

\$~20

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

%

Judgment delivered on: 17.05.2019

+ CRL.REV.P. 579/2017 & CrI.M.A.12671/2017 (stay)

VIKAS BHUTANI

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Prateek Chaturvedi, Advocate

For the Respondents : Mr. Hirein Sharma, AFP for the State.

Mr. Nishant Solanki, Advocate for R-2

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

17.05.2019

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.05.2017 whereby interim maintenance has been assessed by the Trial Court. On an application filed the respondent under Section 12 of The Protection of Women from Domestic Violence Act, 2005, an amount of Rs.40,000/- has been fixed as interim maintenance.

2. Learned counsel for the petitioner submits that the Trial Court has erred in not appreciating that the respondent had already filed an

application under Section 125 Cr.P.C and interim maintenance of Rs.15,000/- was assessed in the said application and petitioner had continued to pay the said amount of Rs.15,000/- per month.

3. It is informed that the said application under Section 125 Cr.P.C has since been withdrawn.

4. Learned counsel submits that the Trial Court further erred in relating back the maintenance to the date of the application and not restricting it to the date of order as respondent is already receiving maintenance of Rs.15,000/- under orders passed in an application under Section 125 Cr.P.C. The quantum assessed by the trial court has not been assailed on merits.

5. The only contention of learned counsel for the petitioner is that since the respondent was already receiving a sum of Rs.15,000/-, the order should not have related back to the date of the application but should have been from the date of the order.

6. Learned counsel for the respondent submits that even the amount of Rs. 15,000/- has not been fully paid.

7. I am unable to accept the contention of the learned counsel for the petitioner.

8. I am unable to accept the contention of the learned counsel for the petitioner. One has to look at the nature of the maintenance awarded.

9. The object of grant of maintenance is to afford a subsistence allowance to the wife, who is not able to maintain herself, then the award normally should be from the date of the application. For the court to award maintenance from the date of the order there have to be compelling circumstances for the court to take such a view. Maintenance awarded to a wife is not a bounty. It is awarded to her so that she can survive. The fact that time is spent between the date of the application and a final adjudication and an award in favour of the wife, does not mean that she had enough funds to maintain herself. When the trial court comes to conclusion after trial that the wife is entitled to an amount of maintenance the assessment in fact relates back to the date of the application. When the assessment relates back to the date of the application then there have to be compelling circumstances for the trial court to restrict the award of maintenance to a period post the date of the order.

10. This court in *Rekha Sabharwal & Anr. Vs Jitender Sabharwal 2018 SCC OnLine Del 12448; Crl.M.C.3647 of 2014* has been held that the maintenance is to relate back to the date of the application and not from the date of the order.

11. A coordinate bench of this court in *Bimla Devi Vs Shamsher Singh (2015) 224 DLT (CN8) 8* held that “Maintenance is a right which accrues to a wife against her husband since the inception of her getting married with him. A moral and legal obligation and duty is cast upon the husband to maintain his wife. The necessary corollary is

that from the time the wife starts residing separately from her husband, she can claim maintenance from him”.

12. The Supreme Court of India in *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 9 SCC 632 held that *“the High Court was not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order.*

13. Further, in *Jaiminiben Hirenghai Vyas & Anr vs Hirenghai Ramesh Chandra Vyas & Anr.* (2015) 2 SCC 385 the Supreme Court held that *“Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case”.*

14. Clearly, the maintenance is to be from the date of the

application. Further, as noticed above there is no challenge to the quantum of maintenance assessed by the trial court.

15. Accordingly, petitioner shall pay maintenance at the rate of Rs. 40,000/- per month from the date of filing of the application i.e. March, 2014. Petitioner would be entitled to an adjustment of the amount that petitioner has already paid in terms of the order passed in the application under Section 125 Cr.P.C. and the interim orders passed by this court.

16. In view of the above, I find no merit in the petition. The petition is accordingly dismissed. Interim order dated 08.08.2017 is vacated.

17. After the petition was dismissed, learned counsel for the petitioner prayed for some time to take instructions – as to in how much time petitioner would be in a position to clear the arrears.

18. At request, list for directions on 24.05.2019.

SANJEEV SACHDEVA, J

MAY 17, 2019

rk