

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

Judgment Reserved on: January 16, 2014

Judgment Pronounced on: February 11, 2014

+ (i) **CRL.M.C.3106/2008**

RAVI DUTTA Petitioner

Through: Ms. Amita Sehgal Mathur,
Ms. Y Thakran & Mr. Prashant
Singh, Advocates

versus

KIRAN DUTTA & ANR. Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Mr. Vijay Aggarwal and Ms.
Chaitali Jain, Advocates for
respondent No.2

+ (ii) **CRL.REV.P.14/2009**

KIRAN DUTTA Petitioner

Through: Mr. Vijay Aggarwal and Ms.
Chaitali Jain, Advocates

versus

STATE & ANR. Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Ms. Amita Sehgal Mathur, Ms. Y
Thakran & Mr. Prashant Singh,
Advocates for respondent No.2

+ (iii)

CRL.M.C.10/2009

KIRAN DUTTA

..... Petitioner

Through: Mr. Vijay Aggarwal and
Ms. Chaitali Jain, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State

Ms. Amita Sehgal Mathur, Ms. Y
Thakran & Mr. Prashant Singh,
Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT

1. In the above-captioned first two petitions, quashing of impugned order of 23rd August, 2008 is sought by both the sides. In a complaint under Section 12 of *The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act)*, trial court vide impugned order of 23rd June, 2008 has directed husband-*Ravi Dutta* to pay maintenance of Rupees Twenty Thousand per month to wife- *Kiran Dutta* and another Rupees Twenty Thousand per month towards rental and another Rupees Twenty Thousand as compensation *under Section 22 of the DV Act*. In appeal, impugned order has been set aside and the matter has been remanded back to trial court with following directions:-

(i) First of all, learned Metropolitan Magistrate shall determine as to whether the petitioner is an aggrieved person within the definition of Section 2(a) of the Act.

(ii) Thereafter, he shall call for a Domestic Incident Report from the Protection Officer or Service Provider.

(iii) It would always be appropriate for the Magistrate to direct both the parties to undergo counselling with a member of service provider as per Section 14 of the Act.

(iv) It would be also appropriate for the Magistrate to send both the parties for mediation.

(v) In the meantime, the Magistrate may award an interim maintenance or protection as the case may be to the aggrieved person during these proceedings.

(vi) Metropolitan Magistrate would be fully justified in deciding the case only on the basis of averments, affidavits and documents filed by the parties. He need not convert this family litigation in a full-fledged trial. However, in the present case, learned Metropolitan Magistrate will give an opportunity to Ms. Kiran Dutta to file an affidavit explaining the obscene SMSs, her medical treatment and other averments made by appellant in his reply before learned Metropolitan Magistrate.

2. Not satisfied with impugned order of 23rd August, 2008, both the sides have challenged it in the above captioned two petitions on different grounds. In the above captioned third petition, cancellation of bail granted to petitioner-husband vide order of 2nd May, 2008 in FIR No. 63/2007 under Sections 406/498/34 of IPC, registered at Police Station Amar Colony, New Delhi by complainant-wife is sought.

3. With the consent of learned counsel for parties, the above captioned three petitions were heard together and by this common judgment, they are being disposed of.

4. At the hearing, it was urged on behalf of petitioner-*husband* that impugned order rightly sets aside trial court's order but there is no basis for remanding the matter back to trial court and in fact, complainant – *wife's* application under Section 12 of *D.V. Act* ought to have been dismissed, as complainant-*wife* is a highly qualified lady, who has been paid ₹5.40 lacs annually and that there is no finding of any domestic violence being committed by petitioner-*husband*. It was submitted on behalf of petitioner-*husband* that grant of interim maintenance of Rupees Ten Thousand per month is wholly justified without returning a *prima facie* finding of petitioner-*husband* being guilty of committing domestic violence. To contend so, reliance was placed by learned counsel for petitioners upon decisions in *Renu Mittal v. Anil Mittal*, 173 (2010) DLT 269; *Rachna Kathuria v. Ramesh Kathuria*, 173 (2010) DLT 289; *Vijay Verma v. State of NCT of Delhi & Ors.*, 2010 (118) DRJ 520; *Sanjay Bhardwaj & Ors. v. State & Anr.*, 2010 (118) DRJ 385; *Damanpreet Kaur v. Indermeet Juneja*, (2013) 1 JCC 306; *Smt. Mamta Jaiswal v. Rajesh Jaiswal II* (2000) DMC 170.

5. On behalf of complainant-*wife* it was submitted that appellate court in the impugned order has set aside well reasoned order of trial court without any valid justification and so impugned order deserves to be set aside and trial court's order ought to be restored.

6. After having heard both the sides and on perusal of the impugned order, trial court order and the decisions cited, I find that Section 12 of

D.V. Act mandates that before passing any order on such an application, a '*Domestic Incident Report*' has to be taken into consideration and in the instant case, when the impugned order was passed by trial court, *Domestic Incident Report* was still awaited. No doubt, Section 28 of the *DV Act* does permit the Court dealing with cases under *DV Act* to lay down its own procedure for deciding applications under Section 12 or sub-Section 2 of Section 23 of *DV Act* but the procedure so evolved has to be fair and reasonable. In any case, the Court trying cases under *DV Act* cannot bypass a mandate of Section 12 of *DV Act* which requires consideration of *Domestic Incident Report* prior to passing any order under Section 12 of *DV Act*.

7. This Court is conscious of the fact that both the sides had stated before trial court that the application under Section 12 of *DV Act* be decided on the basis of the averments made in the application and parties do not want to give any evidence or want to cross-examine any witness but still trial court ought to have waited for the *Domestic Incident Report*. Non-consideration of *Domestic Incident Report* by trial court while deciding application under Section 12 of *DV Act* violates the mandate of Section 12 of *DV Act* and thus renders trial court's order of 30th June, 2008 unsustainable.

8. Upon considering impugned order in its entirety, I find no substance in petitioner-*husband's* contention of straightaway dismissal of complainant-*wife's* application under Section 12 instead of remanding the matter to trial court. It is being so said because on technicalities, substantial justice cannot be sacrificed. The mandate of Section 12 of *DV Act* of mandatory consideration of *Domestic Incident Report* cannot be

deviated and the object of *DV Act* cannot be defeated by not remanding the matter back to trial court. The directions issued to trial court in the impugned order are meant to facilitate proper effective decision on complainant-wife's application under Section 12 of *DV Act*.

9. Impugned order remanding the matter back to trial court does not suffer from any palpable error. So, trial court is directed to decide complainant-*wife's* application under Section 12 of *DV Act* with promptitude while taking into consideration the afore-noted decisions.

10. So far as direction to pay interim maintenance of ₹10,000/- per month is concerned, I find that appellate court in impugned order has not *prima facie* disclosed that petitioner-*husband* is or was committing an act of domestic violence as defined under Section 3 of *DV Act*. Therefore, direction in the impugned order to pay interim maintenance of ₹10,000/- per month to complainant-*wife* is rendered unsustainable and is hereby quashed.

11. However, complainant-*wife* is permitted to file an application for interim maintenance under Section 23 of *DV Act*. If such an application be filed within four weeks, trial court shall make all endeavours to decide it within a period of three months thereafter. The third petition seeking cancellation of bail granted to petitioner-*husband* is dismissed as not pressed and the above-captioned first two petitions are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

FEBRUARY 11, 2014

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