

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL. M.C. 1920/2010**

Decided on 15.07.2010

IN THE MATTER OF :

SUJATA AGGARWAL Petitioner
Through: Mr. Hameed S. Shaikh, Advocate

versus

RAVI SHANKAR AGGARWAL Respondent
Through: Mr. V.S. Pandey, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing of orders dated 23.09.2008 and 24.02.2010 passed by the learned Metropolitan Magistrate in a petition filed by the petitioner under Section 125 of the Cr.PC for maintenance.

2. Vide order dated 23.09.2008, the application filed by the petitioner in September, 2008 praying *inter alia* for summoning of witnesses was dismissed, while granting liberty to the petitioner to lead evidence by way of affidavit. Pertinently, till date the petitioner has not taken any step to assail the aforesaid order before a superior court. Instead, trial in the

matter is stated to have been completed some months ago and as per the counsel for the respondent, it is listed for orders today.

3. By the second order dated 24.02.2010, the request of the counsel for the petitioner for staying the proceedings pending before the Metropolitan Magistrate on the ground that proceedings in the connected case filed by the daughter of the petitioner were stayed by the High Court vide order dated 22.02.2010 passed in CrI.M.C. No.1323/2009, was declined on the ground that there was no stay granted by the High Court in respect of the present proceeding and that the same was the main case.

4. Vide order dated 18.03.2008, learned Metropolitan Magistrate, while deciding the application of the petitioner seeking interim maintenance under Section 125 of the Cr.PC, had directed the respondent to pay a sum of Rs.20,000/- per month to the petitioner from the date of filing of the application till the disposal of the petition. Aggrieved by the interim maintenance fixed under the aforesaid order, the petitioner sought enhancement of the amount and preferred a revision petition, registered as CrI.M.C. 2725/2008. The said revision petition was dismissed by this Court vide order dated 21.08.2008, concurring with the order of the learned Metropolitan Magistrate. The aforesaid order was taken in appeal by the petitioner to the Supreme Court, by preferring a Petition for Special Leave to Appeal (CrI) No. 2161/2009, which was disposed of vide order dated 13.04.2009 with the following observations:

“Delay condoned.

Heard learned counsel for the parties.

The trial Court in an application filed by the wife for maintenance under Section 125 of the Code of Criminal Procedure, 1973, by way of interim measure, had directed the husband to pay Rs.20,000/- per month.

Petitioner, being dissatisfied with the said interim order, challenged the said order before the High Court for enhancement of maintenance. The High Court by the impugned order has dismissed the same.

We are informed that the said maintenance petition under Section 125 of the Code is still pending before the concerned court.

In this view of the matter, we are not inclined to exercise our discretion under Article 136 of the Constitution of India. The Special Leave Petition is dismissed. However, the concerned court, before which the petition under Section 125 of the Cr.PC, is pending, is directed to dispose off the said petition in accordance with law within a period of three months from the date of receipt/production of a copy of this order, after affording an opportunity to both the parties to lead evidence in the matter."

5. Counsel for the respondent submits that the petitioner is trying to adopt dilatory tactics in the present case and despite the aforesaid specific orders of the Supreme Court, directing that the petition under Section 125 Cr.PC be disposed of within a period of three months from the date of receipt of the order after affording an opportunity to both the parties to lead evidence in the matter, the petitioner has chosen to prefer the present petition and sought an adjournment on the last date of hearing before the Metropolitan Magistrate, on the ground of non-availability of her counsel. Counsel for the petitioner states today that as the Supreme Court had granted liberty to both the parties to lead evidence in the matter, the

petitioner is entitled to be granted the relief as sought by her in the application filed for producing additional evidence.

6. The records reflect that on the date when the order of the Supreme Court was passed, i.e., on 13.04.2009, no such application of the petitioner for adducing any additional evidence was pending. Nor did the petitioner file such an application on a later date. Hence, the question of the Metropolitan Magistrate granting such an opportunity to her does not arise. It does not lie in the mouth of the petitioner to allege today that an application for summoning of additional witnesses filed by her in September, 2008 and rejected vide order dated 23.09.2008 can be assailed in the present proceedings after a lapse of almost two years. Even otherwise, counsel for the respondent states that the stage of evidence is over, arguments have already been addressed in the matter and the same is listed for orders today.

7. As far as the order dated 24.02.2010 is concerned, admittedly, the present petition under Section 125 of the Cr.PC was preferred by the petitioner prior in time to a petition filed by her daughter for the same relief of maintenance. Counsel for the petitioner also concedes that the present case was treated as the main case. In the light of the order of the Supreme Court, the petitioner cannot be heard to state that the learned Metropolitan Magistrate ought to have waited for CrI.M.C. No. 1323/2009 to be decided first merely because the proceedings in the said petition filed by the daughter of the petitioner were stayed. The present petition is nothing but an attempt on the part of the petitioner to try and delay the pending proceedings under Section 125 Cr.PC. Knowing very well that there is an

order of the Supreme Court dated 13.04.2009 calling upon the learned Metropolitan Magistrate to dispose of the pending proceedings within three months, the petitioner has intentionally not mentioned passing of the said order in the present petition. It is counsel for the respondent, who has handed over a copy of the said order in the Court. Leave alone the matter being decided in three months from 13.04.2009, even after over one year, it is stated to be pending and listed for orders today. For the aforesaid reasons, this Court is not inclined to interfere in the impugned orders dated 23.09.2008 and 24.02.2010. On merits also the impugned orders do not suffer from any irregularity, perversity or arbitrariness to deserve interference. The petition is dismissed with costs of Rs.5,000/- payable to the other side within one week.

JULY 15, 2010
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(HIMA KOHLI)
JUDGE