
(2022) 05 DEL CK 0196

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 167, 810 Of 2020, Criminal Miscellaneous Application No. 706, 3323, 3324, 3325, 3326, 16497 Of 2020

Dhirender Chhaunkar

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Protection of Women from Domestic Violence Act, 2005 — Section 12, 29

Citation : (2022) 05 DEL CK 0196

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Kartikeya Rastogi, Kartikeya Rastogi, Sugam Puri

Judgement

Anu Malhotra, J

CRL.M.A.16497/2020, CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 in CRL.M.C. 810/2020

CRL.M.A.No.706/2020 in CRL.M.C. 167/2020

1. The petitioner, vide CRL.M.C. 810/2020 has sought the setting aside of the order dated 24.01.2020 of the Court of the learned Sessions Judge, Tis Hazari, West, Delhi in C.A. No. 328/19 whereby the appeal of the petitioner against the order of the learned MM dated 30.05.2017 was dismissed and sought remitting the matter for fresh disposal to the learned Sessions Court for re-consideration of the maintenance amount with further prayers to the effect that a monthly maintenance of Rs.3,125/- i.e., 1/4th of Rs.12,510/- i.e., the average monthly income of the petitioner calculated for the period of 01.01.2009 to 01.11.2019 be granted and that the proceedings in Ex. No. 111 of 2017, 112 of 2017, 318 of 2017, 297 of 2019 and Ct. No. 9045 of 2019 before the Court of the learned MM be stayed.

2. Along with the petition were also CRL.M.A. Nos.3323/2020, 3324/2020,

3325/2020, 3326/2020, vide which the prayers made were to the effect:-

"CRL.M.A. No.3323/2020

A. Stay all the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the present Petition.

CRL.M.A. No.3324/2020

A. Stay all the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, "West until the hearing and final disposal of the present Petition.

CRL.M.A. No.3325/2020

A. Stay all the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the present Petition.

CRL.M.A. No.3326/2020

A. Stay all the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the present Petition."

3. The petition i.e. CRL.M.C. 810/2020 and accompanying applications are dated 10.02.2020.

4. On 13.02.2020 qua CRL.M.C. 810/2020 in which CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020, it was directed as under:-

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.....

Subject to the deposit of a sum of Rs.50,000/- with the learned Trial Court in relation to the proceedings in Ex.No. 111/2017 in the Court of the Metropolitan Magistrate-01, West, Tis Hazari Courts, before the date 17.3.2020, the directions imposed vide the order dated 24.1.2020 by the learned Trial court in the said execution proceedings directing a payment of Rs.2,00,000/- on 17.3.2020 is stayed. The receipt of the deposit of the sum of Rs.50,000/- be placed on the record by the petitioner."

5. On 23.09.2020, the matter was taken up in view of CRL.M.A.13144/2020 filed on behalf of the respondent no.2 i.e. Neeru Sharma, the wife of the petitioner seeking a vacation of the stay of the execution proceedings bearing Ex. No.111/17 before the learned MM-01, West, THC, Delhi submitting to the effect that there had been a gross violation of the directions dated 13.2.2020 in as much as the petitioner had not deposited Rs.50,000/- as directed vide order dated 13.2.2020. There were further submissions made on behalf of the respondent No.2/applicant that the petitioner had misused the process of law in as much as the petitioner had also filed another Crl.M.C. No. 167/2020

submitting inter alia to the effect that the petition bearing No.167/2020 had virtually with verbatim similar prayers been filed by the petitioner and that there was no interim restraint granted in Crl.M.C. No. 167/2020 and that the proceedings in the said matter were then listed on 16.3.2020 and are now listed before the Roster Bench. Notice of the application is issued to the petitioner/non-applicant.

6. The petitioner of CRL.M.C. 810/2020 was represented by learned counsel for the petitioner on the date 23.09.2020. Vide order dated 23.09.2020, it was observed that before proceeding further, it was considered essential that the directions vide order dated 13.02.2020 for the deposit of Rs.50,000/- with the learned Metropolitan Magistrate-01, West, Tis Hazari Courts be complied with by the petitioner by the date 24.9.2020 with the copy of the receipt of deposit of the said sum being placed on record by the petitioner on or before the next date of hearing.

7. The response of the petitioner/ non-applicant to CRL.M.A.13144/2020 filed on behalf of the respondent no.2 was directed to be filed vide order dated 23.09.2022 before the date 30.09.2020 with the copy thereof being directed to be supplied to the counsel for the respondent no.2 and the matter was re-notified for hearing on CRL.M.A.13144/2020 for the date 30.09.2020.

8. The reply to CRL.M.A.13144/2020 filed by the respondent no.2 was submitted by the petitioner/ non-applicant with the copy of the Bankers' Cheque bearing No.038799 dated 18.09.2020 in favour of the respondent no.2 for a sum of Rs.50,000/- qua which it was submitted that the said sum had since been paid to the respondent no.2 which was not refuted on behalf of the respondent no.2 by her learned counsel present.

9. Vide order dated 30.09.2020 qua CRL.M.A.13144/2020, it was observed as under:-

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.....

It was submitted on behalf of the respondent no.2 that the petitioner had misused the process of law, in as much as, the petitioner had filed another petition i.e. CRL.M.C.167/2020 with it having been submitted inter alia on behalf of the respondent no.2 that the petition bearing CRL.M.C. No.167/2020 was virtually having similar prayers made by the petitioner and there was no interim restraint that had been granted in CRL.M.C.167/2020 and that the proceedings in that petition were listed for the date 16.03.2020 and were thereafter re-notified before the Roster Bench, in as much as, the order dated 13.02.2020 directing the petitioner to deposit a sum of Rs.50,000/- in the Court of the learned Metropolitan Magistrate-01 had not complied with, the petitioner was directed to comply with directions dated 13.02.2020 in the present petition with directions to place on record the copy of the receipt of the said sum of Rs.50,000/- that has

been submitted by the petitioner that the said sum has been paid which is also not refuted on behalf of the respondent no.2, placed on record along with the reply to CRL.M.A.13144/2020 which reply has been filed by the petitioner herein, is the copy of the Bankers Cheque bearing No.038799 dated 18.09.2020 in favour of the respondent no.2 for a sum of Rs.50,000/- qua which it has been submitted that the said sum has been paid to the respondent no.2 which is not refuted on behalf of the respondent no.2 by the learned counsel present.

The present petition has been filed by the petitioner assailing the impugned order dated 24.01.2020 of the learned ASJ-03 in CA No.328/2019 vide which an appeal filed by the petitioner herein against the order dated 30.05.2017 of the learned MM, West, THC, New Delhi vide which the petition under Section 12 of the Protection of Women from Domestic Violence was disposed of and interim maintenance of an amount of Rs.15,000/- per month was directed to be paid to the respondent no.2 to the present petition,- was confirmed, which appeal was dismissed vide order dated 24.01.2020 placed at Annexure P1 to the present petition which is the order impugned in the present petition. Vide the said order dated 24.01.2020, it was observed vide paragraph 5 thereof to the effect:-

"5. The present appeal has been preferred after undue delay of more than two years. No reasonable explanation has been offered by the appellant for the undue delay. The appeal is barred by limitation, whereas, it has no substance on merits. The present appeal is a misuse of process of law and the same is dismissed."

observing to the effect that that appeal i.e. CA No.328/2019 was barred by limitation and also had no substance on merits and was a misuse of the process of law and was dismissed.

The other prayers made vide the present petition are to the effect:-

".....

(B) Remitting the matter for fresh disposal to the Ld. Sessions Court for re-considering the maintenance amount.

(C) Granting the Respondent a monthly maintenance of Rs.3,125/- i.e., (1/4th of 12,510/- i.e., the average monthly income of the Petitioner) calculated for the period of 01.01.2009 to 01.11.2019.

(D) Stay the Execution proceedings in Ex. No.112 of 2017, 112 of 2017, 318 of 2017, 297 of 2019 and Ct. No.9045 of 2019 before the Court of Ld. MM Ms.Neetu Nagar (NDOH 17.03.2020)

(E) Pass any other order or direction which this Hon?ble Court may deem fit and proper in the best interest of justice."

The order dated 30.05.2017 of the learned MM, Mahila Court, THC, Delhi in CC No.93/1/12 qua petition under Section 12 of the Protection of Women from Domestic Violence Act placed at Annexure P4 to the present petition was the

order which had been assailed in CA No.328/2019 dismissed vide order dated 24.01.2020 which is the order assailed in the present petition i.e. CRL.M.C.810/2020. Vide this order i.e. order dated 30.05.2017 as already observed hereinabove as mentioned in the order dated 24.01.2020 of the learned ASJ-03, which is the order assailed in the present petition, it was observed to the effect that an interim order dated 04.08.2015 passed by the Sessions Court whereby the interim maintenance at the rate of Rs.15,000/- awarded to the petitioner with 10% increase every year,- was confirmed apart from declining relief of residence to the petitioner of the petition under Section 12 of the Protection of Women from Domestic Violence Act.

The order dated 04.08.2015 of the learned ASJ-05, West in CA No.14/15 was in relation to an appeal against order dated 03.01.2015 of the learned MM whereby interim monthly maintenance of Rs.9,000/- per month was granted to the respondent no.2 herein from the date of filing of the petition till further orders to be paid apparently by the present petitioner. The said CA No.14/15 was allowed partly with the order dated 03.01.2015 of the learned MM granting interim monthly maintenance of Rs.9,000/- per month being modified and being enhanced to Rs.15,000/- per month from the date of filing of the petition, which amount of interim maintenance of Rs.15,000/- as enhanced vide order dated 04.08.2015 in CA No.14/15, was confirmed vide order dated 30.05.2017 in CC No.93/1/12 in the petition under Section 12 of the Protection of Women from the Domestic Violence filed by the respondent no.2 with 10% increase every year.

The order dated 04.08.2015 of the learned ASJ-05, West in CA No.14/15 enhancing the interim maintenance of Rs.15,000/- as awarded to the respondent no.2 was assailed by the present petitioner in CRL.M.C.167/2020 in which the prayers made by the petitioner herein were to the effect:-

“(A) Setting aside Judgment dated 04.08.2015 passed by the Ld. Session Judge, Tis Hazari, West, Delhi whereby the maintenance of the Respondent was enhanced from Rs.9,000/- to Rs.15,000/-.

(B) Granting the Respondent a monthly maintenance of Rs.3,125/- i.e., (1/4th of 12,510/- i.e., the average monthly income of the Petitioner) calculated for the period of 01.01.2009 to 01.11.2019.

(C) Remitting the matter for fresh disposal to the Ld. Sessions Court for re-considering the maintenance amount.

(D) Stay the Execution proceedings in Ex. No.111 of 2017, 112 of 2017, 318 of 2017, 297 of 2019 and Ct. No.9045 of 2019 before the Court of Ld. MM Ms.Neetu Nagar (NDOH 16.01.2020)

(E) Any other order or direction which this Hon?ble Court may deem fit and proper also be passed in favour of the Petitioner.”

Apparently thus, the order dated 04.08.2015 in CA No.14/15 got merged in the proceedings dated 30.05.2017 in CC No.93/1/12 which order dated 30.05.2017

is what was assailed in CA No.328/2019 by the present petitioner which CA No.328/2019 was dismissed vide order dated 24.01.2020 of the learned ASJ-03, West against which the present petition was filed and it is essential to observe as rightly contended on behalf of the respondent no.2 that the prayer made seeking the stay of the execution proceedings in the Executing Court was not granted in CRL.M.C.167/2020, in as much as, notice of CRL.M.A.706/2020 had been issued vide order dated 15.01.2020, returnable for 16.03.2020 qua which learned counsel for the petitioner submits that the said prayer has not been declined and is presently pending consideration and that it could not only be taken up on the date fixed i.e. 15.01.2020 in CRL.M.C.167/2020 due to lack of time.

Be that as it may, the proceedings in CRL.M.C.167/2020 are indicated to have been re-notified vide order dated 16.03.2020 to the date 11.05.2020 and the proceedings of the date 11.05.2020 have been re-notified for the date 27.11.2020 and are now pending before the Court of Hon'ble Mr.Justice Suresh Kumar Kait.

In as much as, the aspect of pendency of CRL.M.A.706/2020 in CRL.M.C.167/2020 had not been borne out from the record at the time of consideration of the proceedings on 13.02.2020 in CRL.M.C.810/2020, the stay granted of directions imposed vide order dated 24.01.2020 by the learned Trial Court in Execution No.111/2017 is set aside.

The date 19.10.2020 stands cancelled and CRL.M.A. 13144/2020 is disposed of accordingly."

10. Vide the said order dated 30.09.2020, it was however considered essential that the proceedings of CRL.M.C. 810/2020 i.e. the petition in which CRL.M.A.13144/2020 had been filed by the respondent no.2 and the proceedings of CRL.M.C. 167/2020 were taken up by a Single Court and thus, subject to the orders of the Hon'ble the Chief Justice, the proceedings of CRL.M.C.810/2020 and CRL.M.C.167/2020 were requested to be placed before a Single Bench for the date 27.11.2020.

11. CRL.M.C. 167/2020 which had been filed by the very same petitioner dated 14.01.2020 and which had been first taken up on 15.01.2020 was also taken up on 27.11.2020.

12. On 27.11.2020, the application under consideration now i.e. CRL.M.A.16497/2020 was taken up and notice thereof was issued to the respondent no.2 and the response of the respondent no.2 to the same was called for.

13. Submissions qua CRL.M.A.16497/2020 were made on behalf of either side.

14. Vide order dated 23.02.2021, it was observed as under:-

"Qua application Crl.M. A. No. 16497/2020, reply thereto is on record. Learned counsel for the petitioner has also submitted an affidavit of income.

Submissions have been made on behalf of both sides.

The State is arrayed as proforma party in the present petitions, represented by the Addl. Public Prosecutor.

The matters are reserved for orders.”

15. Vide proceedings dated 04.08.2021, the matter was re-notified for arguments on 20.08.2021 at 3.30 PM and was then reserved for orders qua the aspect as per proceedings dated 23.02.2021 i.e. qua CRL.M.A.16497/2020 in CRL.M.C. 810/2020 and the prayers made by the applicant/petitioner therein were to the effect:-

“A. Stay all the Execution proceeding being Ex. 111 of 2017, 112 of 2017, 318 of 2017, 297 of 2019 and Ct. Case No 9045 of 2019 pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the present Petition.

B. Direct the parties to furnish fresh income affidavits in consonance with Judgment dated 04.11.2020 passed by the Hon'ble Supreme Court in the case of Rajnesh v. Neha.

C. Direct the Respondent No. 2 To furnish adequate security for the maintenance amount already released and the maintenance amount to be released in the future.”

16. As regards prayer Clause (A) of the aforesaid application i.e. CRL.M.A.16497/2020, it is essential to observe that CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 all make the same prayers seeking a stay of the execution proceedings pending before the learned MM, Tis Hazari, West until hearing and final disposal of CRL.M.C. 810/2020. The said applications are still pending consideration and have not been taken up for hearing for the reasons that CRL.M.A.13144/2020 had been filed during the interregnum after order dated 13.02.2020 when the matter had been directed to be fixed for 30.04.2020 when it could not be taken up due to the then prevailing pandemic and thereafter, the proceedings in CRL.M.A.13144/2020 filed on behalf of the respondent no.2 seeking a vacation of the ad-interim order dated 13.02.2020 had commenced which resulted vide order dated 30.09.2020 in the setting aside of the stay granted of directions imposed vide order dated 24.01.2020 of the learned Trial Court in Ex. No.111/17.

17. As regards the prayer made in CRL.M.A.16497/2020 qua the merits of the aspect of stay of the execution proceedings on the premise of the final order dated 24.01.2020 of the learned ASJ, THC, West, Delhi whereby, CRL.A.328/2019 filed by the petitioner was dismissed, qua the merits of the prayer made by the petitioner challenging the award of maintenance @ Rs.15,000/- per month with further directions of 10% per annum increase as imposed vide order dated 30.05.2017 of the learned MM, Mahila Court (West), Delhi in CC No.93/1/12, the matter is yet to be heard and the responses of the

respondent no.2 to the applications i.e. CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 are yet to be filed. The prayer made in prayer Clause (A) vide CRL.M.A.16497/2020 filed by the petitioner in CRL.M.C. 810/2020 thus, cannot be considered presently.

18. Furthermore, it is essential to observe that the applicant/ petitioner has submitted to the effect vide paragraphs 3 & 4 of CRL.M.A.16497/2020 as under:-

"3. This Hon'ble Court vide its Order dated 13.02.2020 stayed the Order dated 24.01.2020 passed by the Executing Court directing the Petitioner to pay an amount of Rs. 2,00,000/- subject to a deposit of Rs 50,000/- (fifty thousand only). However, vide Order dated 30.09.2020 this Hon'ble Court vacated the said stay on execution proceedings No. 111 of 2017 for the following reasons:

"In as much as, the aspect of pendency of CRL.M.A.706/2020 in CRL.M.C.167/2020 had not been borne out from the record at the time of consideration of the proceedings on 13.02.2020 in CRL.M.C.810/2020, the stay granted of directions imposed vide order dated 24.01.2020 by the learned Trial Court in Execution No.111/2017 is set aside. The date 19.10.2020 stands cancelled and CRL.M.A. 13144/2020 is disposed of accordingly."

It is respectfully submitted that this Hon'ble Court while recording the aforesaid observations has omitted to peruse the Application for stay being M.A. No. 13144 of 2020 filed with the present Petition wherein the Petitioner/ Applicant had specifically mentioned the pendency of Crl.M.C. 167/2020: Be that as it may, the Petitioner has paid the amount of Rs. 2,00,000/- as per the Order dated 24.01.2020 passed by the Executing Court. Copy of Order dated 13.02.2020 has been annexed herewith as 'Annexure P-2'.

4. That the Respondent No. 2 has acted irresponsibly by misinforming this Hon'ble Court that the Petitioner asked for verbatim relief in Crl.M.C. 167 of 2020 and thereby again misinformed the-Court that stay was not granted to the Petitioner on 15.01.2020 for the want of the merit in Crl.M.C. No. 167 of 2020 whereas in the actual scenario the matter was not heard by this Hon'ble Court on 15.01.2020 due to paucity of time."

It is essential to observe that the said submissions have been considered vide order dated 30.09.2020, wherein, it was observed to the effect:-

".....

.....

The order dated 04.08.2015 of the learned ASJ-05, West in CA No.14/15 was in relation to an appeal against order dated 03.01.2015 of the learned MM whereby interim monthly maintenance of Rs.9,000/- per month was granted to the respondent no.2 herein from the date of filing of the petition till further orders to be paid apparently by the present petitioner. The said CA No.14/15 was allowed partly with the order dated 03.01.2015 of the learned MM granting interim

monthly maintenance of Rs.9,000/- per month being modified and being enhanced to Rs.15,000/- per month from the date of filing of the petition, which amount of interim maintenance of Rs.15,000/- as enhanced vide order dated 04.08.2015 in CA No.14/15, was confirmed vide order dated 30.05.2017 in CC No.93/1/12 in the petition under Section 12 of the Protection of Women from the Domestic Violence filed by the respondent no.2 with 10% increase every year.

The order dated 04.08.2015 of the learned ASJ-05, West in CA No.14/15 enhancing the interim maintenance of Rs.15,000/- as awarded to the respondent no.2 was assailed by the present petitioner in CRL.M.C.167/2020 in which the prayers made by the petitioner herein were to the effect:-

“(A) Setting aside Judgment dated 04.08.2015 passed by the Ld. Session Judge, Tis Hazari, West, Delhi whereby the maintenance of the Respondent was enhanced from Rs.9,000/- to Rs.15,000/-.

(B) Granting the Respondent a monthly maintenance of Rs.3,125/- i.e., (1/4th of 12,510/- i.e., the average monthly income of the Petitioner) calculated for the period of 01.01.2009 to 01.11.2019.

(C) Remitting the matter for fresh disposal to the Ld. Sessions Court for re-considering the maintenance amount.

(D) Stay the Execution proceedings in Ex. No.111 of 2017, 112 of 2017, 318 of 2017, 297 of 2019 and Ct. No.9045 of 2019 before the Court of Ld. MM Ms.Neetu Nagar (NDOH 16.01.2020)

(E) Any other order or direction which this Hon’ble Court may deem fit and proper also be passed in favour of the Petitioner.”

Apparently thus, the order dated 04.08.2015 in CA No.14/15 got merged in the proceedings dated 30.05.2017 in CC No.93/1/12 which order dated 30.05.2017 is what was assailed in CA No.328/2019 by the present petitioner which CA No.328/2019 was dismissed vide order dated 24.01.2020 of the learned ASJ-03, West against which the present petition was filed and it is essential to observe as rightly contended on behalf of the respondent no.2 that the prayer made seeking the stay of the execution proceedings in the Executing Court was not granted in CRL.M.C.167/2020, in as much as, notice of CRL.M.A.706/2020 had been issued vide order dated 15.01.2020, returnable for 16.03.2020 qua which learned counsel for the petitioner submits that the said prayer has not been declined and is presently pending consideration and that it could not only be taken up on the date fixed i.e. 15.01.2020 in CRL.M.C.167/2020 due to lack of time.

Be that as it may, the proceedings in CRL.M.C.167/2020 are indicated to have been re-notified vide order dated 16.03.2020 to the date 11.05.2020 and the proceedings of the date 11.05.2020 have been re-notified for the date 27.11.2020 and are now pending before the Court of Hon’ble Mr.Justice Suresh Kumar Kait.

In as much as, the aspect of pendency of CRL.M.A.706/2020 in CRL.M.C.167/2020 had not been borne out from the record at the time of consideration of the proceedings on 13.02.2020 in CRL.M.C.810/2020, the stay granted of directions imposed vide order dated 24.01.2020 by the learned Trial Court in Execution No.111/2017 is set aside.

The date 19.10.2020 stands cancelled and CRL.M.A. 13144/2020 is disposed of accordingly."

19. Furthermore, in view of the submission that has been made in the application under consideration i.e. CRL.M.A.16497/2020 to the effect that this Court had omitted to peruse the application for stay bearing CRL.M.A.13144/2020 filed along with the petition i.e. CRL.M.C. 810/2020, wherein, the petitioner had specifically mentioned the pendency of CRL.M.C. 167/2020, it is essential to observe that CRL.M.A.13144/2020 had been filed by the respondent no.2. Even if the mention of CRL.M.A.13144/2020 in paragraph 3 of CRL.M.A.16497/2020 is read as being the pendency of CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020, a bare perusal of each of these applications indicates that averments in paragraph 10 of each of them only read as under:-

"CRL.M.A. No.3323/2020

10. That the Petitioner has also challenged the Judgment dated 04.08.2015 passed by the Ld. Sessions Judge, Tis Hazari, West, Delhi whereby the Ld. Sessions Judge granted interim maintenance of Rs 15,000/- per month to the Respondent. The said Petition is lying pending before this Hon'ble Court. (NDOH 16.03.2020).

CRL.M.A. No.3324/2020

10. That the Petitioner has also challenged the Judgment dated 04.08.2015 passed by the Ld. Sessions Judge, Tis Hazari, West, Delhi whereby the Ld. Sessions Judge granted interim maintenance of Rs 15,000/- per month to the Respondent. The said Petition is lying pending before this Hon'ble Court. (NDOH 16.03.2020).

CRL.M.A. No.3325/2020

10. That the Petitioner has also challenged the Judgment dated 04.08.2015 passed by the Ld. Sessions Judge, Tis Hazari, West, Delhi whereby the Ld. Sessions Judge granted interim maintenance of Rs 15,000/- per month to the Respondent. The said Petition is lying pending before this Hon'ble Court. (NDOH 16.03.2020).

CRL.M.A. No.3326/2020

10. That the Petitioner has also challenged the Judgment dated 04.08.2015 passed by the Ld. Sessions Judge, Tis Hazari, West, Delhi whereby the Ld. Sessions Judge granted interim maintenance of Rs 15,000/- per month to the Respondent. The said Petition is lying pending before this Hon'ble Court. (NDOH

16.03.2020).”

Thus, the mention of CRL.M.C. 167/2020 is conspicuously silent in paragraph 10 of each of these applications i.e. CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020, and apart from the same, as regards the aspect of pendency of CRL.M.A.No.706/2020 filed in CRL.M.C. 167/2020 vide which application i.e. CRL.M.A.No.706/2020, the prayer made by the very same applicant/petitioner herein was to the effect:-

“A. Stay the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the present Petition.

B. Stay the Execution proceeding pending before the Ld. MM. Ms. Neetu Nagar, Tis Hazari, West until the hearing and final disposal of the Appeal No. 71/02/19 pending before the Ld. Sessions Judge under section 29 of the Domestic Violence Act.”,

and it cannot be overlooked that the mention of pendency of CRL.M.A.No.706/2020 in CRL.M.C. 167/2020 is conspicuously inexistent in CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 and so is the aspect that vide order dated 15.01.2020 in CRL.M.C. 167/2020 qua CRL.M.A.No.706/2020, it was only a notice that had been directed to be issued to the respondent no.2 thereof.

20. Though, the reply of the respondent no.2 to CRL.M.C. 167/2020 dated 07.12.2020 has been submitted, the reply to CRL.M.A.No.706/2020 has not been filed by the respondent no.2.

21. In the interest of justice, however, since it is the avowed contention of the petitioner as averred in paragraph 20 of CRL.M.A.16497/2020 to the effect:-

“20. That the monthly rental income provided to the Petitioner at present is Rs 15,000/- (fifteen thousand only) and the maintenance he is liable to pay the Respondent from May 2019 onwards is approximately Rs 20,000 per month. Therefore, in view of the present scenario it is practically impossible to pay an amount exceeding the income of the Petitioner.”,

it is directed that the respondent no.2 files the responses to CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 in CRL.M.C. 810/2020 as also to CRL.M.A.No.706/2020 in CRL.M.C. 167/2020 within a period of two weeks and the rejoinder thereto, if any, of the petitioner to the responses of the respondent no.2 be filed by the petitioner within a period of one week thereafter.

22. Furthermore, as regards prayer Clause (B) made vide CRL.M.A.16497/2020, both the petitioner and the respondent no.2 in terms of the verdict of the Hon’ble Supreme Court in “Rajnish Vs. Neha and Another” 2020 SCC OnLine SC 903, are directed to submit their income affidavits on the record within a period of two weeks with the copies thereof being supplied inter se before the next date of hearing.

23. Qua prayer Clause (C) made vide CRL.M.A.16497/2020, the said aspect shall be considered on giving an oral hearing to both parties.

24. The matter is thus, directed to be listed for consideration of CRL.M.A.No.706/2020 in CRL.M.C. 167/2020 and CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 in CRL.M.C. 810/2020 on the date 12.07.2022 at 3:30 PM for which date the directions hereinabove qua completion of pleadings qua CRL.M.A. Nos.3323/2020, 3324/2020, 3325/2020, 3326/2020 in CRL.M.C. 810/2020 as also to CRL.M.A.No.706/2020 in CRL.M.C. 167/2020 and submission of the fresh income affidavits of either side are directed to be complied with, without default.