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

+ **CRL.REV.P. 743/2019**

PAWAN KUMAR

.....Petitioner

Through: Mr. Varun Kumar, Advocate

versus

NEETU & ANR.

.....Respondents

Through: Ms. Astha, Advocate (DHCLSC) with
Ms. Megha Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

17.03.2025

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1. The present petition is directed against the order dated 24th May, 2019 passed by Additional Sessions Judge (West), Tis Hazari Courts, Delhi in Criminal Appeal No. 158/2018. By way of the impugned order, the appeals preferred by the Petitioner as well as the Respondent No. 1 under Section 29 of the Protection of Women from Domestic Violence Act, 2005¹, have been dismissed.

2. The said appeals were preferred by both sides against an order dated 20th July, 2018, passed by Metropolitan Magistrate in Case No. 680/2017, whereby interim maintenance of INR 9,750/- per month was granted to Respondent No. 1 – i.e., wife of the Petitioner and Respondent No. 2 - the minor daughter of the Petitioner and Respondent No. 1. While the Respondents preferred an appeal against the order granting interim maintenance, seeking enhancement of the said maintenance amount, the

¹ “DV Act”



Petitioner preferred an appeal seeking reduction of the said maintenance amount. As noted above, both of the said cross appeals were dismissed by the impugned order.

3. Briefly stated, the germane facts of the case are as follows:

3.1 The Petitioner and Respondent No. 1 got married on 28th January, 2016 and from this marriage, they have a daughter - Respondent No. 2. The marriage did not survive for long and about one year later, both the parties separated.

3.2 On 2nd November, 2017, Respondent No. 1 filed a complaint under Section 12 of the DV Act, against the Petitioner and his family members levelling allegations of domestic violence. Respondent No. 1 also filed an application under Section 20 of the DV Act seeking interim maintenance.

3.3 The Petitioner denied the allegations of the Respondent No. 1 and contended that she is not entitled to maintenance as she is gainfully employed, well-educated and competent to earn.

3.4 On consideration of the pleadings and contentions of both sides, *vide* order dated 20th July, 2018, the Metropolitan Magistrate made a *prima facie* assessment of the incomes and expenditure of the parties and granted interim maintenance of INR 9750/- to each of the Respondents.

3.5 Both the parties assailed the aforementioned order by way of cross appeals, which have been adjudicated by the ASJ *vide* the impugned order dated 24th May, 2019, whereby the decision of the Metropolitan Magistrate stands confirmed.

4. Aggrieved by the aforenoted decision, counsel for the Petitioner assails the impugned order dated 24th May, 2019, contending that both the Courts have taken an erroneous approach and have failed to appreciate the



legal principles relating to award of maintenance. He submits that Respondent No. 1 did not fulfil any of her marital obligations and duties and as such, she cannot claim any rights as his spouse. He further contends that Respondent No. 1 has failed to establish a *prima facie* case of domestic violence against the Petitioner and his family.

5. The Petitioner's main contention *qua* the award of interim maintenance is that the same is grossly unreasonable as the Trial Court has failed to appreciate the fact that the Petitioner also has an obligation of paying an EMI for repayment of a home loan which was taken by him prior to the marriage. He claims that these monthly instalments are directly deducted from his salary account and therefore, if he is also constrained to pay the maintenance amount of INR 9750/- each to the Respondents, he would not have any money left for himself.

6. The Court has considered the aforementioned contentions but remains unpersuaded. At the outset, it must be emphasised that the impugned order only pertains to award of interim maintenance. Thus, the scope of interference at this stage is limited to examining whether the interim relief granted by the Court suffers from any patent illegality or material irregularity.

7. In the instant case, the Petitioner is a Government Employee with ESI Hospital and his salary has been assessed on the basis of his salary record which reflected that the Petitioner is earning a gross income of Rs. 50,865/- per month and after deductions, his income in hand is Rs. 39,007/- per month. On the other hand, Respondent No. 1 is not employed and is currently living with her mother, who is bearing all her expenses. In this regard, even though the Petitioner has argued that Respondent No. 1 is an



educated woman who is gainfully employed and earns INR 50,000/- per month, he has not produced any credible material to substantiate this allegation. It is well settled that a wife cannot be denied maintenance merely because she is educated or was previously employed².

8. As regards the contention that the Trial Court has not adjusted the EMI payments on the Petitioner's purported home loan, it is noted that no documentary evidence was adduced by the Petitioner to substantiate his claim of having taken a home loan. Therefore, even though there is no discussion on the aspect of EMI being paid by the Petitioner, the Trial Court considered the gross income of the Petitioner and adjusted the usual deductions to arrive at the conclusion that the total income of the family available for disbursement is approximately INR 39,000/-. This amount was then divided into 4 equal parts of INR 9,750/- each between the Petitioner, Respondent No. 1 and Respondent No. 2, after keeping aside one extra portion for the Petitioner on account of him being the earning member of the family, as per the decision of the Supreme Court in *Annurita Vohra Vs. Sandeep Vohra*³. Thus, in the opinion of the Court, in absence of any documentary proof of the home loan, the Trial Court has rightly held that the income available for disbursement was INR 39,000/-, which was divided amongst the parties.

9. It is also important to note that Respondent No. 2 is a minor who at the time of the impugned order was aged about 2 ½ years. Therefore, considering the needs of the Respondents which includes the expenses towards their food, clothing, shelter, medicine, education, rent, etc., in the

² *Rajesh v. Neha & Anr.*, (2021) 2 SCC 324

³ 2004 SCC Online Del 192



opinion of the Court, the award of interim maintenance is reasonable and calls for no interference.

10. Accordingly, the Court finds no merits in the present petition.

11. Dismissed.

SANJEEV NARULA, J

MARCH 17, 2025/ab