

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

+ **CrI. M.C. No.3024/2008**

Date of Decision : 10.07.2009

SH. VIJAY SINGH YADAV

.....Petitioner

Through: Mr. M.B.Singh, Advocate

Versus

SMT. RAJESH YADAV & ANR.

..... Respondents

Through: Mr.N.K.Sharma, Advocate
for the respondent no.1
with respondent no.1 in
person.
Mr.Jaideep Malik, APP for
the State.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 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 the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. *(Oral)*

1. This is a petition filed by the petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C. against the order dated 07.4.2008 passed by Ms.Kiran Bansal, MM, Delhi in M.P. No.372/3/03 u/S 125 of Cr.P.C. directing the petitioner herein to pay an interim maintenance @Rs.4,000/- per month to the respondent no.1 w.e.f. December, 2003 till the disposal of the main petition.

2. Briefly stated the facts leading to the filing of the present petition are not in dispute except the quantum of earnings of the petitioner. It is admitted by the petitioner that the respondent

No.1 Smt. Rajesh Yadav is his wife. It is admitted that the marriage took place between the parties on 26.2.1973 and from the said wedlock, they were blessed with two sons namely Sameer Yadav and Goldi Yadav. It is also not in dispute that from 1993 onwards, the respondent no.1 was living separately along with her sons. The respondent no.1 Smt.Rajesh Yadav has made allegations that she was forced to live separately on account of demand of dowry by the petitioner herein and that she does not have any independent source of income and accordingly, chose to file the petition for grant of maintenance under Section 125 of the Cr.P.C. for herself and her two sons. The learned Magistrate as early as on 24.11.2003 has directed the petitioner herein to pay interim maintenance of Rs.4,000/- per month to the respondent till November, 2003. Somehow this resulted in prolonged litigation initiated by the petitioner by way of filing revisions as a consequence of which said order of payment of interim maintenance could not be complied with and only a sum of Rs.1 lac has been paid in these proceedings which has been accepted by the respondent no.1 herein without prejudice to the rights and contentions on 13.5.2009 that is after a lapse of almost six years.

3. The main contention of the learned counsel for the petitioner is that the petitioner has been stated in the impugned order to be an able bodied person and having 42 Killas of land while as his holding of agricultural land is stated to be much less. It has been stated that his income has been taken to be

Rs.30,000/- per month from the land in question as against that he is earning only a sum of Rs.1,000/- to 15,000/- per month. The learned counsel for the petitioner has drawn my attention to the report of the Patwari showing his holding to the extent of 34 Kanal 17 Marlas.

4. The second contention of the learned counsel for the petitioner is that the respondent cannot be permitted to take advantage of her wrong inasmuch as she herself has deserted the petitioner way back in 1993 apart from the fact that she herself is a stage artist and is making a good living. Learned counsel has referred to the following authorities contending that notwithstanding the fact that this is an interim order still there is a mis-carriage of justice in calculating the total income which has been taken to be the basis for payment of the interim maintenance to the respondent that is not sustainable in the eyes of law. These authorities are as follows:

Chaturbhuaj Vs. Sita Bai 2007 (13) Scale 402
Delhi Lotteries Vs. Rajesh Aggarwal 1997 VI AD (Delhi) 529
Krishnan & Anr. Vs. Krishnaveni & Anr. JT 1997 (1) SC 657
MCD Vs. Sub-Judge & Anr. 66 (1997) DLT 50

5. I have carefully considered the submissions made by counsel for the petitioner. There is no doubt that no revision is permissible under Section 397 (2) of the Cr.P.C. against an interlocutory order. However, in appropriate cases, the High Court in exercise of its powers under Section 482 is competent enough to intervene or set aside or modify even an interlocutory order in case it has resulted in abuse of process of law or is

causing grave miscarriage of justice. For this purpose, the judgments which have been relied upon by counsel for the petitioner in case of **Krishnan & Anr. Vs. Krishnaveni & Anr.** & **in case titled Delhi Labour Vs. Raj** (supra) are not in dispute.

6. The question which is to be considered in the instant case is as to whether in the present case the interlocutory order which has been passed by the learned Magistrate by way of interim maintenance of Rs.4,000/- per month to the respondent is causing any grave miscarriage of justice qua the petitioner, keeping in view his stand that the annual income of the petitioner from the agricultural land is only Rs.1,000/- to Rs.15,000/-. I do not feel that the interlocutory order which has been passed by the learned Magistrate is causing grave miscarriage of justice or is resulting in an abuse of process of law which would warrant interference by this Court in altering the interim maintenance fixed by the learned Magistrate. This is on account of the fact that this is only an interim maintenance which has been fixed not only in respect of the respondent Smt. Rajesh Yadav but also her two sons. Therefore, to content that a sum of Rs.4,000/- is excessive for three persons is an absurd proposition.

7. The learned Magistrate while granting interim maintenance has taken into consideration an average of Rs.30,000/- as the agricultural income and has also taken note of the fact that the petitioner had retired from his job and got a sum of Rs.8 to 9 lacs at the time of his retirement. He has rightly assessed the overall

income of the petitioner as Rs.8 to 9 lacs out of which at best he has given 50% to the respondent for the purpose of maintenance.

8. The very fact the petitioner was directed to pay an amount of interim maintenance in order to prevent the vagrancy on the part of the respondent as early as on 2003, the petitioner's intention does not seem to be bonafide in preferring this petition on account of the fact that from 2003 despite the repeated orders for maintenance. The petitioner has initiated three rounds of litigations to avoid the discharge of obligation cast on him. It is only this year for the month of May, 2009 that he has handed over a sum of Rs.1,50,000/- to the respondent. This clearly shows that the intention of the petitioner is to avoid the obligation cast on him by the statute by adopting dilatory tactics. Therefore, this contention of the learned counsel for the petitioner that there is miscarriage of justice or that his income has not been rightly assessed does not have any merit at this stage on account of the fact that all these aspects will be considered by the learned Magistrate on merits as and when the parties adduce their evidence. Accordingly, this contention of the learned counsel for the petitioner is dismissed.

9. The third contention which has been raised by the learned counsel for the petitioner is that there are some contradictions in the stand taken by the respondent in different rounds of litigation. In addition to this, it has been contended that the respondent is working as a Stage artist and making an earning. The very fact that there are some contradictions with regard to

the stand of the respondent will not entitle the petitioner to completely become oblivious to his obligation to maintain his wife and children. The petitioner shall be at liberty to adduce such evidence and show to the learned Magistrate that she was employed at some point of time which fact will be obviously taken into consideration by the learned Magistrate while deciding the matter on merit.

10. For these reasons, I feel even this contention made by counsel for the petitioner needs to be rejected.

11. The learned counsel for the petitioner had also placed reliance on the case titled **Chaturbhuj Vs. Sita Bai** (supra) wherein the Apex Court laid down that it is essentially on the wife to discharge the burden to show what is the income of the petitioner /husband. There is no dispute about the proposition of law laid down by the Supreme Court. The question of burden being discharged by the wife and the onus shifting on the petitioner are all questions of merits. Section 125 Cr.P.C. has been essentially incorporated in 1973 to prevent the husband from avoiding his responsibility to maintain his wife, parents or children so that they are not left to become vagrant. It has been laid down in the said provision that an interim order or interim measure can be passed by the Court on the basis of prima facie evidence. Even at the first stage of presentation of the petition itself, the learned Magistrate has power to pass any order with regard to the interim maintenance. In the present case though

an order has been passed almost six years earlier and the compliance has taken place only in the month of May, 2009.

12. For the reasons mentioned above, there is no merit in the present petition accordingly, the same is dismissed. However, it is expected that the question of discharge of burden, quantum of earnings of the petitioner shall be considered by the learned MM in detail while disposing of the main petition which may be done as expeditiously as possible.

13. With these observations, the present petition is dismissed.

V.K. SHALI, J.

July 10, 2009
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