kashmir Armed Forces and has since retired from service.
8. Upon a consideration of the record, this court is of the view that any sum of money that may have been paid by the petitioner to his wife or to his son or to any other member of the family *prior* to the direction



contained in order dated 06.01.2021 cannot be considered as money paid towards interim maintenance in the proceedings bearing MT No.38/2019. Accordingly, the direction of the learned Family Court that the “*maintenance already paid by the respondent to the petitioner, if any, in this case as well as before any other court, shall be, adjusted*” was intended to cover *only* those sums of money that may have been paid by the petitioner towards maintenance under directions of a court of law, and not any other sums of money that the petitioner may have paid to his family prior to any such directions.

9. Furthermore, the direction contained in order dated 06.01.2021 is clear, namely that the monthly interim maintenance and arrears of maintenance were to be transferred "*directly in the account of the petitioner no.1*" i.e., respondent No. 1 herein and not to any other person or to any other account.
10. In the circumstances, the court does not find any error in order dated 06.06.2024 that would require interference by this court in exercise of its inherent powers under the section 528 of the BNSS.
11. The petition is accordingly dismissed *in-liminie*.
12. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 5, 2024/ak