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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 567/2019**

NIHARIKA GHOSH @ NIHARIKA KUNDU Petitioner

Through: Petitioner in person.

versus

STATE & ANR Respondents

Through: Mr. Hitesh Vali, APP for State.
Ms. Inkle Roy, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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21.09.2023

1. The present petition under Section 401 read with Section 482 of the CrPC seeks the following reliefs:

“(i)Call for the record of CC No.476458/2016 pending in the court of Ms. Swati Gupta, Ld. MM-03, Mahila Court, South District, Saket Court and Crl. Appeal No.468/2018, decided by Dr. Rakesh Kumar, Ld. ASJ, South District, Saket Court, New Delhi on 2.2.2019.

(ii) Set aside the order of Dr. Rakesh Kumar, Ld. ASJ, South District, Saket Court, New Delhi dated 2.2.2019 in Criminal Appeal No.468/2018 and the order of Ms. Niti Phutela, Ld. MM-03, Mahila Court, South Distiiect, Saket Courts, New Delhi dated 14.11.2018 in CC No. 476458/2016; and

III. Remand the matter to the court of Ms. Swati Gupta, Ld. MM-03, Mahila Court, South District, New Delhi for fresh adjudication of the application of the Revisionist for grant of interim maintenance on merits;

IV. Fix adequate interim maintenance for the revisionist;

V. Any other or further relief/order as this Hon'ble Court pleases may kindly be passed in favour of the Revisionist and against the respondent no. 2.”

2. The present petition has been filed against order dated 02.02.2019, passed by the learned Additional Special Judge, Saket Courts, New Delhi, in



Criminal Appeal No. 468/2018, whereby an appeal filed by the present petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005, ('DV Act') against the order dated 14.11.2018, passed by the learned Metropolitan Magistrate-03 (Mahila Court), Saket, New Delhi, in Criminal Complaint no. 476458/2016, titled 'Niharika Ghosh v. Shankar Ghosh & others', was dismissed.

3. The present petitioner had filed an application under Section 12 of the DV Act before the learned Metropolitan Magistrate seeking a protection order against the present respondent alongwith an application under Section 23 DV Act of the for grant of interim maintenance. The learned Metropolitan Magistrate, on 14.11.2018, after considering the 'Domestic Incident Report' and other documents, dismissed the aforesaid application for interim maintenance. The petitioner challenged the said order before the learned Additional Session Judge in appeal under Section 29 of the DV Act, which was dismissed *vide* the impugned order dated 02.02.2019.

4. The learned Additional Session Judge, in the impugned order dated 02.02.2019, noted as under:

“9. As already observed, vide the impugned order, the learned Magistrate dismissed the application of interim maintenance of appellant.

10. The main contention raised by counsel for the aggrieved to challenge the impugned order is that the learned Magistrate has dismissed the application under section 23 of the D.V. Act only on the ground of the dismissal of application under section 24 of the HM Act by a Superior Court i.e. the Family Court.

11. The said contention raised by counsel for the aggrieved is not sustainable. A perusal of impugned order reveals that it is detailed and reasoned order. The learned Magistrate has, while passing the impugned order, also considered other factors. While passing the impugned order, the learned Magistrate has also considered educational qualification of the aggrieved and CDs placed on record by the



respondent.

12. Another contention raised by the counsel for the aggrieved is that the aggrieved is not working for gain with Sh. Udit Raj, Member of Parliament and she is not getting any salary. However, it is not been specifically denied by counsel for the aggrieved that the aggrieved is visiting such office and working there.

13. It has also been admitted by the counsel for the aggrieved that the aggrieved has worked as Accountant in Jewellery shop till 22.05.2015 and thereafter she left the job.

14. During the course of arguments, counsel for the aggrieved has admitted that educational qualification of aggrieved is M. A. (Pol. Science), MBA and Ph.D. (Management).

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16. It is noteworthy that by way of impugned order the learned Magistrate has dismissed the application for interim maintenance. Once the contention raised by the aggrieved person has been denied by the respondent, therefore, it becomes a matter of evidence and both the parties may prove their contentions at that time. The learned Magistrate has also after considering the material available on record rightly dismissed the application of the aggrieved/appellant for grant interim maintenance.”

5. The present petition has been filed raising similar contentions that were raised before the learned Additional Session Judge.

6. Learned counsel appearing on behalf of the respondents draws the attention of this Court to a judgment dated 12.09.2023, passed by learned Division Bench of this Court in MAT.APP.(F.C.) 248/2019, whereby an appeal filed by the present petitioner against an order dated 03.09.2019, passed by the learned Principal judge, Family Courts, dismissing an application for maintenance under Section 24 of the Hindu Marriage Act, 1955, was dismissed.

7. The learned Division Bench of this Court, while dismissing the aforesaid appeal recorded as under:-



“6. It is not in dispute that the appellant was M. Phil at the time of her marriage and was pursuing Ph.D which she has completed and is now having the qualification of Ph.D (Management) with professional qualification in Computers. While on the other hand the respondent is a simple graduate. It is also not denied that appellant was working at the time of her marriage at a Diamond Jewellery Showroom and was getting Rs.12,000/- per month. She had left her job since she was unable to attend her office since 22.05.2015.

7. From the submissions it is evident that not only is the appellant highly qualified but had been working even at the time of her marriage.

8. The second aspect of significance is that the respondent had claimed that the appellant is working in the office of M.P. Udit Raj in Connaught Place and her claim that she is unemployed, is incorrect. In support of his assertions he had relied upon a CD showing the appellant working in the office of Mr. Udit Raj and also marking her attendance in the Register. The appellant who had initially taken a stand that she was not working, when confronted with this CD, gave an explanation that she has a friend working in the office of Mr. Udit Raj and at times when she goes to visit her friend, she also looks after the office work.

9. The learned Principal Judge, Family Court has rightly observed that the appellant had initially failed to disclose that she was working even if not regularly or for charity as claimed by her. She had failed to disclose any of these facts and was compelled to do so after the filing of the application under Section 151 CPC and the CD. It was also observed by learned Principal Judge, Family Court that it is difficult to accept that a person who is so highly qualified would not be working and it is even more difficult to accept that she would be working for charity.

10. We on the facts as narrated above, agree with the conclusions of the learned Principal Judge, Family Courts that the appellant not only is a highly qualified lady, but has been working even at the time of her marriage and thereafter. The documents and the admissions made by the appellant clearly lead to an irresistible conclusion that she is employed in the office of the M.P. It is no doubt that merely because a person is qualified she must be compelled to work, but here is a case where in addition to be qualified, the appellant has been working. There is no doubt a difference between “capacity” and “actual earning”, but here it is not a case where appellant had only the capacity but the document on record clearly point out that she has also been working.

11. Similar facts as in hand were considered in the case of Mamta Jaiswal vs. Rajesh Jaiswal 2000 (3) MPLJ 100 to observed that Section



24 has been enacted for the purpose of providing a monetary assistance to either spouse who is incapable of supporting himself or herself in spite of sincere efforts. However, the law does not expect persons engaged in the legal battles to remain idle solely with the objective of squeezing out money from the opposite party. Section 24 of HMA is not meant to create an Army of idle people waiting for a dole to be awarded by the other spouse. In the said case finding that the lady was very well qualified, declined to grant any maintenance.

12. Likewise, in the case of *Rupali Gupta vs. Rajat Gupta 2016* (234) DLT 693, Division Bench of this Court deprecated the claim of maintenance under Section 24 of HMA by a well qualified spouse having an earning capacity.

13. We find that in the present case it is not only that the appellant is highly qualified and has an earning capacity, but in fact she has been earning, though has not been inclined to truthfully disclose her true income. Such a person cannot be held entitled to maintenance. Pertinently, the claim for maintenance by the appellant under the provisions of Protection of Women against Domestic Violence Act has also met the same fate and the maintenance has been declined to her. We, therefore, find no merit in the Appeal which is hereby dismissed.”

8. In view of the aforesaid observations, and after examining the impugned order dated 02.02.2019, this Court is of the opinion that the case of the petitioner in the present petition is similar to the contentions raised in the aforesaid MAT.APP.(F.C.) 248/2019.

9. In view of the above, the present petition is dismissed and disposed of accordingly.

10. Pending applications, if any, also stands disposed of.

AMIT SHARMA, J

SEPTEMBER 21, 2023/nk