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

+ **CRL.REV.P.(MAT.) 35/2025, CRL.M.A. 2069/2025, CRL.M.A. 2070/2025**

PRAKHAR

.....Petitioner

Through: Mr. Ripin Singh Bansal, Advocate.

versus

JYOTI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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23.01.2025

CRL.M.A. 2068/2025 (*seeking condonation of delay in filing petition*)

1. For the grounds and reasons stated in the application, the same is allowed. Delay in filing the petition is condoned.

2. Disposed of.

CRL.REV.P.(MAT.) 35/2025

3. The present petition has been filed under Section 438 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, impugning judgment dated 22nd November, 2023², passed by the ASJ-03 (East), Karkardooma Courts, Delhi,³ in Criminal Appeal No. 41/2023.

4. The brief facts leading to the filing of the present petition are as follows:

¹ "BNSS"

² "the impugned judgment"

³ "the Appellate Court"



4.1. On 23rd November, 2016, Petitioner and the Respondent got married as per Hindu rites and ceremonies. On 5th December, 2017, the Respondent filed a Complaint Case bearing CC Case No. 4226/2017 under Section 12 read with Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005⁴, before the MM (Mahila Court)-01, East District, Karkardooma Courts, New Delhi⁵, against the Petitioner and his family members.

4.2. During the subsistence of the proceedings before the Trial Court, an application was filed by the Respondent under Section 23 of the PWDV Act, seeking interim maintenance. However, since the Petitioner was not present, he was proceeded against *ex-parte* and the application was decided on 17th February, 2020.

4.3. On 8th February, 2021, the Petitioner moved an application before the Trial Court seeking recall of the Trial Court's order dated 17th February, 2020. However, on 17th March, 2021, the Petitioner failed to appear before the Court again, leading to the dismissal of his recall application, and consequently, an *ex-parte* judgment was passed in the matter on 27th September, 2021, whereby the Trial Court, *inter alia*, granted maintenance amount totalling to INR 30,000/- payable by the Petitioner to the Respondent each month. Of the said amount, INR 20,000/- were directed to be paid from the date of filing of the maintenance petition and INR 10,000/- were to be paid as rent from the date of the Trial Court's judgment till further orders, if any.

4.4. Aggrieved by the aforesaid judgment of the Trial Court, the Petitioner

⁴ "the PWDV Act"

⁵ "the Trial Court"



preferred Criminal Appeal No. 41/2023, before the Appellate Court. The Appellate Court, after hearing both the parties, passed the impugned judgment and remanded the matter to the Trial Court for re-consideration and proceed with the matter as existed on 17th February, 2020. However, as an ad-interim measure, the Appellate Court directed the Petitioner to pay ‘ad-interim’ maintenance amounting to INR 10,000/- per month from the date of filing of the petition till the date of disposal of the application for interim maintenance under Section 23(2) of the PWDV Act. The final directions issued in the impugned order reads as under:

“FINAL ORDER:

14. *In view of the above observations, the Criminal Appeal is allowed in the following terms:-*

(a) *The application under Section 5 of the Limitation Act is allowed subject to cost of Rs.10,000/-, to be paid by the appellant/husband to the complainant/wife on or before NDOH i.e. 19.12.2023 before the Ld. Trial Court. The appellant/ husband is also directed to pay the costs, which was imposed vide order dated 25.09.2019 by the Ld. Trial Court, on or before 19.12.2023 before the Ld. Trial Court. In case, the aforesaid payments are not made by the appellant/ husband to the complainant/ wife on or before 19.12.2023, then, the present appeal is deemed to be dismissed.*

(b) *Subject to fulfillment of para-14(a) above, the matter is remanded back to Ld. Trial Court and the Ld. Trial Court will proceed with the matter, as existed on 17.02.2020. As an ad-interim maintenance, the appellant/ husband is directed to pay a sum of Rs.10,000/- per month to the respondent/ complainant, from the date of filing of the petition, till the date of decision of the application under Section 23(2) PWDV Act, which was pending on the date of hearing of 17.02.2020. After passing an order in the said application by the Ld. Trial Court, the said order will be operative, however, the aggrieved party may challenge the same, in accordance with law. The appellant/husband is directed to clear the arrears within two months from today and the appellant/husband is directed to pay the further maintenance amount on monthly basis from December, 2023 and i.e. on or before 15th day of each English calendar month either directly to the wife/complainant or in her bank account, which may be provided by her in Ld. Trial Court. However, it is made clear that the appellant/ husband will continue to pay/deposit the ad-interim maintenance amount to the respondent/ complainant, as per the aforesaid directions.*



(c) Parties are directed to file affidavits of income, assets and expenditure, as per the directions passed by Hon'ble Apex Court in Civil Appeal No.730/2020 titled as Rajneesh Vs. Neha decided on 04.11.2020, before Ld. Trial Court on or before 19.12.2023 and no adjournment shall be granted to any of the parties on any ground, whatsoever, for filing the said affidavits.

(d) The husband/appellant is directed to pursue his matter before the Ld. Trial Court diligently and promptly, failing which, the Ld. Trial Court will pass an appropriate order in accordance with law.

(e) Nothing in this judgment shall tantamount to expression on the merits while deciding the application under Section 23(2) of the PWDV Act and also on the main petition under Section 12 of the PWDV Act. Ld. Trial Court will pass the orders on the aforesaid application and petition uninfluenced by the present judgment.

(f) The parties shall bear their own respective costs.

(g) A copy of this judgment be placed in TCR and be sent to Ld. Trial Court immediately.

Appeal file be consigned to Record Room after due compliance."

4.5. The aforementioned judgment of the Appellate Court dated 27th September, 2021, is challenged by way of the present revision petition.

4.6. Meanwhile, the Respondent preferred an Execution Petition bearing No. CrI/141/2022. Accordingly, by an order dated 28th February, 2023, the Petitioner was ordered to be taken into judicial custody. Again, on 18th October, 2024, the Petitioner was directed to be taken into judicial custody and remanded to civil imprisonment. In these proceedings, the Petitioner secured bail on 22nd November, 2024.

5. In this backdrop, counsel for the Petitioner has advanced the following:

5.1. The Appellate Court had decided the amount without considering his income affidavit dated 25th November, 2019, which reflect that he is only a 10th pass and holds only an ITI qualification. Further, the said Affidavit also indicated that he was working as a helper to a technician, earning merely



INR 4,000/- to INR 7,000/- per month and had a monthly expenditure of INR 3,200/-. Even as per his fresh income affidavit dated 11th March, 2024, he is shown to be working as a seasonal labourer and he earns INR 7,000/- to INR 8,000/- and has a monthly expenditure of INR 6,950/-. Thus, the Petitioner does not have the capacity to pay even INR 10,000/- per month, as directed by the Appellate Court.

5.2. The Petitioner is a resident of Uttar Pradesh, and in the absence of any income, even if the Court presumes his income under the relevant provision of Minimum Wages Act for an unskilled labour, then the Petitioner's income amount to INR 10,000/-.

5.3. In the proceedings before the Trial Court, on account of Petitioner's inability to make payment of the maintenance amount, he has already been sent to judicial custody twice, with the recent period of custody being from 18th October, 2024 to 22nd November, 2024.

5.4. The Respondent has been misusing the process of law with the sole intention of harassing the Petitioner and extracting money from him. Additionally, the Respondent has not filed her Income Affidavit, as directed by the Appellate Court, even after regular reminders and therefore, delaying the proceedings before the Trial Court. The Respondent did not produce any evidence on record to show that the Petitioner was earning a sum of INR 45,000/- per month, therefore, the imposition of the ad-interim maintenance amount is unjustified and contrary to law.

6. The Court has considered the afore-noted contentions. At the outset, it must be noted that the Appellate Court has only fixed an ad-interim maintenance, which is to apply till the time the Trial Court decides the application under Section 23(2) of the PWDV Act. Thus, there is no finality



on the issue of maintenance and the Petitioner will have adequate opportunity to present his case before the Trial Court.

7. Notably, the Appellate Court had passed the order on 22nd November, 2023, and till date, the Petitioner has admittedly paid only an amount of INR 18,000/- and has not cleared the arrear till date. The facts of the case clearly indicate that the Petitioner has been negligent in pursuing his legal remedies and failed to participate before the Trial Court and is unnecessarily delaying the proceedings. In view of the foregoing, this Court is not inclined to entertain the present revision petition.

8. However, the Court has perused the Trial Court's order dated 22nd November, 2024, wherein counsel for Respondent had sought more time to file her Income Affidavits, Bank Account Statements and ITR, on the ground that she had to undergo a surgery, thus, as noted above, the ad-interim maintenance order of the Appellate Court is continuing to operate.

9. Accordingly, the petition is disposed of with a direction that the Trial Court shall render a decision on the issue of maintenance to be awarded to the Respondent, if any, at the earliest.

10. With the above direction, the present petition is dismissed, along with any pending applications.

SANJEEV NARULA, J

JANUARY 23, 2025

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