

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

Date of Reserve: August 25, 2010

Date of Order: 30th August, 2010

+ CrI.M.C.No. 130/2010 & CrI.M.A.No. 504/2010

%

30.8.2010

Rachna Kathuria

... Petitioner

Through: Mr. P.Narula, Advocate

Versus

Ramesh Kathuria

... Respondent

Through: Mr. S.S.Saluja, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

By this petition under Section 482 Cr.P.C. the petitioner has assailed an order dated 22nd October 2009 of learned Additional Sessions Judge passed in appeal whereby the appeal of the petitioner was dismissed.

2. The petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*in short the Act*) and along with it she filed an application under Section 29 of the Act seeking maintenance. The learned Court of MM observed that petitioner was living separate from her husband since 3rd January, 1996. She had filed a Civil Suit under Hindu Adoption and Maintenance Act and an application under Section 125 Cr.P.C. and

she was getting a total maintenance of ₹ 4000/- per month from the respondent. In case the petitioner felt that maintenance awarded to her was not sufficient, the proper course for her was to approach the concerned Court for modification of the order as already observed by the High Court in a petition filed by her earlier and the application was dismissed. Against this petitioner preferred an appeal. The learned Additional District Judge dismissed the appeal and the petitioner has preferred this petition.

3. It must be understood that the Protection of Women from Domestic Violence Act, 2005 does not create any additional right to claim maintenance on the part of the aggrieved person. It only puts the enforcement of existing right of maintenance available to an aggrieved person on fast track. If a woman living separate from her husband had already filed a suit claiming maintenance and after adjudication maintenance has been determined by a competent court either in Civil Suit or by Court of MM in an application under Section 125 Cr.P.C. she does not have a right to claim additional maintenance under **the Act**. The Court of MM under **the Act** has power to grant maintenance and monetary reliefs on an interim basis in a fast track manner only in those cases where woman has not exercised her right of claiming maintenance either under Civil Court or under Section 125 Cr.P.C. If the woman has already moved Court and her right of maintenance has been adjudicated by a competent Civil Court or by a competent Court of MM under Section 125 Cr.P.C., for any enhancement of maintenance

already granted, she will have to move the same Court and she cannot approach MM under the Protection of Women from Domestic Violence Act by way of an application of interim or final nature to grant additional maintenance. This petition is not maintainable and is hereby dismissed.

August 30, 2010
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SHIV NARAYAN DHINGRA, J.