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

Date of decision: 21st October, 2021

IN THE MATTER OF:

\+ **CRL.M.C. 677/2021 & CRL.M.As. 3321/2021 & 7969/2021**

BSR ..... Petitioner

Through Petitioner in person

versus

PSR .....Respondent

Through Respondent in person

\+ **CRL.M.C.691/2021 & CRL.M.As.3364/2021,7897/2021, 7968/2021**

BSR ..... Petitioner

Through Petitioner in person

versus

PSR .....Respondent

Through Respondent in person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. CRL.M.C. 677/2021 is directed against the order dated 06.02.2021, passed by the learned Additional Session Judge – 03, Karkardooma Courts, in Criminal Appeal No.19/2020. Criminal Appeal No.19/2020 arises out of order dated 23.01.2020 passed by the Metropolitan Magistrate, Karkardooma Courts, in CT/3448/2018.

2. The learned Metropolitan Magistrate by an order dated 23.01.2020 dismissed the petition filed by the petitioner under Section 12 of the Domestic Violence Act (D.V. Act) on the ground of non-prosecution. The learned Metropolitan Magistrate has also issued notice to the Deputy

Director, Directorate General of All India Radio to furnish details of empanelment of the petitioner herein with the details of enrolment number and details of the lawyer's fees of the petitioner herein for the purpose of determination of maintenance.

3. CRL.M.C. 691/2021 is directed against the order dated 06.02.2021 passed by the Additional Session Judge – 03, Karkardooma Courts, in Criminal Appeal No.25/2020. Criminal Appeal No.25/2020 arises out of order dated 24.07.2019 passed by the Metropolitan Magistrate, Karkardooma Courts, in CT/3448/2018.

4. The learned Metropolitan Magistrate by an order dated 24.07.2019 dismissed the application filed by the petitioner herein seeking counter-claim under the Domestic Violence Act. The learned Metropolitan Magistrate by the same order also rejected the plea of the petitioner for restoration of ownership/possession of four properties and permission to live with his children.

5. Both the appeals were disposed of by a common judgment. The Appellate Court condoned the delay in filing the appeal. However, the Appellate Court has dealt with the appeal by passing the following order:

> *"12. Now court will deal with the merits of the above mentioned criminal appeals.*
>
> *13. Perusal of the both these impugned orders are crystal clear that Id. trial court passed the impugned orders after considering each and every point of law and judgments cited. Neither of these order suffer from any illegality, perversity nor passed the same in any arbitrarily manner. Appellant tried to mingle other issues with the present one.*

> *14. With the above discussion, this court is of the view that impugned orders do not call for any interference and same are well reasoned and legally justified. Accordingly, the impugned orders dated 24.07.2019 and 23.01.2020 are hereby upheld.*
>
> *15. Accordingly, the above mentioned criminal appeals are hereby dismissed as no merits are found therein."*

6. The Additional Session Judge was hearing an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act"). Section 29 the DV Act reads as under:

> *"**29**. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."*

7. Under Section 29 of the DV Act, an appeal is maintainable against an order passed by the Magistrate on both law and facts. The Appellate Court has not given any reasons other than saying that both the impugned orders therein were crystal clear and that the Metropolitan Magistrate has passed the impugned orders after considering each and every point of law.

8. It is well settled that reasons are the live links between the mind of the decision taker to the controversies in decision and the decision or conclusion arrived at. An order sans reasons takes away a very valuable right of a litigant - to challenge that order. The Supreme Court in CCT v. Shukla & Bros., **(2010) 4 SCC 785,** has observed as under:

> *"**13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of***

justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. *Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements.* ***A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.*** *Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.*

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19*. In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in the absence of proper discussion. The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."*

(emphasis supplied)

9. The Supreme Court in State of Orissa v. Dhaniram Luhar, **(2004) 5 SCC 568,** has observed as under:

"6. .....Reasons introduce clarity in an order. On plainest consideration of justice, the High Court

ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. *Similar view was expressed in State of U.P. v. Battan [(2001) 10 SCC 607 : 2003 SCC (Cri) 639] . About two decades back in State of Maharashtra v. Vithal Rao Pritirao Chawan [(1981) 4 SCC 129 : 1981 SCC (Cri) 807 : AIR 1982 SC 1215] the desirability of a speaking order while dealing with an application for grant of leave was highlighted.* ***The requirement of indicating reasons in such cases has been judicially recognised as imperative.*** *The view was reiterated in Jawahar Lal Singh v. Naresh Singh [(1987) 2 SCC 222 : 1987 SCC (Cri) 347] . Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or court, be it even the highest court in a State, oblivious to Article 141 of the Constitution.*

7. *Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar [(2003) 11 SCC 519 : 2004 SCC (Cri) 212 : (2003) 7 Supreme 152] .)*

8. *Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that*

> *if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.* ***Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out.*** *The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."* (emphasis supplied)

10. It is well settled that even when an appellate Court affirms the order of the Court below, it has to adjudicate on the issues which arises in the appeal and must deal with all the contentions raised by the parties.

11. The impugned order is completely bereft of any reasons. The duty of the Appellate Court is to see whether the learned Metropolitan Magistrate had considered the claim of the petitioner on merits and what are the reasons given by the learned Metropolitan Magistrate to reject the claim.

12. Confronted with this, the respondent submits that the matter be remanded back to the learned Sessions Court for a *de novo* hearing of the appeals on the merits of the case.

13. Resultantly, the petition is allowed and the order dated 06.02.2021 passed by the Additional Session Judge – 03, Karkardooma Courts, in Criminal Appeals No.19/2020 & 25/2020 is set aside and the matter is remanded back to Additional Session Judge for consideration.

14. Be it noted that this Court has not passed any orders on the merits of

the case and has set aside the impugned order only on the ground that the orders are completely bereft of any reasons.

15. In view of the fact that the present petition arises out of matrimonial dispute, the Additional Session Judge is directed to dispose of the appeals as expeditiously as possible.

SUBRAMONIUM PRASAD, J

OCTOBER 21, 2021
Rahul