

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

+ **Crl.M.C. No. 3009/2011**

Date of Decision: 07.9.2011

SATISH MEHRA Petitioner
Through Mr. G.P. Thareja with Mr. Dharmish
Thanai, Advs.

versus

ANITA MEHRA Respondent
Through None.

**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)

Crl. M.A. No. 10600/2011

1. This is an application for condonation of delay of 479 days in filing the present petition under Section 482 Cr.P.C against the order dated 12.4.2010.

2. The ground for condonation of delay as stated in the application is that, the petitioner had preferred a revision petition in the Court of

Sessions against the impugned order. However, it was brought to the knowledge of the petitioner that the case from which this revision petition has arisen had been transferred to the Family Court and therefore, the revision petition against an order passed by the learned MM could not be entertained by the learned Sessions Court. Accordingly, the petitioner had sought permission to withdraw the petition with liberty to approach the High Court. This prayer of the petitioner was allowed by the learned Addl. Sessions Judge, vide order dated 04.8.2011. It is stated that because of this reason there was a delay of 479 days which was beyond the control of the petitioner and constitutes 'sufficient cause' under Section 5 of the Limitation Act and accordingly, the same may be condoned.

4. I have heard the learned counsel for the petitioner and perused the averments. I am of the view that for the reasons mentioned in the application, the delay of 479 days in filing the present petition under Section 482 Cr.P.C was occasioned because of the pendency of the revision petition in Sessions Court, which did not have the power to deal with the same and this constitutes 'sufficient cause' and accordingly, the same is condoned.

5. Application stands allowed.

Crl. M.A. No. 10599/2011

1. This is an application seeking exemption from filing the legible/certified copies.

2. Subject to the deficiency being rectified in due course, the application is allowed.

3. Application stands disposed of.

Crl. M.C. No. 309/2011 & Crl. M.A.No. 10598/2011

1. This is a petition filed by the petitioner under Section 482 Cr.P.C assailing the order, dated 12.4.2010, passed by Ms.Veena Rani, learned Metropolitan Magistrate, by virtue of which the learned Magistrate has directed the present petitioner to pay an interim maintenance to the respondent/wife and three children @ Rs.35,000/- per month w.e.f. 28.4.2009 till the time the complaint of the respondent/wife under Section 125 Cr.P.C is decided on merits.

2. Briefly stated, the facts leading to the filing of the present petition are that the petitioner got married to the respondent on 18.2.1980 in India according to Hindu Rites and ceremonies. The petitioner, at the time of marriage, was a non-resident Indian (NRI). He was settled in

the US since 1975. The respondent migrated to US with the petitioner where another marriage ceremony is alleged to have taken place on 19.05.1982. The couple was blessed with three children; daughter Nikita born on 02.04.1988, daughter Riva born on 10.11.1989 and son Neal born on 10.11.1989.

3. Matrimonial relations between the present petitioner and the respondent were not very cordial. It is alleged that from 1980 till 1992, the present petitioner used to give US \$ 31,200 per month to the respondent/wife for running her household affairs. However, it is alleged that the cheque of the aforesaid amount when encashed used to be taken back by the petitioner, thus, she never got the monthly allowance from the petitioner which made her life very difficult.

4. It is also alleged that the petitioner used to, physically as well as mentally, abuse the respondent as well as her children. The respondent had gone to the extent of lodging a report against the petitioner of having subjected his own daughter Nikita to physical and sexual abuse.

5. It is also alleged that there was an amount of Rs.4.58 crores in the joint account of the present petitioner and the respondent/wife, which was drained off by him. The petitioner is stated to be a man of status

who has assets in India as well as in US. The value of the assets in India is stated to be approximately Rs.13 crores, while as the value of the assets of the petitioner in US is not known to the respondent. On the basis of the aforesaid facts, after migration to India respondent filed a complaint under Section 125 Cr.P.C claiming maintenance @ Rs.3,79,500/- for herself and for her children.

6. Learned Metropolitan Magistrate after discussing the case law and taking the prima facie view of the documentary evidence observed that the claim of maintenance by the respondent/wife to the tune of Rs.3,79,500/- per month was highly excessive. However, keeping in view the facts of the case and the various principles of law, the learned MM came to the conclusion vide order dated 12.4.2010 that the respondent/wife is entitled only to a maintenance @ Rs.35,000/- per month till the final disposal of the petition from the date of filing of the application, i.e. 28.4.2009.

7. Against the said order dated 12.4.2010, a revision petition was filed, which was kept pending till the order dated 04.8.2011 was passed by the learned Additional Sessions Judge wherein the petitioner had sought withdrawal of the petition with liberty to file a petition before the

High Court and thereafter the present petition has been filed.

8. I have heard the learned counsel for the petitioner. He has tried to go into the merits of the impugned order by alleging that the respondent/wife was in the habit of leveling false and frivolous allegations against the present petitioner. In this regard, he has drawn the attention of the Court to a reported judgment in the case titled, Satish Mehra vs. Delhi Administration (SC), reported as **1996 (3) Recent Criminal Reports, page 410**, where the Appellate Court had quashed the FIR and the proceedings under Section 354 & 376 IPC lodged by the respondent/complainant against the present petitioner for having sexually abused her three year old daughter. I have gone through the said judgment. No doubt that the Apex Court had quashed the FIR under Section 354 & 376 IPC on account of false and frivolous allegations purported to have been made by the respondent/ wife. However, that cannot be the basis for challenging an order of grant of ad interim maintenance. Section 397(3) Cr.P.C. clearly lays down that revision petition against an interlocutory order is not permissible. Admittedly, order of grant of ad interim maintenance is an interlocutory order and could not be assailed in revision. If it has to be challenged, the petitioner

has to make out an overwhelming case to show that the exercise of powers under Section 482 Cr.P.C. is warranted to prevent the abuse of processes of law and to secure the ends of justice. The learned counsel for the petitioner has not been able to point out any such infirmity in the impugned order. Orders regarding grant of ad interim maintenance are passed to prevent vagrancy. In the instant case the respondent has not only to look after herself but has also to look after her three children and their education. It was specifically put to the learned counsel for the petitioner since an order of interim maintenance was passed against him on 12.4.2010, requiring him to pay maintenance to the respondent/wife @ Rs.35,000/- per month, w.e.f. 28.4.2009, he should inform the Court as to how much amount of money he has paid from 28.4.2009, to the respondent/wife, till date. The answer to this question was that not even a single penny has been paid by the present petitioner to the respondent despite the impugned order having been passed. In such a contingency, the learned counsel for the petitioner is made aware of the pronouncement of this Court in the case titled Rajeev Preenja vs. Sarika in **Crl. M.C. No.1859/2008 reported as 2009(159) DLT 616**, wherein the learned Single Judge of this Court had taken a view that the revision

petition filed by the husband in the Court of learned Sessions Judge against the order of interim maintenance passed by the learned Magistrate in favour of the wife ought not to be entertained till the time the entire amount of interim maintenance, which was due under the order passed by the learned Magistrate is actually paid or deposited in the Court. It is pertinent to note that the respondent/wife in the said case has not only to maintain herself but her children also.

9. In my considered opinion, the petitioner, before being permitted to assail the validity of the order passed under Section 125 of the Cr.P.C, though it is an interlocutory order, ought to have shown his bona fide by paying some amount of maintenance to the respondent/wife. He was specifically given an opportunity to deposit some amount at his own discretion in order to show his bona fide, however, learned counsel for the petitioner explains his inability. If the petitioner is seeking to assail an order of interim maintenance without paying even a single penny as maintenance to the respondent/wife, I am afraid that such a petition ought not to be entertained because the whole purpose of passing an order of interim maintenance gets defeated. The petitioner has been directed to pay interim maintenance with effect from

28.04.2009 and nearly two and a half years have elapsed not even a single penny has been paid. Under these circumstances, how the respondent, a lady with three children, is going to survive.

10. I have gone through the impugned order. I do not find any infirmity in the same so as to assume that there is any gross abuse of the processes of law or any order to the contrary to the one which is already passed on 12.04.2010, is required to be passed.

11. Dismissed.

V.K. SHALI, J

SEPTEMBER 07, 2011
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