

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **CRL.M.C. 370/2011 & CrI.M.A. No.1447/2011**

Decided on 18.02.2011

IN THE MATTER OF :

VIPIN TYAGI

..... Petitioner
Through : Mr. B.S. Chowdhary, Adv.

versus

SMT. ROOPA TYAGI & ANR.

..... Respondents
Through : None.

CORAM

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

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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 |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 482 Cr.P.C. against the order dated 28.10.2010 passed by the learned Metropolitan Magistrate in the Complaint Case No.200/4/2009 filed by respondent No.1, wife of the petitioner, for maintenance under Section 125 Cr.P.C. for herself as also for respondent No.2, a daughter aged around 1-½ years.

2. Counsel for the petitioner states that the impugned order, by which interim maintenance of ₹5,000/- per month is fixed as payable to respondent No.2, is liable to be set aside on the ground that the petition preferred by respondent No.1 under Section 125 Cr.P.C. was only for

seeking maintenance in respect of herself, and not in respect of respondent No.2, the minor child. He seeks to draw the attention of this Court to the prayer clause of the aforesaid petition to contend that it was only respondent No.1 who had claimed maintenance from the petitioner.

3. However, a perusal of the petition preferred by the respondents, enclosed as Annexure P-2, does not bear out the submission made by the counsel for the petitioner. In fact, in para 23 of the aforesaid petition, it has been specifically stated on behalf of both the respondents that they are unable to maintain themselves and are totally dependent on the aged parents of respondent No.1. To do complete justice between the parties, the courts are required to examine the petition as a whole and not just the prayer clause. Such a technical approach if adopted by the courts would lead to grave miscarriage of justice. Therefore, the aforesaid argument is turned down as being devoid of merits.

4. The second contention of the counsel for the petitioner is that the trial court did not appreciate the fact that the petitioner has been disowned by his own parents and therefore, he is not a beneficiary of the various properties taken note of in para 8 of the impugned order, for the purpose of fixing the interim maintenance. He states that the fact of the petitioner being disowned by his family was taken up as a preliminary objection in his reply to the petition filed by the respondents under Section 125 Cr.P.C. He is however unable to inform the Court as to the date on which the parents of the petitioner disowned him.

5. The aforesaid submission made on behalf of the petitioner of his being disowned by his parents has been taken note of by the court below only to be discarded with the observation that as a matter of practice,

whenever any matrimonial litigation is filed by the wife of the son, the first step taken by his parents is to debar him from all their properties on paper. This Court is inclined to agree with the aforesaid observation. In any case, the present order is only an interim order and not a final order. The aforesaid argument can be taken up before the trial court in the course of arguments after the petitioner is able to establish this fact in the course of trial.

6. The third and final ground taken by the learned counsel for the petitioner to seek quashing of the interim order is that the petitioner is undergoing treatment at the Institute of Human Behaviour & Allied Sciences (IHBAS) for mental unsoundness since the year 2009 and is therefore not in a position to pay the interim maintenance as ordered by the court below. Pertinently, the documents placed on record by the petitioner were, admittedly, not before the trial court when the impugned order came to be passed. Counsel for the petitioner submits that the aforesaid documents were filed subsequently and are on the record of the trial court.

7. While refraining from commenting on the mental condition of the petitioner in the present proceeding, it is apparent from a perusal of the aforesaid documents that the petitioner has only been issued an OPD Card and prescribed some medicines. The mental health of the petitioner can be established in the course of trial and in case the petitioner succeeds, then appropriate orders shall follow. However, at the stage of deciding the legality of an interim order, this Court is not inclined to conduct an indepth examination of the aforesaid documents, more so when the said documents were not placed before the trial court at the time of addressing arguments on the interim application. As per the petitioner, he is undergoing treatment

at IHBAS since the year 2009. Thus, the documents being sought to be relied upon before this Court, were always available to the petitioner for filing before the trial court along with his reply. Having failed to file them at the appropriate stage, the petitioner cannot be permitted to advert to them in the present proceedings, so as to overturn the order of interim maintenance granted to respondent No.2.

8. It is also settled law that the powers of this Court in exercise of its inherent powers under Section 482 of Cr.P.C. are extraordinary in nature and should be exercised with great caution. In the case of Janata Dal vs. H.S. Chowdhary reported as **(1992) 4 SCC 305**, it was held by the Supreme Court as follows: -

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

Having regard to the facts and circumstances of the present case, this Court is of the opinion that the petitioner has failed to place on record any facts which justify exercise of such powers in his favour.

9. Pertinently, despite the fact that there is no stay operating in his favour, counsel for the petitioner states that the petitioner has not paid any maintenance to respondent No.2 ever since the passing of the impugned order. Under the impugned order, the said amount was directed to be paid

by the petitioner from the date of filing of the application, i.e., w.e.f. May, 2009. The explanation sought to be offered for non-payment is the pendency of the present petition, which was filed in this Court two months after passing of the impugned order, i.e., on 31.1.2011. It is stated that the next date of hearing fixed before the trial court is 28.3.2011 for recording of evidence on behalf of the respondents herein (petitioners in the court below). The time for payment of the amount of maintenance is extended. The petitioner is permitted to tender the arrears of maintenance to respondent No.2 on or before the aforesaid date fixed before the court below.

10. The petition is dismissed, along with the pending application, with costs of ₹10,000/- payable to the respondent No.1 on or before the next date of hearing fixed before the trial court.

Registry is directed to forward a copy of this order forthwith to the concerned Court for information.

FEBRUARY 18, 2011
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HIMA KOHLI,J