

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

% **Reserved on : 29th November, 2012**
Pronounced on : 5th December, 2012

+ CRL.M.C. 387/2012 & CrI.M.A. No.1341/2012 (Stay)

HARI OM MAHESHWARI Petitioner
Through : Petitioner in person.

versus

USHA MAHESHWARI Respondent
Through: Mr.Vikas Goyal, Adv.

AND

+ CRL.M.C. 438/2012

HARI OM MAHESHWARI Petitioner
Through : Petitioner in person.

versus

USHA MAHESHWARI Respondent
Through: Mr.Vikas Goyal, Adv.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J.

1. By this common order, I shall dispose of CrI.M.C. No.387/2012 and CrI.M.C.438/2012 as not only the parties to both the petitions are common but the main issue on the basis of which quashing has been

sought by the petitioner revolves around the payment allegedly received by respondent Usha Maheshwari in a case under Section 138 NI Act on the basis of which the petitioner is seeking refund of Rs.4.5 lacs paid by him towards interim maintenance and quashing of the order awarding interim maintenance as well the warrant of attachment in execution petition and also seeking release of his car attached in execution petition.

2. In order to appreciate the issue involved in both the petitions, it is necessary to refer to the basic dispute between the petitioner and respondent who are husband and wife :

(i) The parties to the petition got married in the year 1975. They had two children out of the wedlock. In the year 1989, the parties started residing separately.

(ii) In the year 1996, the petitioner paid Rs.15 lacs to the respondent to obtain divorce by mutual consent. Although the cheque of Rs.15 lacs was allegedly accepted by the respondent and invested with a company but refused for divorce by mutual consent.

(iii) The respondent was to receive Rs.25 lacs as maturity amount of the cheque of Rs.15 lacs received by her from the petitioner for divorce by mutual consent and invested with the company. However, the cheque of Rs.25 lacs got dishonoured and a complaint under Section 138 NI Act was filed by the respondent. In the proceedings under Section 138 NI Act, the respondent compounded the matter and received Rs.4 lacs.

(iv) The respondent also filed an application under Section 24 of Hindu Marriage Act and under Section 125 CrPC seeking maintenance.

(v) On the application under Section 24 of Hindu Marriage Act, the petitioner was directed to pay Rs.10, 000/- per month to the respondent

towards maintenance, whereas in the proceedings under Section 125 CrPC, the petitioner was awarded interim maintenance @ Rs.12,000/- per month.

(vi) In the revision petition filed by the petitioner Hari Om Maheshwari, the learned ASJ vide order dated 18.02.2010 modified the order of learned MM and the amount of Rs.12,000/- per month awarded to the respondent towards maintenance, was reduced to Rs.10,000/- per month which was the maintenance awarded to respondent under Section 24 of Hindu Marriage Act.

3. Feeling aggrieved by the order dated 18.02.2010 passed by learned ASJ vide which the amount of interim maintenance granted in the proceedings under Section 125 CrPC was reduced from Rs.12,000/- per month to Rs.10,000/- per month, the petitioner preferred Crl.M.C. No.2097/2010 seeking quashing on the grounds that :

(i) Respondent was living separately since 1989 and was earning by giving private tuitions and was maintaining bank account and also holding PAN Card;

(ii) She has received Rs.4 lacs in the proceedings under Section 138 NI Act but this aspect has not been considered by learned MM and ASJ while awarding maintenance ; and

(iii) Respondent had the capacity to engage four counsel in the Supreme Court in SLP Civil No.9773/2009 which shows her sound financial position.

4. This Court, while dismissing the petition bearing Crl.M.C. No.2097/2010 under Section 482 CrPC, observed that grounds No.(i) and (iii) referred to above, do not disentitle her from claiming

maintenance. In respect of ground No.(ii), it was observed in para 4 of the order which is reproduced as under :-

‘4. The second grievance of the petitioner is that the court below failed to consider that he was entitled to claim adjustment of a sum of Rs.4 lacs, which was paid to the respondent in the pending proceedings, filed by her against one Shri Arun Kumar, under Section 138 of the Negotiation Instruments Act. This aspect of the matter was taken note of by both, the learned ASJ & the Metropolitan Magistrate, who observed that the same is a matter of evidence to be decided after the parties lead the evidence. The said argument was also considered by the learned Additional Sessions Judge, who rightly noted that the claim of the petitioner that a lump sum payment of Rs.15 lacs was made by him to his wife, who in turn invested the same elsewhere, is a question that requires evidence, and since the main petition is pending, the said issue cannot be decided at the interim stage.’

5. Despite the above observation by this Court in Crl.M.C. No.2097/2010, another round of litigation has been started by the petitioner by invoking the inherent jurisdiction of this Court on almost identical pleas.

6. In Crl.M.C. No.387/2012, the petitioner has made the following prayer :

‘(a) hold that the respondent wife is liable to account for and adjust the amounts realised by her from cheque bouncing complaint of Rs.25 lacs towards order of maintenance;

(b) quash and set aside the impugned order dated 3.1.2012 passed by learned ASJ in Crl.Rev.No.94/11 as well as orders dated 8.11.2011 and 26.11.2011 passed by Ld.Metropolitan Magistrate in Ex.No.55/4/1;

(c) dismiss the execution application no.55/4/11 filed by the respondent; and

(d) pass an ex-parte order for release of the car bearing No.DL-3C-AE-0632 attached by delhi Police pursuant to the order dated 8.11.2011 passed by learned Trial Court ion Ex.No.55/4/11.'

7. In Crl.M.C. No.438/2010, the petitioner has made the following prayer :

(a) set aside the impugned order passed by Ld.ASJ dated 26.11.11 alongwith order dated 6.6.2011 passed by learned MM;

(b) direct respondent to refund Rs.4.50 lacs realized by her pursuant to the order of maintenance;

(c) set aside the order of interim maintainant dated 18.5.2009 passed by learned MM in M.P. No.1291/3/06;

(d) dismiss the application u/s 125 CrPC filed by the respondent in complaint case MP No.1291/3/06.'

8. A bare reading of the above prayer leads to only one conclusion that basically the petitioner is seeking refund of Rs.4.5 lacs paid by him towards interim maintenance for the reason that the respondent had already received Rs.4 lacs in the case under Section 138 NI Act and also Rs.15 lacs in the year 1996 when she agreed for divorce by mutual consent and Rs.15 lacs was paid to her towards all her claims in this regard.

9. The learned MM while awarding interim maintenance as well as the learned ASJ in the Revision Petitions No.31/2009, 80/2011 and 94/2011 have observed that the issue involved cannot be decided without leading evidence by the parties. The warrants of attachment had been issued and attachment had been done pursuant to the order passed by the Court in execution petition. Even this Court in Crl.M.C. No.2097/2010

has affirmed the view of learned ASJ in the order dated 18.02.2010 passed in Crl.Rev. No.31/09 and referred to above.

10. By filing these petitions seeking the relief which has ultimately the effect of dismissal of the execution petition as well as the issue of maintenance in the proceedings under Section 125 CrPC. It has been repeatedly held that as both the parties are making allegations and counter allegations against each other, it can only be decided after giving an opportunity to the parties to adduce evidence.

11. It is worth mentioning that in the garb of petition under Section 482 CrPC, the petitioner has filed second revision petition which is not maintainable. In the case ***Wajid Mirza vs. Mohammed Ali Ahmed & Ors. 1982 CriLJ 890***, the High Court of Andhra Pradesh has observed as under :-

'23. This Court in Re Puritipati Jagga Reddy, (1979) 1 AJLJ 1 : AIR 1979 Andra Pra 146 at p. 149 (FB) held :

The language of sub-section (3) of Section 397 contains no ambiguity. If any person had already chosen to file a revision before the High Court or to the Sessions Court under sub-section (1), the same person cannot prefer a further application to the other Court. To put it in other words, sub-sec.(1) and (3) make it clear that a person aggrieved by any order or proceeding can seek remedy by way of revision either before the High Court or the Sessions Court. Once, he has availed himself of the remedy, he is precluded from approaching the other forum. It is equally manifest from the provisions of sub-section (3) that this bar is limited to the same person who has already chosen to go either to the High Court or to the Sessions court seeking a remedy and that it does not apply to the other parties or persons.'

12. The Bombay High Court has taken the same view in the case

Inayatullah Rizwi v. Rahimatuallah & Ors. 1981 CriLJ 1398 and observed that :

‘We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below become final, but when the Sessions Judge reverse the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.’

13. In the exercise of power under Section 482 CrPC, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding should not be permitted to degenerate into a weapon of harassment.

14. In view of above legal position, both the petitions i.e. CrI.M.C. No. 387/2012 and CrI.M.C. No.438/2012 are hereby dismissed.

15. CrI.M.A. No.1341/2012 is also dismissed.

PRATIBHA RANI, J

December 05, 2012

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