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SHALU OJHA

v.

PRASHANT OJHA

(SLP (Cri.) No. 3935 of 2016)

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SEPTEMBER 04, 2017

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

Protection of Women from Domestic Violence Act, 2005:

C s. 12 – Application under – Maintenance sought by wife
(appellant) from husband (respondent) – Interim maintenance of
Rs. 2,50,000/- per month granted w.e.f. filing of complaint – Husband
did not honour the order – Execution petition by wife for recovery
of arrears of maintenance – Challenge to maintenance order by
husband declined finally by Supreme Court, while observing that
D matter be referred for conciliation – Conciliation failed – High
Court’s order directing the husband to pay Rs. 10 lakhs each in two
instalments – Wife’s application seeking modification of the directions
of High Court seeking entire arrears of maintenance – Appeal by
wife for vacation of interim stay of execution proceedings – Allowed
E by Supreme Court directing to execute the maintenance order –
Despite the order husband since did not clear the arrears, sent to
judicial custody – In application of husband, Supreme Court directed
the Sessions Court to decide the appeal of the husband on merit –
Sessions Court reduced the maintenance from Rs. 2,50,000/- P.M.
to 50,000/- P.M. Wife challenged the order u/s. 482 Cr.P.C. –
F Husband also filed petition u/s. 482 Cr.P.C. seeking further
reduction of the maintenance amount – Petition of husband
dismissed by High Court and the order was further affirmed by
Supreme Court – Pending the petition u/s. 482 Cr.P.C., wife filed
present SLP challenging the order of Sessions Judge whereby he
G reduced the maintenance amount – Attempt of Supreme Court for
amicable solution failed – Family Court directed to decide the
domestic violence proceedings within a period of eight weeks from
the date of the present judgment – High Court directed to decide
the pending application filed by the wife as regards correctness of
order of Sessions Court whereby the maintenance amount was
H reduced.

CRIMINAL APPELLATE JURISDICTION: Special Leave A
Petition (Criminal) No.3935 of 2016.

From the final Judgment and Order dated 13.02.2015 passed by the Additional Session Judge, North West District Court, Rohini, New Delhi in C.A. No.75/2014.

Shalu Ojha (petitioner-in-person). B

Sameer Rohatgi, Akshit Pradhan, T.V.S. Raghavendra Sreyas, Ms. Gayatri Gulati Sreyas, Advs. for the Respondents.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Though this case has a chequered history, C
only those facts which are very material are taken note of, eschewing other unnecessary details, in order to avoid burdening this judgment with the facts which may not be relevant.

2. The petitioner is the respondent's wife. It is unfortunate that after their marriage on April 20, 2007 in Delhi, they stayed together D
hardly for four months. Thus, for almost ten years they have parted company and are living separately. It is not necessary to go into the reasons which led to the matrimonial discord as in the present petition this Court is concerned only with the dispute regarding the rate of maintenance. E

3. The petitioner had filed an application sometime in June 2009 claiming maintenance under the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act'). In that application, apart from other reliefs, she has claimed maintenance as well. Order dated July 05, 2012 was passed by the learned Metropolitan Magistrate granting interim maintenance @ F
Rs.2,50,000/- per month with effect from the date of filing of the complaint as well as compensation of Rs.1,00,000/-. Since the respondent did not honour the said order, the petitioner filed the execution petition for recovery of the arrears of maintenance. In the meantime, the respondent challenged the order of the Metropolitan Magistrate granting maintenance, G
by filing appeal under Section 29 of the DV Act, in the Court of Additional Sessions Judge, Delhi (for short, the 'ASJ'). In the said appeal, the learned ASJ issued interim directions dated January 10, 2013 for depositing of the entire arrears of maintenance within two months. As this order was not complied with, the appeal filed by the respondent was dismissed H

A on May 07, 2013. This order of dismissal was challenged by the respondent before the High Court. In those proceedings, order dated July 23, 2013 was passed allowing the appellant herein to file the reply, etc. As no stay was granted, order dated July 23, 2013 was challenged by the respondent in this Court by filing a special leave petition. This Court, however, did not entertain the same. At the same time, while disposing of the special leave petition, observations were made to the effect that if the parties apply for mediation, the matter shall be referred to the Delhi High Court Mediation and Conciliation Centre at the earliest. Keeping in view these observations, the High Court referred the dispute to the Mediation Centre at the Delhi High Court and also stayed the execution proceedings in the meantime. Mediation proceedings failed. As a result, the High Court took up the matter on merits and passed orders dated September 10, 2013 directing the respondent to pay Rs.5,00,000/- on or before September 30, 2013 and another sum of Rs.5,00,000/- on or before October 31, 2013. The petitioner filed an application seeking modification of these orders and prayed for the directions to the respondent to pay entire arrears of maintenance as per the order of the Family Court in domestic violence proceedings. In the said application only notice was issued and since interim stay on the execution proceedings continued, the petitioner filed special leave petition in this Court for vacation of the interim order passed by the High Court in the execution proceedings. This special leave petition was converted into appeal on grant of leave, in which judgment was delivered on September 18, 2014 allowing the said appeal. Operative portion of the said judgment reads as under:

F “31. The issue before the High Court in CrI.MC. No. 1975 of 2013 is limited i.e. whether the sessions court could have dismissed the respondent’s appeal only on the ground that respondent did not discharge the obligation arising out of the conditional interim order passed by the sessions court. Necessarily the High Court will have to go into the question whether the sessions court has the power to grant interim stay of the execution of the order under appeal before it.

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32. In a matter arising under a legislation meant for protecting the rights of the women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim

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orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order. A

33. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside. B

34. We are of the opinion that the conduct of the respondent is a gross abuse of the judicial process. We do not see any reason why the respondent's petition CrI.MC No. 1975 of 2013 should be kept pending. Whatever be the decision of the High Court, one of the parties will (we are sure) approach this Court again thereby delaying the conclusion of the litigation. The interests of justice would be better served if the respondent's appeal before the Sessions Court is heard and disposed of on merits instead of going into the residuary questions of the authority of the appellate Court to grant interim orders or the legality of the decision of the Sessions Court to dismiss the appeal only on the ground of the non-compliance by the respondent with the conditions of the interim order. The Criminal Appeal No. 23/2012 stands restored to the file of the Sessions Court. C D

35. We also direct that the maintenance order passed by the magistrate be executed forthwith in accordance with law. The executing court should complete the process within 8 weeks and report compliance in the High Court. We make it clear that such hearing of the Sessions Court should only be after the execution of the order of maintenance passed by the Magistrate. E F

36. In the event of the respondent's success in the appeal, either in full or part, the Sessions Court can make appropriate orders regarding the payments due to be made by the respondent in the execution proceedings."

4. Notwithstanding the aforesaid judgment, as the respondent did not clear the entire arrears of maintenance, he was sent to judicial custody, where he remained till December 22, 2014. A miscellaneous application was filed by the respondent in this Court in the afore-mentioned disposed of appeal stating that he was in judicial custody due to his inability to pay the entire maintenance and requested that his matter be heard by the G H

A Sessions Court on merits. In this application this Court passed orders dated December 18, 2014 directing the Sessions Court to decide the appeal of the respondent within six weeks. He remained in judicial custody till December 22, 2014, on which date he was released. During this period, though the respondent had paid certain amounts towards maintenance, but he did not clear the entire outstanding dues.

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5. Thereafter, on February 13, 2015, the learned ASJ decided the appeal of the respondent reducing the maintenance from Rs.2,50,000/-, as fixed by the Family Court, to Rs.50,000/- per month, from the date of filing of the petition under Section 12 of the DV Act. This order was challenged by the appellant by filing a petition (Crl.MC. No. 850 of 2015) before the High Court under Section 482 read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.').

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6. It will also be of interest to note that the maintenance of Rs.50,000/-, as fixed by the learned ASJ, even when reduced significantly from Rs.2,50,000/-, was still not acceptable to the respondent either. Seeking further reduction in the maintenance, the respondent also challenged this order before the High Court by filing petition under Section 482 Cr.P.C. However, his petition was dismissed by the High Court vide order dated April 06, 2015. The special leave petition filed by the respondent there against was also dismissed by this Court on May 11, 2015. In this manner, insofar as maintenance granted by the learned ASJ @ Rs.50,000/- per month is concerned, this order has attained finality qua the respondent. The question, therefore, is as to whether the petitioner is entitled to enhancement and whether the learned ASJ rightly reduced the amount of maintenance.

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7. Though the petitioner has filed a petition under Section 482 Cr.P.C., which is registered as Crl.MC. No. 850 of 2015, as pointed out above, and the same is still pending. Notwithstanding, the petitioner has chosen to file the instant special leave petition challenging the order dated February 13, 2015 passed by the ASJ.

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8. Normally, when the proceedings are still pending before the High Court, where same order dated February 13, 2015 passed by the ASJ is challenged, this Court should not have entertained the instant petition from the very beginning. However, notice was issued in this petition, keeping in mind the consideration as to whether the dispute can be resolved amicably, suitably and appropriately by this Court. For this

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purpose, matter was taken up from time to time. Attempts were even made that the parties settle all their disputes amicably. We even called the parties to the Chambers and had discussions with them. However, amicable solution to the problem, acceptable to both the parties, could not be achieved. A

9. The petitioner, who appears in person, has submitted that there were no valid reasons for the learned ASJ to reduce the maintenance. In order to prove that the respondent is a man of means who is running number of businesses either as the proprietor or partner of firm(s) or shareholder/director in certain companies and possesses various assets and is also enjoying the life of affluence, she has produced plethora of documents in support. The respondent has refuted the authenticity or the relevance of those documents and his submission is that his stakes in all these businesses are no longer there. According to him, some of the companies/firms mentioned by the petitioner never took off and started any business and in some other companies he no longer enjoys any stakes. Picture painted by the respondent is that he is undergoing very hard times and his financial condition is pathetic. It is also stated that he had to even go behind bars and remain in custody for more than fifty days because of his inability to pay the arrears. We are not giving the details of the properties and businesses as mentioned by the petitioner or the response thereto as given by him. It is because of the reason that after going through these documents, we find that final view thereupon can be taken only after evidence is led by both the parties and the veracity of their respective stands is tested with their cross-examination in the light of material which both the parties want to produce. B
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10. We, therefore, dispose of this petition with the following directions: F

(a) insofar as domestic violence proceedings before the Family Court are concerned, necessary documents shall be filed by both the parties within four weeks from today and evidence led pursuant thereto. The trial court shall endeavour to decide the case finally, within a period of eight months from today, on the basis of evidence and fix the rate of maintenance finally; and G

(b) Crl.MC. No. 850 of 2015, pending before the High Court, shall be taken up for hearing immediately and the High Court H

A shall endeavour to dispose of the same as expeditiously as possible and determine at what rate interim maintenance is to be given, i.e. whether order dated February 13, 2015 passed by the learned ASJ need any modification or not.

No costs.

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Kalpana K. Tripathy

SLP disposed of.