

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

+ **Crl. Rev. P. 726/2010 & Crl. M.A. 17479/2011**

% Reserved on: 8th August, 2011

Decided on: 4th November, 2011

ANITA

..... Petitioner

Through: Mr. Ratnesh Bansal, Advocate

versus

RATI RAM CHAUHAN

..... Respondents

Through: Mr. Shailender Dahiya, Advocate
with Respondent in person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. By this petition the Petitioner seeks quashing of the Judgment dated 10th September, 2010 passed in case number 95/2010 by the learned Additional Principal Judge dismissing the application of the Petitioner seeking maintenance from the Respondent under Section 125 Cr. P. C.

2. Briefly the facts are that the marriage between the parties was solemnized on 23rd February, 1996. The Petitioner claims that the Respondent and his family members were not satisfied with the dowry articles presented at the time of marriage. They started ill treating her and raised a demand of Rs. 1 Lac and a car. On 17th April, 1996 the Respondent, his father and sister pushed her down from the roof of the matrimonial home resulting in serious injuries to the Complainant. She was then removed by the neighbors to Gupta Nursing Home. The nursing home however did not admit her and referred her instead to Mata Chanan Devi Hospital. On 27th April, 1996 the Petitioner was discharged from Mata Chanan Devi Hospital and since then she has been staying in her parental home. After about 17-20 months, the Petitioner lodged a complaint with the police for the said incident and a case FIR No. 34/98 was registered under Section 498A/307/406/34 IPC. In the said trial the Respondent and his family members were acquitted by the learned Additional Session Judge. The Respondent in May, 1998 filed a petition for dissolution of marriage on the ground of cruelty and the marriage was dissolved by learned District Session Judge vide Judgment and decree dated 26th May, 2007. Vide this Judgment, the Petitioner was granted Rs. 3,000/- per month as alimony. There is however an appeal pending in this court filed by the Petitioner vide Mat. App. 46/2007. The Petitioner

claims that after her injury, she is unable to move and the Respondent has not made any provision for her medical treatment or maintenance and is refusing to maintain her without any sufficient cause. Hence the present petition.

3. The learned Counsel for Petitioner contends that the learned Additional Principal Judge in the impugned Judgment has placed great reliance on the fact that the Respondent and his family members have been acquitted by the learned Additional Session Judge. According to him this acquittal was not binding on the family court and therefore the maintenance application should have been decided on its own merits de hors the findings of the learned Additional Sessions Judge in the criminal trial.

4. It is stated that as per Section 125 Cr. P. C if a person with sufficient means neglects or refuses to maintain his wife then he is liable to pay her maintenance. Learned Counsel states that the learned Additional Principal Judge failed to appreciate the fact that during trial the Respondent admitted his liability to maintain the Petitioner but had not shown any intention to take the Petitioner back to the matrimonial home.

5. Learned Counsel for Petitioner further states that the Petitioner has appealed against the Judgment dated 26th May, 2007 passed by the learned Additional Session Judge dissolving her marriage which is still pending in this Court. Under these circumstances the alimony of Rs. 3,000/- per month granted to the Petitioner in the divorce proceedings should have been disregarded by the learned Additional Principal Judge while deciding the petition for maintenance.

6. Learned Counsel for Respondent on the other hand contends that the Respondent had never neglected to maintain the Petitioner. On the 17th April 1996, the Petitioner slipped from the stairs when the Petitioner and his father were not at home. The entire medical expenses were borne by the Respondent. The Respondent being a Government employee is entitled to all the facilities of medical treatment under CGHS and had repeatedly asked the Petitioner to get treated at any CGHS hospital. But all she did was demand money in lieu of medical expenses, trying to cause the Respondent wrongful loss. The Petitioner was never meted with cruelty. It is the Petitioner who has deserted the Respondent as she was not interested in maintaining the relations.

7. I have heard learned Counsels for the parties. While adjudicating any issue it is the responsibility of the Judge to consider all the facts and circumstances. Proceedings under Section 125 CrPC are summons trial

proceedings. The Court is justified on relying upon the findings of the competent Court in a criminal trial for the offences alleged and regarding cruelty by the matrimonial Court. In *Inderjit Kaur vs. Union of India* (1990) 1 SCC 344 it was held that, that Section 125 CrPC provides a speedy remedy against starvation of the civil liabilities of the parties, the order made thereunder is tentative and is subject to final determination of the rights in civil court. Further in *Teja Singh vs. Chhoto* 1981Crl. L.J. 1467 (Punjab & Haryana) while dealing with a similar issue it was held that even if an order granting maintenance had been passed in favour of the wife and if thereafter a decision between the parties is rendered by the civil court which has a bearing on the question which came up for consideration earlier before the Court dealing with the petition under Section 125 of the Code of Criminal Procedure, it has to give effect to the civil court order by cancelling the order granting maintenance if such is the import of the judgment of the civil court. In case of *Sri Jasholal Agrawala @ Jain vs. Smt. Puspabati Agrawala*, 1994 Crl.LJ 185 the High Court of Orissa it was held that it has to be taken as an accepted principle that the finding of the civil court in a matrimonial proceeding is binding on the criminal court and the criminal court is not entitled to question the correctness or validity of the civil court decision.

8. The learned Additional Principal Judge was therefore justified in relying on the fact that the learned Additional District Judge by Judgment dated 26th May, 2007 had dissolved the marriage of the parties on the ground of cruelty by the Petitioner and had the Respondent actually been harassing or neglecting the Petitioner then he would have never succeeded in the divorce petition. The fact that the Respondent allowed bed ridden Petitioner to go to her parental home so that she could be looked after by her mother was also found to be convincing since the Respondent had no female member in his family.

9. It is relevant to note that the Petitioner in her statement has admitted before doctor in the Hospital that she had slipped from the stairs on the day of incident. The Petitioner has not placed anything on record to show that there was any pressure from the side of Respondent on her to give that statement. Further, the father of the Petitioner in his statement before Court admitted that when he visited his daughter in the Hospital she did not tell him anything. From a perusal of the statements of witnesses, it is clear that the claim of the Petitioner that Respondents failed to maintain her and willfully neglected her is not substantiated.

10. As per the record the Respondent had filed the medical bills of Mata Chanan Devi Hospital as evidence of making payment of the same. The father of the Petitioner in his explanation for the bills being in

possession of the Respondent had stated that the respondent had stolen the bills from him. But this story is completely contradictory to his other statement wherein he had said that the Respondent never visited the Petitioner in the hospital or thereafter. Thus the Respondent had no occasion to commit the theft of the bills from the Petitioner or her father. Therefore it can be safely held that the Respondent bore the expenses of the Petitioner's treatment in the hospital and he was not negligent in his responsibilities towards the Petitioner.

11. The Petitioner has not been able to adduce any evidence to support her contention of being neglected by the Respondent. Moreover there is no explanation rendered by the Petitioner as to why she did not inform her neighbour or any other person who allegedly removed her to the nursing home that she was thrown by the Respondent or his father. Further the fact that the Complaint under Sections 498A, 406, 307 & 34 IPC was filed by the Petitioner after about 17-20 months of the incident shows that the same was an after thought. The Respondent on the other hand has adduced evidence to show that he had not neglected to maintain the Petitioner and is even paying Rs. 3,000/- per month regularly as directed by the learned Additional District Judge vide the Judgment dated 26th May, 2007.

12. Learned Additional Principal Judge has considered all the relevant issues and scrutinize the matter. I do not find any infirmity in the Judgment dated 10th September, 2010.

The revision petition and the application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

NOVEMBER 04, 2011
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