

(2017) 03 DEL CK 0248

In the Delhi High Court

Case No : 407 of 2016 & CRL M A Nos 6829 of 2016 & 7088 of 2016

NAYANIKA THAKUR MEHTA

APPELLANT

Vs

MOHIT MEHTA & ORS

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Protection of Women From Domestic Violence Act, 2005](#), [Section 23](#), [Section 12](#)

Citation : (2017) 03 DEL CK 0248

Hon'ble Judges : S.P.Garg

Bench : SINGLE BENCH

Advocate : Anil K.Aggarwal, Harish Uppal, Tileshwar Prasad

Judgement

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 24.09.2015 of learned Addl. Sessions Judge whereby the petitioner was declined interim maintenance earlier granted by the Court of learned Metropolitan Magistrate by an order dated 10.08.2015. The petition is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as "D.V.Act") has been filed by the petitioner against the respondents. Application under Section 23 of the D.V.Act was filed by the petitioner to seek interim maintenance for herself and her minor child Manasvini. The said application was contested by the respondents. By an order dated 10.08.2015, the learned Metropolitan Magistrate granted maintenance @ Rs.70,000/- per month (including Rs.8,000/- being paid by the respondent No.1 towards tuition fee of baby Manasvini) for her maintenance as well as maintenance of the minor daughter from the date of filing of the petition i.e. 23.07.2014.

3. The respondent challenged the said order in CA No.22/2015. By an order dated 24.09.2015, the Appellate Court granted maintenance of Rs.45,000/- (including Rs.8,000/- which was being paid by him to the child Manasvini). Since the petitioner was earning around Rs.84,200/- per month, she was held not entitled to any maintenance.

4. Undisputedly, the petitioner is working as Associate Professor with National Institute of Fashion Technology (NIFT). Her gross income was Rs.79,500/- per month on which she was paying Rs.8,000/- as income tax. She had an income from FDR to the tune of Rs.7,500/- and Rs.5,300/- from various investments including PPF. Her total income, thus, was assessed to be Rs.84,200/- by the Trial Court.

5. The respondent in the affidavit disclosed that his gross monthly income was Rs.1,58,407/-. He claimed to be living in a rented accommodation since 19.07.2014 on monthly rent of Rs.23,500/-. The Trial Court noted that the respondent had fixed deposit and NSCs etc. worth Rs.12,83,306/-; he had various interest earning shares and bonds etc. Taking into consideration various factors, the Trial Court was of the view that the monthly income of the respondent was approximately Rs.2,20,000/-.

6. Considering the income and expenditure of the parties detailed in the order dated 10.08.2015, the petitioner and her daughter were awarded Rs.70,000/- per month as interim maintenance.

7. In appeal, monthly income of the respondent was calculated to be Rs.1,32,714/- and that of the petitioner as Rs.84,200/-. The appellate Court was of the view that whole / combined income is to be divided into five parts i.e. one share for the child, two shares each for both the appellant and the respondent. The total income of the family was ascertained to be Rs.2,16,914/- (Rs.1,32,714/- + Rs.84,200/-) and each was to get share of Rs. 43,382/-. Since the petitioner was earning Rs.84,200/- per month, it was considered equivalent to the share which she would have got from the entire family's income; she was held not entitled for any maintenance.

8. As per conclusion arrived at by the Appellate Court, the total income of the respondent was Rs.1,32,714/-. It appears that the learned Appellate Court did not take into consideration various other income and perks received by the respondent from his employer. The luxurious status being enjoyed by the respondent was over-looked. The Trial Court in its order dated 10.08.2015 noted that besides income of Rs.1,58,407/- per month as Senior Manager (Legal) with ITC Ltd., the respondent had fixed deposits and NSCs worth Rs.12,83,306/-; he had various interest bearing shares and bonds. The respondent was spending Rs.60,000/- per month via credit card. It was further noted that the respondent had Honda Jazz and Honda City cars and an apple iphone 4S; the parties had travelled to various international destinations; the respondent was member of various clubs and had various insurance policies; the respondent was getting

various free benefits, reimbursement facilities, perquisites, e-sops etc. from his employer, which were not part of his salary. The respondent had purchased a property No.2158, Pocket-2, Sector D, Vasant Kunj which was gifted by him to his mother - Savita Mehta.

9. It has come on record that besides income, the respondent had obtained Employee Stock Option Scheme (ESOPs) perks amounting to Rs.15,11,525/- (2013 - 2014); Rs.2,00,97,761/- (2012 - 2013), Rs.33,85,250/- (2010-2011) and Rs.17,78,000/- (2009-2010). In 2013-2014, the total taxable perquisites were Rs.17,65,627/- and it were Rs.2,03,52,543/- in 2012-2013. True, ESOPs perks are variable and are not regular feature of the salary received by the respondent. However, the perks received by the respondent cannot be overlooked to ascertain his financial status and capability. It has not been explained as to how and in what manner, huge amount received as ESOPs in the year 2013-2014 and 2012-2013 was invested or dealt with. The respondent cannot be permitted to suppress the income generated through these variables. The petitioner has legitimate expectations to share the said perks being enjoyed by the respondent.

10. Considering the total income being received by the respondent from various sources, his affluent status, financial soundness and the income from salary received by the petitioner, interim maintenance @ Rs.70,000/- granted by the Trial Court jointly for the petitioner and her daughter (including Rs.8,000/- being already paid by the respondent for the child) cannot be considered excessive or unreasonable. The petitioner and her daughter are entitled to maintenance on the principle of equi- status and respect that they would have enjoyed if continued to live with the respondent in the matrimonial home. Apparently, the respondent is living a luxurious life. The petitioner is entitled to lead a decent life at par with the dignity and status of her respondent husband.

11. In the light of above discussion, the petition is allowed. The impugned order of the Appellate Court is set aside and the order of the Trial Court 10.08.2015 is restored. Pending applications also stand disposed of.

12. Observations in the order shall have no impact on the merits of the case.