

HIGH COURT OF DELHI

**BENCH : HON'BLE MR. JUSTICE ANOOP KUMAR
MENDIRATTA**

Date of Decision: April 16, 2024

CRL.M.C. 140/2024, CRL.M.A. 571/2024

RAJEEV DAGAR ...PETITIONER

VERSUS

MUKESH DAGAR ...RESPONDENT

Legislation:

Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Protection of Women from Domestic Violence Act, 2005

Subject:

Petition under Section 482 Cr.P.C. to set aside an appellate court order concerning maintenance payments under the Domestic Violence Act, due to procedural irregularities related to judicial officer transfers.

Headnotes:

Judicial Procedure Irregularity – Transfer of Judicial Officer and Validity of Judgments – Criminal Miscellaneous Case – Delhi High Court – Case concerning the validity of judgments passed after the transfer of a judicial officer – Section 482 of the Code of Criminal Procedure, 1973 – Petitioner seeks setting aside of the order dated 15.12.2023 passed by the learned Additional Sessions Judge, South West District, Dwarka Courts in Criminal Appeal Nos. 188/2023 and 226/2023 – Order challenged on the grounds of violation of transfer order No. 50/D3/Gaz.-IA/DHC/2023, whereby officers of the Delhi Higher Judicial Service were transferred – High Court finds that the learned ASJ became functus officio upon receipt of the transfer order at

11:09AM, 15.12.2023, and could not have validly conducted hearings or pronounced judgments post this time – Held, judgments and orders passed post-transfer are set aside due to lack of jurisdiction – Appeals remanded back for fresh consideration by a successor court in compliance with the transfer rules – Appeals to be reconsidered on 14.05.2024 in a time-bound manner. [Paras 1-9]

Referred Cases: None.

Representing Advocates:

For the Petitioner: Mr. Mohit Mathur, Sr. Advocate with Mr. Nikhil Mehta, Mr. Himanshu Nailwal, Mr. Raghav Arora, Mr. Yash Mehta, Mr. Sehaj, and Mr. Abhilash Mathur, Advocates.

For the Respondent: Mr. Lakshay Kumar and Mr. Gitesh Aneja, Advocates with respondent in-person.

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred on behalf of the petitioner Rajeev Dagar (husband of respondent No.2) for setting aside order dated 15.12.2023 passed by learned Additional Sessions Judge, South West District, Dwarka Courts, Delhi in „***Rajeev Dagar vs. Mukesh Dagar***“, CA No.188/2023 and „***Mukesh Dagar vs. Rajeev Dagar***“, CA No.226/2023.

2. In brief, Criminal Appeal No.188/2023 was preferred on behalf of Rajeev Dagar (petitioner herein) challenging order dated 31.03.2023 passed by learned MM in proceedings under Protection of Women from Domestic Violence Act, 2005 whereby interim maintenance was granted in favour of all three children @ Rs.80,000/- per month from the date of filing of

application i.e. 07.04.2018. On the other hand, Criminal Appeal No.226/2023 was preferred on behalf of Mukesh Dagar (respondent/wife) against the aforesaid order dated 31.03.2023 passed by learned MM for enhancing the maintenance amount.

3. Both the aforesaid appeals were disposed of vide order dated 15.12.2023 by learned ASJ whereby CA No.188/2023 preferred on behalf of Rajeev Dagar (petitioner) was dismissed, while CA No.226/2023 preferred on behalf of Mukesh Dagar (respondent) was allowed granting maintenance @ Rs.95,000/- for each child (i.e. Rs.1,90,000/- per month for two younger children apart from maintenance of Rs.95,000/- for the eldest daughter from the date of filing of the case till she attains the age of 18 years).

4. The grievance of learned counsel for the petitioner is that aforesaid appeals were taken up by the learned Appellate Court on 15.12.2023, in violation of transfer order No.50/D3/Gaz.-IA/DHC/2023 dated 14.12.2023, whereby the officers of Delhi Higher Judicial Service were transferred with immediate effect and contrary to Note 2, which provides as under :

“2. The judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the court in terms of the posting/transfer order. The judicial officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks thereof, notwithstanding the posting/ transfer. Date of pronouncement shall be notified in the cause list of the court to which the matter pertains as also of the court to which the judicial officer has been transferred and on the website.”

5. He further submits that aforesaid transfer order was forwarded to the learned judicial officers and came to the notice of learned Trial Court on 15.12.2023 prior to hearing and despite transfer orders, the appeals were taken up for hearing and orders uploaded on 19/20.12.2023 despite the objection raised by learned counsel for the petitioner that mediation proceedings were pending pursuant to an order dated 24.11.2023 passed by Co-ordinate Bench of this Court in Cont. Case (C) No.1171/2022. It is pointed out that appeals were listed before the learned Appellate Court at item Nos.12&13 (in the cause list) and arguments could not have been concluded by 11:00AM. Further, it is not feasible to pass a detailed order running into 14 pages, without reserving the same prior to 11:00AM. It is

prayed that appeals be remanded back for fresh hearing to the learned Appellate Court/Successor Court for considering the matter afresh, as remedy under Section 482 Cr.P.C. is the last resort after the appeals have been considered in accordance with law.

6. On the other hand, learned counsel for the respondent opposes the petition and submits that the appeals were part-heard and as such the same were taken up for further arguments/clarification on 15.12.2023 in terms of earlier order dated 20.10.2023 and judgment was pronounced in accordance with law. Learned counsel for the respondent urges that in case the appeals are remanded back for reconsideration by the learned Appellate Court, the same may be directed to be disposed of, in a time bound manner.

7. Admittedly, in terms of order dated 14.12.2023 issued by High Court of Delhi, the postings/transfers in the Delhi Higher Judicial Service were made with immediate effect. As such, the concerned officers had become *functus officio* to deal with the matters after the transfer orders were communicated to them. As per the report received from the concerned Principal District and Sessions Judge, the transfer orders dated 14.12.2023 were received by the office of Principal District and Session Judge on 14.12.2023 and were circulated to all the Branches through digital mode/WhatsApp at 11:06AM. The said order is stated to have been seen by the concerned judicial officer at 11:09AM as per the WhatsApp screenshot forwarded with the report. In view of above, the officer had become *functus officio* for purpose of exercising the jurisdiction in respect of the matters placed before him in exercise of jurisdiction as ASJ-04, South-West District, Dwarka Courts on 15.12.2023 at 11:06AM. The cases which were not taken up prior to 11:06AM and concluded could not have been further effectively heard and disposed of since the judicial officer ceases to exercise the jurisdiction.

8. The issue raised by learned Senior Counsel for the petitioner is that appeals were neither finally heard nor order pronounced prior to 11:09AM, by which time the judicial officer had become aware of the transfer orders dated 14.12.2023 and was no longer competent to hear and pronounce the judgment. It has been pointed out that the appeals were kept for clarifications/arguments vide order dated 20.10.2023 for 15.12.2023 and were listed at item No.12&13 of the cause list of the learned Appellate Court. As such, the possibility of hearing the matters listed for arguments almost at the fag end of the cause-list is stated to be

remote, coupled with the fact that strong objection had been raised on behalf of the petitioner for adjournment since the disputes were referred for mediation by Co-ordinate Bench of this Court.

9. It is well settled that in case the judicial officer concerned receives the transfer orders, he becomes *functus officio* to exercise the jurisdiction thereafter over the matters listed before him. The factual position placed on record strongly reflects that the appeals which were listed vide order dated 20.10.2023 passed by the learned Trial Court for further arguments on 15.12.2023, possibly could not have been taken up and concluded by 11:09AM. The judgment passed by the learned Trial Court would have been valid only in case the appeals had been taken up prior to 11:09AM and reserved for orders or an operative act or the judgment would have been conveyed after hearing the parties. In the said eventuality, the manner or mode of delivery subsequently would not have prejudiced the parties in any manner. The essence is that the officer should have exercised that power prior to receipt of the transfer orders. Since the circumstances strongly reflect that the appeals appear to have been taken up after receipt of the transfer orders at 11:09AM; without casting any aspersions on the conduct of proceedings and expressing any opinion on the merits of the appeals, there is no option but to set aside the order passed by the learned Appellate Court in CA No.188/2023 & CA No.226/2023, since the officer had become *functus officio* to exercise the jurisdiction as ASJ-04, South-West District, Dwarka Courts, Delhi. The appeals are accordingly directed to be decided afresh by the learned Successor Court in accordance with law. Appeals shall be taken up by the learned Trial Court/Successor Court for consideration on 14.05.2024 and make an endeavour to dispose of the same in accordance with law in a time bound manner.

A copy of this order be forwarded to the learned Trial Court/Successor Court for information and compliance.

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