

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

+ **Crl. M. C. No. 1069/2011**

Date of Decision : 10.05.2011

NAGENDER SINGH

..... Petitioner

Through: Mr.V.N.Kha, Adv.

Versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Navin Sharma, APP

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? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

1. This is a petition filed under Section 482 Cr.P.C. against the order dated 24.02.2011 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in C. C. No. 02/2011 titled **Sh. Nagender Singh Vs. State & Ors.** upholding the order dated 07.01.2010 passed by the learned Metropolitan Magistrate in a petition under Section 125 Cr.P.C.
2. Briefly stated the facts leading to the filing of the present petition are that the petitioner got married to the respondent no. 2 on 09.02.2007 according to Hindu Rites and Customs. It is alleged that the respondent no. 2

started living in a joint family with the present petitioner and the marriage was consummated. The respondent no. 2 alleged that she has been subjected to cruelty and demand of dowry which resulted in strained relationship between the petitioner and the respondent no. 2. The respondent no. 2 lodged a complaint in Crime against Women Cell and also initiated a petition under Section 125 Cr.P.C. for the purpose of grant of maintenance as she was not having sufficient source of income to maintain herself. In addition to this, the proceedings under Section 24 of the Hindu Marriage Act were also initiated whereupon the learned ADJ is stated to have granted a maintenance @ Rs.1,500/- per month to the respondent no. 2 w.e.f. 04.11.2008. So far as the case under Section 125 Cr.P.C. is concerned, the present petitioner did not appear despite the summons being served. The petition was accordingly decided ex-parte.

3. The petitioner filed a revision petition in the Sessions Court where the ex-parte order of maintenance which was passed against the petitioner, was set aside and the matter was remanded back to the learned Metropolitan Magistrate. The present petitioner did not file his written statement despite being given repeated opportunities. The respondent no. 2 filed her own affidavit by way of evidence claiming maintenance @ Rs.7,000/- per month from the

date of filing of the application. It was alleged by her that the present petitioner is working with Idea Cellular Company and is earning Rs.35,000/- per month approximately. Despite the sufficient opportunities having been given, the petitioner did not cross-examine the witness. Ultimately on merits, it culminated into an order dated 07.01.2010 in favour of the respondent no. 2 directing the petitioner to pay a sum of Rs.7,000/- as maintenance for the sustenance of the respondent no.2.

4. The petitioner feeling aggrieved by the said order filed a revision petition before the learned Additional Sessions Judge. The contention of the learned counsel for the petitioner was that the respondent no. 2 was also getting a maintenance @ Rs.1,500/- per month and the learned Metropolitan Magistrate has not taken into consideration the said amount. The learned Additional Sessions Judge dismissed the revision petition on the ground that he had been indulging in dilatory tactics and despite sufficient opportunities having been given to him, he did not file his written statement or statement by way of defence. On the contrary, even the complainant was not cross-examined by him, therefore, the aforesaid order directing the payment of maintenance @ Rs.7,000/- per month passed by the learned MM, was affirmed by the learned Sessions Court.

5. The present petition has been filed against the order dated 24.2.2011 passed by the learned ASJ confirming the order dated 7.1.2010 passed by the learned Metropolitan Magistrate, on the ground that the present petitioner is earning a sum of Rs.4,000/- to 4,500/- approximately per month and he has no other source of income to sustain himself. He has stated that keeping in view his earnings, in case he is burdened with a maintenance of Rs.7,000/-, he will not be able to pay the same and hence the present petition for quashing or setting aside the order dated 24.2.2011 passed by the learned Additional Sessions Judge.
6. I have heard the learned counsel for the petitioner as well as the learned APP.
7. The main contention of the learned counsel for the petitioner is that he does not have an income of Rs.35,000/- per month as alleged by the respondent no. 2. On the contrary, it is stated that the petitioner is working as a driver in Idea Cellular Company and not as an Area Manager and his monthly income is approximately Rs.4,000/- to Rs.4,500/- per month, and therefore, he is unable to pay the maintenance to the respondent no.2 at the rate at which the Court has fixed the same.

8. It was also contended by the learned counsel for the petitioner that the respondent no. 2 was guilty of concealment of material facts and since the respondent no. 2 has not come to the Court with clean hands, therefore, the aforesaid order deserves to be set aside. It was also stated that while passing the order dated 24.2.2011, the learned Additional Sessions Judge has not taken into account the factum of Rs.1,500/- being given by the petitioner to the respondent no. 2. It was further alleged that the learned Additional Sessions Judge without taking into consideration the salary of the present petitioner had directed the payment of Rs.7,000/- per month. The learned counsel for the petitioner has placed reliance on the following two judgments to canvass that the respondent no. 2 is guilty of concealment of material facts, and therefore, the order itself fixing the maintenance is liable to be quashed.

(i) **State of Rajasthan Vs. Ani @ Hanif & Ors.**
AIR 1997 SC 1023

(ii) **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors.** AIR 1994 SC 853

9. The respondent no.2 vehemently opposed the prayer of the petitioner. It is stated that the petitioner has not paid even a single penny from the date of the passing of the order of maintenance, in the present petition and he is deliberately indulging in dilatory tactics.

10. I have carefully considered the respective submissions made by the learned counsel for the petitioner, respondent no. 2 in person as well as the learned APP.
11. The first submission of the learned counsel for the petitioner that the respondent no.2 has committed fraud in as much as she has given the income of the present petitioner as Rs.35,000/- per month approximately but actually he is employed as a driver and is getting a salary of Rs.4,000/- to 4,500/- per month is an unsubstantiated fact. It is in this regard, the learned counsel for the petitioner has relied upon these two judgments titled **S.P.Changelvania Naidu (dead) by LRs Vs. Jaynath (dead) by LRs** AIR 1994 SC 853 and **The State of Rajasthan Vs. Ani @ Hanif & Ors.** AIR 1997 1023.
12. I have gone through both the judgments. I do not think that both these judgments help the petitioner in any manner. So far as the Chengelvaria Naidu's judgment is concerned, no doubt, it lays down that if fraud is detected at any stage, it will vitiate the entire proceedings but the question which arises is as to whether any fraud has been committed or not, must be prima facie established on the record. In the instant case, the reason for fraud that is alleged by the petitioner, is that the petitioner is stated to be engaged as a driver with a company and earning

₹4,000/- to ₹4500/- or so while as, it is alleged that the respondent no.2 has stated that the petitioner is earning ₹35000/- and hence the allegation of fraud. One should not lose sight of the fact that the petitioner despite having been given an opportunity by the Court of Sessions, did not file any reply to the petition contesting his financial earning, but he did not even cross examine the respondent no.2 in this regard. Therefore, the testimony of the respondents in this regard has to be accepted to be correct. In such a factual situation to urge that fraud is played on Court is an argument of dispensation and without any iota of evidence.

13. So far as the second judgment in Ani's case is concerned, it is only dealing with the powers of the Court to ask questions from a witness. I fail to understand as to how the said judgments would be applicable to the facts of the present case. The Supreme Court in **Haryana Financial Corporation Vs. Jagdamba Oil Mills** AIR 2002 SC 834 has clearly laid down that the law is not applied like theorems.
14. Coming back to the facts of the present case, I do not find that the petition u/S 482 Cr.P.C. is even maintainable on account of the fact that there is no abuse of the processes of law or the facts do not require passing any order other than the one which is passed by the Court of Sessions.

15. On the contrary, the petitioner having failed to get a favourable order on Revision in the Court is literally filing a second revision which is prohibited under Section 397(2) Cr.P.C. Hence, the present petition is dismissed.

V.K. SHALI, J.

May 10, 2011
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