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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 1246/2024 &, CRL.M.A. 32564/2024, CRL.M.A.
32565/2024
UMESH SPetitioner

Through: Ms. Geeta Luthra, Sr. Advocate with
Ms. Kamakshi Gupta, Mr. Manas
Agrawal and Mr. Dennis Jacob, Advs.

versus

PRITI S

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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29.10.2024

CRL.M.A. 32563/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.REV.P. 1246/2024

By way of the present petition filed under section 438 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns order dated 09.09.2024 made by the learned Additional Sessions Judge, Patiala House District Courts, New Delhi in 02 connected criminal appeals bearing CA No.66/2024 and CC No.83/2024 filed by the parties, whereby both parties had challenged order dated 14.02.2024 made by the learned Metropolitan Magistrate, Mahila Court, Patiala House District Courts, New Delhi on an application seeking grant of interim maintenance by the petitioner (husband) to the respondent (wife).



2. At the outset, since order dated 14.02.2024 made by the learned Magistrate is not on record, Ms. Geeta Luthra, learned senior counsel appearing for the petitioner has handed-up a set of Additional Documents under cover of index dated 29.10.2024 which *inter-alia* contains that order. The additional documents are taken on record.
3. Ms. Luthra argues, that on point of fact, the petitioner and respondent have 02 grown-up children viz. Ms. Ankita Saraf (aged about 33 years) and Mr. Devesh Saraf (aged about 29 years); and that all 04 persons reside together at a farmhouse rented by a company in which the petitioner is a Director.
4. Ms. Luthra argues, that *vide* order dated 14.02.2024, for reasons which are not discernible, the learned Magistrate has enhanced the interim maintenance payable by the petitioner to the respondent from Rs.3.30 lacs per month to Rs. 8.30 lacs per month. Learned senior counsel submits that the sum of Rs. 3.30 lacs per month was being paid by the husband voluntarily towards household expenses to the wife; but the learned Magistrate has enhanced that to Rs.8.30 lacs per month, holding that *“it is hard to believe that respondent no.1 is only earning what he has claimed”*.
5. In this behalf Ms. Luthra draws attention to the following extract of order dated 14.02.2024 :

“20. Considering that the respondent no.1 is paying Rs. 3.30 lakhs voluntarily to the complainant for the household expenses. In addition to that, respondent no.1 is further directed to pay Rs. 5 lakhs per month to the complainant for her personal expenses as it is hard to believe that respondent no.1 is only earning what he has claimed. R1 is a Director and Managing Director of multiple 5 Star hotels and the said is an admitted fact and he has many bank



accounts as mentioned by him in his income affidavit, the financial documents of all those are not before this Court. Further, the amount of loan given by him shows that he has sufficient funds/finances to pay the aforesaid monthly maintenance. On the other hand, complainant fails to justify her claim of Rs. 25 lakhs per month as interim maintenance.

“21. Further, with respect to the prayer of the complainant as to refrain respondent no.1 to evict from her matrimonial home i.e. 27A, Green Avenue Lane, Vasant Kunj, New Delhi, respondent no.1 has shown that the lease deed of the said property was expired on 31.01.2023 and he has been receiving notice from the landlord to vacate the said premises. Further, Ld. Counsel for respondent has also filed the list of alternate accommodation for the complainant. Considering the settled law that this Court cannot direct the complainant to vacate the matrimonial home, however, it is also a settled principal of law that complainant cannot insist to live in a particular property and therefore, three months time is given to the complainant to look for the option as to the alternate accommodation suggested by R1 and apprise the Court of the same.”

(emphasis supplied)

6. Ms. Luthra further submits, that regardless of the directions contained in para 21 extracted-above, the respondent has not so far looked for any alternate accommodation nor has she apprised the learned Magistrate of the same.
7. Be that as it may, it is submitted that as of now, the petitioner, the respondent, and their 02 children are living in the same farmhouse; and therefore, the petitioner is bearing all expenses towards upkeep, maintenance and other amenities and facilities available in the farmhouse, as also towards all household expenses; and the petitioner is also continuing to pay to the respondent the sum of Rs.3.30 lacs, as referred to above.



8. Learned senior counsel argues, that order dated 14.02.2024 was challenged before the learned Sessions Court by both sides, which has culminated in the passing of the impugned order, whereby the learned Sessions Court has been pleased to dismiss both appeals, with the following purported reasoning :

“19. Admittedly, the husband despite the alleged termination/ expiry of the lease is continuing to reside in the same accommodation till date. He has placed on record the list proposing alternate accommodation for the wife, but has not placed on record any document in the form of lease agreement or otherwise to show that he had also taken some accommodation on rent. This indicates that the intention of the husband is to evict the wife from the said rented accommodation and to shift her to alternate accommodation which is much below the level of accommodation where the parties are residing at present. It would be proper that the husband should look for two similar accommodations of the same level for himself as well as for his wife and then suggest the same to the wife. Admittedly, the application of the husband in this regard is already pending before Id. MM. The Ld. MM after considering the settled law has rightly held that the wife cannot be directed to vacate the matrimonial home. There is no infirmity in the findings of the Ld. MM on the said aspect also.”

9. Learned senior counsel draws attention to order dated 13.09.2023 made by a Co-ordinate Bench of this court in CM(M) No. 1486/2023 titled **Umesh S. vs. Priti S.**, in which the petitioner had prayed that respondent be directed to vacate the farmhouse, which was rented accommodation, and that the respondent be directed to opt for rented accommodation on ‘pro-rata basis’, or in the alternative, to shift to a different accommodation, with the undertaking that the petitioner would continue to pay the rent for such alternate accommodation. In the said proceedings, the petitioner had also made an alternate prayer,



that the learned Magistrate be directed to decide his application in respect of the tenanted premises in a time-bound and expeditious manner.

10. Ms. Luthra submits, that *vide* order dated 13.09.2023, the said proceedings were disposed-of, with a direction to the learned Magistrate to adjudicate the petitioner's application, in accordance with law, preferably within a month from the first listing of the passing of order dated 13.09.2023. It is stated however, that the learned Magistrate did not decide the petitioner's application despite the directions issued by the Co-ordinate Bench of this court; but in what appears to be an *ad-hoc* order the learned Magistrate has awarded an additional sum of Rs.5 lacs per month in favour of the respondent, in addition to Rs.3.30 lacs per month that was already being paid to her by the petitioner, while disposing-of an application u/s 23 of DV Act.
11. Ms. Luthra submits, that in his Affidavit of Income dated 17.10.2023 filed before the learned Magistrate, the petitioner has fairly admitted that his income is Rs. 16,42,011/- per month (stated to have been incorrectly typed as 17,42,011/- per month); and going by the settled principle as enunciated in ***Annurita Vohra vs. Sandeep Vohra***¹, the respondent would in fact be only entitled to about Rs.3.28 lacs per month, against which she is receiving 3.30 lacs per month.
12. Senior counsel submits, that it be borne in mind that the rental of the farmhouse which the respondent continues to reside in and enjoy is

¹ 2004 (74) DRJ 99



about Rs.7 lacs per month, which is being borne entirely by the petitioner.

13. In the circumstances, it is argued that there is no basis for the learned Magistrate to have enhanced the interim maintenance awarded to the respondent from Rs.3.30 lacs to Rs.8.30 lacs per month, without any grounds, reasons, or any change in circumstances.
14. Issue notice.
15. Upon the petitioner taking steps, let notice be sent to the respondent by all permissible modes, returnable for the next date.
16. Let the notice indicate that reply to the petition be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter, with copies to the opposing counsel.
17. Re-notify on 04th February 2025.
18. On a *prima-facie* view of the matter, and subject to the respondent being able to continue to reside in the farmhouse where she is presently living; and subject to the petitioner continuing to pay to the respondent Rs. 3.30 lacs per month, as referred to above, the effect and operation of order dated 14.02.2024 passed by the learned Metropolitan Magistrate, Mahila Court, Patiala House District Courts, New Delhi as well as of order dated 09.09.2024, passed by the learned Additional Sessions Judge, Patiala House District Courts, New Delhi, shall remain stayed, till the next date of hearing before this court.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 29, 2024

V.Rawat