

IN THE COURT OF MS. SHILPI M. JAIN
ADDITIONAL SESSIONS JUDGE
SOUTH-WEST DISTRICT, DWARKA COURTS, NEW
DELHI



CNR No. DLSW010042812025
Criminal Appeal No. 234/2025

*(Under Section 29 of the Protection of Women from Domestic
Violence Act, 2005)*

Daya Chand @ Gokul & Ors.Appellants

Versus

Smt. AnjuRespondent

Date of Institution	: 16.05.2025
Date of Arguments	: 05.09.2026
Date of Order	: 05.09.2026

ORDER

1. This criminal appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter “the DV Act”) has been preferred by the appellants against the order dated 24.04.2025 passed by learned Judicial Magistrate First Class / Mahila Court-04, South-West, Dwarka Courts, New Delhi, in the complaint filed by the respondent-wife under Section 12 of the DV Act.

2. By the said order, the learned Magistrate, after recording the oral statement of appellant no.1 Daya Chand @ Gokul that he was earning about Rs.15,000/- to Rs.20,000/- per

month, directed him to pay ad-interim maintenance of Rs.7,000/- per month to the respondent-wife and minor children, to operate till disposal of the application under Section 23 of the DV Act. The matter before the learned Magistrate was listed for filing of income affidavits and arguments on the said application.

BRIEF FACTS

3. The respondent-wife instituted proceedings under Section 12 of the DV Act alleging domestic violence and seeking, inter alia, protection, residence and monetary relief. Two minor children, are stated to be in her custody. Along with the main complaint, an application under Section 23 of the DV Act for interim / ex-parte maintenance was filed.

4. On 24.04.2025, when the application under Section 23 came up, the respondents before the learned Magistrate sought time to file income affidavit. The petitioner/wife pressed for ad-interim maintenance. On being queried, appellant no.1 stated that he earns Rs.15,000/- to Rs.20,000/- per month. Taking that statement into account, and noticing that the wife was not shown to be gainfully employed and had two minor children with her, the learned Magistrate granted Rs.7,000/- per month as ad-interim maintenance till disposal of the Section 23 application, and fixed the matter for income affidavits and arguments. Aggrieved thereby, the present appeal was filed on 13.05.2025.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

5. Learned counsel for the appellants submitted that the impugned order is unsustainable and is liable to be set aside.

The principal submissions, as pressed in the memorandum of appeal and at the bar, may be summarised as under:

- (i) The learned Magistrate granted ad-interim maintenance without calling for and considering income affidavits of both sides, in compliance of the Hon'ble Supreme Court in *Rajnish v. Neha*, (2020) 6 SCC 1. An order of maintenance could not have been passed on a stray oral statement.
- (ii) Appellant no.1 is not in a position to pay the amount awarded. It was urged that he is presently without stable employment / means, and the figure of Rs.7,000/- per month is oppressive.
- (iii) The respondent-wife is not entitled to maintenance as she is living in adultery / in a relationship with one Chandan. A woman so living cannot claim to be an "aggrieved person" or claim monetary relief under the DV Act.
- (iv) The order is an ad-interim / ex-parte arrangement passed without a full hearing on the Section 23 application. Even so, it is an "order" under the Act and is appealable under Section 29. Reliance was placed on *Ateet Jain v. Chhavi Jain*, CRL.REV.P. 335/2024, decided on 04.02.2026 by the Hon'ble Delhi High Court, to contend that the appellate / revisional court is competent to examine an order of interim maintenance under the DV Act, and that the matter should be considered on merits.
- (v) The learned Magistrate ignored the conduct of the respondent and the overall facts. The appeal, having been filed within limitation, deserves to be admitted and the impugned order stayed / set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

6. Learned counsel for the respondent-wife opposed the appeal at the threshold. The preliminary and other

submissions, as set out in the reply and urged at the bar, are as follows:

- (i) The appeal is premature and not maintainable. The impugned order is only an ad-interim / stop-gap arrangement till disposal of the pending application under Section 23 of the DV Act. Income affidavits have not yet been filed. The main interim application is still pending before the learned Magistrate. The appellant ought to first contest that application, or seek modification under Section 25(2) of the DV Act, instead of rushing in appeal.
- (ii) Reliance was placed on *Abhijit Bhikaseth Auti v. State of Maharashtra*, 2009 Cri LJ 889 (Bom), to submit that while an appeal may lie against an order under Section 23(1) or 23(2), the appellate court will usually not interfere with the exercise of discretion by the Magistrate, and will interfere only if the discretion has been exercised arbitrarily, capriciously or perversely, or in ignorance of settled principles regulating grant of interim relief.
- (iii) The amount of Rs.7,000/- per month is for the wife and two minor children and is modest, having been fixed on the appellant's own statement of income of Rs.15,000/- to Rs.20,000/- per month. The appellant cannot be permitted to resile from a statement made before the Court.
- (iv) The appellant has not paid a single rupee. Arrears are stated to have mounted to about Rs.1,19,000/-. Placing reliance on *Rajnish v. Neha* (supra), *Shalu Ojha v. Prashant Ojha*, (2014) 12 SCC 231, and the practice noted in *Santosh Sehgal v. Murari Lal Sehgal* and *Kaushalya v. Mukesh Babu*, it was urged that a defaulting husband cannot be heard in appeal without deposit of arrears, and that mere filing of an appeal does not operate as stay.

- (v) The allegation of an extra-marital relationship with one Chandan is false, unsubstantiated and a counter-blast. Such a plea cannot be accepted at the ad-interim stage to deny maintenance to a wife and two minor children.
- (vi) The appeal is a device to delay payment and to stall the proceedings before the learned Magistrate. It deserves dismissal with costs, and a direction to deposit the entire arrears.

ANALYSIS AND FINDING

7. On the pleadings and submissions, the following points arise:

- (a) Whether the present appeal under Section 29 of the DV Act against the order dated 24.04.2025 is maintainable, and if so, whether it is premature?
- (b) Whether any interference with the ad-interim direction of Rs.7,000/- per month is called for at this stage?

POINT (a): MAINTAINABILITY AND PREMATUREITY

8. Section 23 of the DV Act empowers the Ld. Magistrate, in any proceeding under the Act, to pass such interim order as he deems just and proper, and, where the application prima facie discloses commission or likelihood of domestic violence, to grant an ex-parte order. Section 25(2) empowers the Court to alter, modify or revoke any order made under the Act on an application of either aggrieved person or respondent, if there is a change in circumstances. Section 29 provides that there shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Ld. Magistrate is served on

the aggrieved person or the respondent, as the case may be, whichever is later.

9. The expression used in Section 29 is “the order made by the Magistrate”. It is not qualified by the words “final”, “interim” or “ad-interim”. A Division Bench of the Hon’ble Delhi High Court in *Sabina Sahdev v. Vidur Sahdev*, 2018 SCC OnLine Del 8973, has held that an appeal under Section 29 against an order granting maintenance under Section 23 is maintainable, and cannot be made subject to a pre-condition of deposit of the entire arrears and that pendency of such appeal shall not operate as a stay of the maintenance order.

10. In view of *Sabina Sahdev* (supra), it cannot be said that a Section 29 appeal against a direction of maintenance under Section 23 is without jurisdiction. The preliminary objection of the respondent that the appeal is “not maintainable” in the strict sense of want of jurisdiction, therefore, cannot be accepted. The appeal, having been filed within thirty days of the order dated 24.04.2025, is competent as a statutory appeal.

11. That, however, is not the end of the matter. Maintainability of the remedy and the stage at which the appellate court should entertain and interfere with the impugned direction are distinct questions. The character of the order under challenge is decisive.

12. A bare reading of the order dated 24.04.2025 shows that it is not a concluded order on the application under Section 23 of the DV Act. The learned Magistrate has herself described the arrangement as ad-interim, to operate only "till disposal of

the application under Section 23". Time was granted to file income affidavits. Arguments on the Section 23 application were specifically deferred and pending.

13. In *Rajnesh v. Neha*, (2020) 6 SCC 1, the Hon'ble Supreme Court has made the filing of a comprehensive affidavit of disclosure of assets and liabilities mandatory before a realistic assessment of interim maintenance is undertaken. The object is to avoid guess-work and to enable both sides to contest quantum on affidavits. That exercise was underway, and had not been completed, when the present appeal was filed.

14. The Hon'ble Bombay High Court in *Abhijit Bhikaseth Auti v. State of Maharashtra*, 2009 Cri LJ 889, while holding that an appeal lies against orders under Section 23(1) and 23(2), cautioned that the appellate court will *usually not interfere* with the Magistrate's discretion at that stage, and will do so only if the discretion is arbitrary, capricious, perverse, or contrary to settled principles governing interim relief. It was held:

"24.....Thus, the conclusions which can be summarized are as under:

- (i) An appeal will lie under Section 29 of the said Act against the final order passed by the learned Magistrate under sub-section (1) of Section 12 of the said Act;*
- (ii) Under sub-section (2) of Section 23 of the said Act, the learned Magistrate is empowered to grant an ex parte ad interim relief in terms of Sections 18 to 22 of the said Act. The power under sub-section (1) is of granting interim relief in terms of Sections 18 to 22 of the said Act. Before granting an interim relief under sub-section (1), an opportunity of being heard is required to be granted to the respondent.*
- (iii) An appeal will also lie against orders passed under sub-section (1) and sub-section (2) of the Section 23 of the said Act which are passed by the learned Magistrate.*

However, while dealing with an appeal against the order passed under Section 23 of the said Act, the Appellate Court will usually not interfere with the exercise of discretion by the learned Magistrate. The appellate Court will interfere only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

(iv) An appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.”

(emphasis is mine)

15. Section 25(2) of the DV Act itself provides an efficacious and immediate remedy to seek alteration, modification or revocation of any order, including an ad-interim order, on change of circumstances. The appellant's later plea of reduced income / want of employment, if genuine, is a plea of change of circumstance to be addressed first before the learned Magistrate on affidavits, and not by short-circuiting the pending Section 23 enquiry.

16. This Court is, therefore, of the considered view that though the appeal is not barred as a matter of jurisdiction, However, entertaining it on merits at this stage would fragment the Section 23 enquiry, render the mandatory affidavit exercise under *Rajnish (Supra)* redundant, and convert every listing direction of the Ld. Mahila Court into a first appeal. That is not the object of Section 29.

POINT (b): WHETHER INTERFERENCE IS CALLED FOR

17. Even otherwise, tested on the *Abhijit Bhikaseth Auti (Supra)* standard, no case for interference is made out.

18. In present matter, the quantum of Rs.7,000/- per month was not arrived at in vacuum. It rests on the appellant's own statement, recorded by the learned Magistrate, that he earns Rs.15,000/- to Rs.20,000/- per month. The respondent-wife was not shown to be employed. Two minor children are in her custody. An award of Rs.7,000/- for three dependants, against a stated income of Rs.15,000/- to Rs.20,000/-, is conservative. It cannot be branded as perverse, arbitrary or capricious.

19. The subsequent attempt of appellant no.1 to plead want of means is a clear resiling from a statement made before the Court. A party cannot blow hot and cold. If the income has in fact diminished after 24.04.2025, the proper course is an application under Section 25(2) supported by documents, or a contest on the pending Section 23 application after filing the *Rajnish (Supra)* affidavit not a first appeal founded on a contrary stand.

20. The plea that the respondent is having extra-marital affair, and is therefore disentitled to maintenance, is equally untenable at this stage.

CONCLUSION

21. In view of the above discussion, this Court passes the following directions:

- (i) Criminal Appeal No. 234/2025 is dismissed. There shall be no interference with the order dated 24.04.2025 at this stage.
- (ii) The Ld. Magistrate is requested to take up the application under Section 23 of the DV Act expeditiously, after the parties file their income affidavits, and to dispose of the same in accordance

with *Rajnesh v. Neha* (supra), uninfluenced by any observation made in this order on the final quantum of interim maintenance.

- (iii) The appellant shall be at liberty in accordance with law to challenge the order that Ld. Magistrate may ultimately pass on application u/s 23 of the Act.

22. Nothing contained in this order shall be construed as an expression of opinion on the merits of the complaint under Section 12 of the DV Act, or on the quantum of interim maintenance that the learned Magistrate may ultimately award after considering the affidavits and material.

23. A copy of this order be sent to the Ld. Judicial Magistrate First Class / Mahila Court-04, Dwarka Courts, New Delhi, for information and compliance. Appeal file be consigned to Record Room after due completion.

**Announced in the open Court
on 05.09.2026**

**(Shilpi M Jain)
ASJ-06 (South-West)
Dwarka Courts/05.09.2026**