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

+ **CRL.REV.P. 1348/2023**

JYOTIKA

.....Petitioner

Through: Mr. Manoj Kumar,
Advocate.

versus

THE STATE & ANR.

.....Respondents

Through: Mr. Raj Kumar, APP for
the State with PSI Ritika,
PS KN Katju Marg.
Mr. Ankit Rai, Advocate
for R-2 (through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.11.2025**

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') against order dated 22.08.2023 passed in Criminal Appeal No. 92/2023 under Section 29 of the Protection of Women from Domestic Violence Act ('DV Act') passed by the learned Sessions Court.

2. Briefly stated, the marriage between the petitioner and Respondent No.2 was solemnized on 29.04.2015. The relationship between the petitioner and Respondent No.2 became strained and thereafter, the petitioner filed an application under Section 12 of the DV Act before the learned Magistrate. In the said complaint case the learned Magistrate passed an order dated 12.10.2022, directing Respondent No.2 to pay interim maintenance of Rs.9000/- per month to the petitioner for maintenance of the minor



child and Rs.6000/- towards the rental accommodation of the petitioner, from the date of filing of the said application that is 04.09.2021.

3. However, thereafter the petitioner filed an application for amendment of the interim order, praying to amend the filing date as 31.03.2021 instead of 04.09.2021 as a complaint vide filing no. 7962/2021, had already been filed on 31.03.2021, in North-West District, inadvertently, by the counsel of the petitioner. The said application was allowed by the learned Magistrate *vide* order dated 27.03.2023, allowing maintenance to the petitioner from the date of 31.03.2021.

4. Aggrieved by this order Respondent No.2 filed an appeal before the learned Sessions Court. The learned Sessions Court *vide* order dated 22.08.2023 modified the order dated 27.03.2023 observing that the grant of interim maintenance should be from the date of filing of the application that is 04.09.2021.

5. The learned Sessions Court observed that the petitioner had initially, albeit inadvertently, instituted an application under the DV Act in the North-West District on 31.03.2021, but subsequently withdrew the same. It was further noted that the withdrawal of an application necessarily brings the said proceedings to an end.

6. The Court noted that upon such withdrawal, liberty was granted to file a fresh application on the same cause of action; consequently, the application filed before the learned Trial Court on 04.09.2021 was, for all intents and purposes, a fresh application and not a continuation of the earlier one.

7. The learned Sessions Court further observed that relief can



be granted only when a party approaches the Court seeking redressal of his or her grievance, and in the present case, the petitioner effectively approached the Court with the correct application only on 04.09.2021, the earlier application having been withdrawn.

8. The learned counsel for the petitioner submits that the petitioner initially inadvertently filed the application under Section 12 of the DV Act at the North-West district. He submits that the application was listed before the learned magistrate and report of the protection officer was called. He submits that during the enquiry the protection officer informed the learned magistrate that as per the address of the petitioner, the learned magistrate had no jurisdiction.

9. He submits that the petitioner thereafter filed an application for transfer of the case to the appropriate jurisdiction, however, the learned magistrate refused to transfer the application as the courts were only working through video conferencing and very limited court staff was present due to Covid-19.

10. He submits that the learned magistrate suggested withdrawing the application and to refile the same at the appropriate jurisdiction. He submits that the petitioner withdrew the original application and immediately filed a fresh application before the appropriate court on 04.09.2021.

11. He submits that the technicality of filing and listing the application is just to regulate the administrative work and substantial justice should prevail over the said technicality.

12. Per contra, the learned counsel for the respondent vehemently opposes the arguments as raised by the learned



counsel for the petitioner and consequently prays that the present petition be dismissed.

13. He submits that the order dated 22.08.2023 is perfectly justified, warranted, rational, legal and reasonable and justified.

14. He submits that the petitioner was under a legal obligation and responsibility to make reasonable enquiry, to verify as to in which jurisdiction, the application under Section 12 of the DV Act, was to be filed, and they had ample opportunity, to make verification from the facilitation centre, to know about the police station. The petitioner cannot be permitted to take advantage of her own wrong.

15. I have heard the counsel and perused the record.

16. It is trite law that that maintenance awarded to the wife shall be awarded from the date of filing of the application before the concerned court. The Hon'ble Apex Court in the case of **Rajnesh v. Neha: (2021) 2 SCC 324** held as under:

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

*112. In **Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51]** , the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held : (SCC p. 196, para 13)*



“13.3. ... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.”

(emphasis supplied)

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

(emphasis supplied)

17. The petitioner wife had initially inadvertently filed an application under Section 12 of the DV Act before the learned Magistrate, North West Direct, even though the said court did not have appropriate jurisdiction to decide the case. Subsequently, the petitioner filed an application before the learned Magistrate, North West District for transferring the case to a court with appropriate jurisdiction.

18. It is pointed out that due to the restrictions upon the court



on account of the Covid-19 pandemic, the matter could not be transferred due to technical difficulties and the petitioner had no option but to withdraw the said application and file a fresh application before the court with appropriate jurisdiction.

19. The law is clear on the said aspect that the wife is entitled to maintenance from the date of filing the petition before the concerned court. Concededly, the petitioner had filed an application under Section 12 of the DV Act before a court which did not have appropriate jurisdiction and withdrew the same. The application under Section 12 of the DV Act was filed before the concerned court only on 04.09.2021.

20. The learned Sessions Court has rightly pointed out that once an application is withdrawn, it necessarily brings the proceedings to an end. The fresh application under Section 12 of the DV Act filed before the concerned court cannot be held to be in continuation of a previously withdrawn application before another court. There exists no apparent infirmity in the order dated 22.08.2023 passed by the learned Sessions Court.

21. However, this Court cannot lose sight of the fact that the DV Act is a welfare legislation with the objective of providing civil remedies to protect women from physical, emotional, economic, and other forms of domestic abuse.

22. The rationale for directing payment of maintenance from the date of the application is to enable the wife to tide over the financial hardship resulting from her separation from the husband. [Ref : **Rajnish v. Neha (supra)**].

23. In the present case, the petitioner wife filed an application under Section 12 of the DV Act on 31.03.2021 before the learned



magistrate, although the same could not proceed due to lack of jurisdiction, it still does indicate that the petitioner wife was separated from her husband and in need of maintenance. Admittedly, the court of appropriate jurisdiction did find the petitioner entitled to interim maintenance and granted the same vide order dated 12.10.2022. It can be fairly assumed that if the petitioner had at the first instance filed an application in the correct jurisdiction, she would have been entitled to maintenance from 31.03.2021.

24. It is pertinent to note that the petitioner had also taken steps to cure the same error by filing a transfer petition, the same was only not fruitful due to the restrictions of Covid 19. The petitioner seeking speedy disposal and grant of maintenance could not wait out the time it would have taken to transfer the matter to the appropriate court and instead opted to withdraw the same to file afresh in the appropriate court. The DV Act is a welfare legislation and maintenance under the Act is provided to the wife so as to prevent destitution.

25. The provisions under the DV Act are enacted for the welfare of women at large. Technical considerations should not deprive the rights of women without any substantial fault of their own.

26. Even though, there is no infirmity in the impugned order, as the learned Magistrate was not empowered to award maintenance from a date preceding the date on which the application under Section 12 of the DV Act was filed before the competent court, no such limitation operates upon this Court, which is duly empowered under Section 482 CrPC to pass appropriate orders to secure the ends of justice.



27. In the facts of the present case and considering that the DV Act is a welfare legislation, this court finds it apposite to exercise its discretionary jurisdiction under Section 482 of the CrPC in the interest of justice and award the petitioner interim maintenance from the date of 31.03.2021.

28. In view of the above, the impugned order dated 22.08.2023 is set aside and the order dated 27.03.2023 passed by the learned Magistrate is restored. However, considering the peculiar facts of the case, Respondent No. 2 is permitted to pay the arrears within a period of twelve weeks.

29. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 14, 2025

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