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

+ CRL.REV.P. 343/2010

AMIT NARAIN MISRA Petitioner
Through: Mr. V.K. Shukla with Mr.K.K.
Verma and Mr. Ashish Tripathi,
Advs.

versus

STATE & ANR Respondents
Through: Mr. Arvind Kr. Gupta, APP.
Mr. Sulaiman Mohd. Khan, Adv.
for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
29.09.2010

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1 This case has a chequered history. An application under Section 125 of the Code of Criminal Procedure, 1973 (Code, for short) was filed by the respondent No. 2 in Patiala House Courts on 18th November, 2006. The petitioner was served and had appeared before the learned Metropolitan Magistrate. He had filed his written statement. Subsequently, the matter was transferred to District Courts Dwarka. The petitioner was not served with any notice from the Court, to which the matter was transferred. He was proceeded ex-parte and vide ex parte order dated 31st July, 2009 the application under Section 125 of the Code was disposed of with direction to the petitioner to pay maintenance @ Rs.5,000/- per month to the respondent No. 2 with retrospective effect from the date of the filing of the application.

2 The respondent No. 2 filed a revision petition against this order for enhancement of maintenance. Petitioner was served in the said revision petition and contested. Relying upon judgment of the Supreme Court in *Mohd. Naim Siddiqui Vs. Smt. Sultana Khatoon*, (1982) 3 SCC 369, the petitioner filed an application for setting aside of the ex-parte order before

the court where the revision petition was pending. It is obvious that this application for setting aside of the ex-parte order passed by the trial court was filed on a wrong legal advice. Application for setting aside ex-parte order should have been filed before the learned trial court and not in the court where the revision petition was pending. This application has been dismissed by the revisionary court and it was held that the judgment in the case of *Mohd. Naim Siddiqui (Supra)* is not applicable. Learned revisionary court relied upon ex-parte evidence led by the respondent No. 2 and her statement that the petitioner was working in a call centre and earning Rs.30,000/- per month. Accordingly, maintenance @ Rs.5,000/- per month was inappropriate. The revision was allowed and the ex-parte order passed by the learned Metropolitan Magistrate was modified and the petitioner has been directed to pay Rs.10,000/- per month from the date of filing of the application for maintenance.

3. Learned counsel for the petitioner states that he has not been given any opportunity to lead any evidence and there was an error or mistake in passing of the ex-parte order dated 31st July, 2009.

4. It is pointed out by the counsel for the petitioner that in the written statement there is an allegation that the respondent No. 2 was working. It is stated that the respondent No. 2 is still working. It is submitted that the respondent No. 2 is M.Com.

5. Having regard to the totality of the facts and to expedite the proceedings and avoid any further complications, it is directed as under:-

(i) Ex-parte order dated 31st July, 2009 is set aside. The petitioner and respondent No. 2 will appear before the concerned court on 12th October, 2010, the date already fixed for further proceedings.

(ii) The petitioner will file Form-16 for the last three financial years and will also file salary slip for the last six months before the trial court on 12th October, 2010.

(iii) Petitioner will continue to make payment @ Rs.6,000/- per

month to the respondent No. 2. Arrears deposited by the petitioner will also be released to the respondent No. 2. This payment of Rs.6,000/- will abide by further orders of the trial court. It is clarified that the trial court can enhance or reduce this amount depending upon evidence led by the parties. The payment of arrears will be subject to the final outcome of the proceedings under Section 125 of the Code.

6. The observations made in this order are for the purpose of disposal of the present petition and will not be construed as observation on merits binding on the trial court.

Dasti.

SANJIV KHANNA, J.

SEPTEMBER 29, 2010
J/VKR