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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1697/2012**

YASHIKA MEHNDIRATTA Petitioner
Through: **Mr. R.K. Tarun, Advocate**

versus

AMIT MEHNDIRATTA Respondent
Through: **Counsel for respondent.**

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER
% **02.05.2013**

1. By this petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr. P.C.) the petitioner wife seeks to challenge the order dated 4th June 2010 whereby the learned Addl. Principal Judge, Family Court declined to grant interim maintenance in favour of the petitioner – wife.
2. Assailing the said order, Mr. R. K. Tarun, learned counsel for the petitioner – wife submits that it is a statutory right of the wife to claim maintenance from her husband and such a right cannot be denied to her even where she has left the matrimonial home without there being any neglect on the part of the husband and also even where the wife starts residing separately under some mutual arrangement. Counsel for the petitioner submits that the denial of interim maintenance even in such circumstances is against the public policy and the husband cannot take

shelter under sub-clause (4) of Section 125 of Cr. P. C. to deny maintenance to his wife merely because she has refused to join the company of the husband.

3. Counsel for the petitioner also argued that the learned trial court has committed a grave error and illegality by not granting an opportunity to the petitioner to lead evidence and has decided the petition filed under Section 125 of Cr. P.C finally at an interim stage.

4. Counsel for the petitioner also submits that under Explanation (b) of Section 125(1) of Cr.P.C., the expression 'wife' has been defined to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married and so far as the present case is concerned, the petitioner cannot be put on a worse footing than the divorced wife.

5. Counsel for the petitioner also submits that petitioner is at least entitled to the grant of maintenance till 30th May 2012 i.e. the date when she got re-married.

6. Learned counsel for the petitioner places reliance upon a judgment reported in ***RanjitKaur v. Pavittar Singh, 1992 Cri. L. J. 262***; a decision of this Court in CrI.M.C. No. 544/2011 titled as ***AmitGuglani vs. PushpaGuglani***, rendered on 21st September 2011, etc. in support of the above contentions.

7. During the course of hearing the present petition, learned counsel

for petitioner has also apprised this Court that the marriage between the parties has already been dissolved by judgment and decree dated 4th June 2010 passed under Section 13B(ii) of the Hindu Marriage Act, 1955. Learned counsel for petitioner further informed that after grant of the said decree, the petitioner has re-married on 30th May 2012 and the respondent also got re-married on 8th July 2012.

8. I have heard the learned counsel for the petitioner.

9. The petitioner in the present case has been denied the interim maintenance by the learned Addl. Principal Judge, Family Court on the ground that the petitioner wife, without any sufficient cause, was herself not ready and willing to live with her husband at the matrimonial home.

10. On perusal of the impugned order, it has been recorded by the learned Addl. Principal Judge, Family Court that in camera proceedings before Shri Sanjay Aggarwal, learned Session Judge pertaining to the case of the petitioner u/s 406/498A/34 IPC against the respondent, the petitioner herself admitted that she had no problem in staying with her husband. She also informed the court that she was living happily with her husband during the period when she was asked to join his company by the directions of the court. The petitioner further disclosed to the court that she was ready and willing to join the company of her husband but she could not stand the pressure put forth by her parents who did not want her to join her matrimonial home. She also informed the court that

she had no courage to go against the wishes of her parents. Impugned order further records the observations of the Sessions court wherein the court found that the father of the petitioner was reluctant in sending the petitioner to her matrimonial home and the mother of the petitioner was not at all ready and in fact straightaway stated that she would not allow her daughter to join her matrimonial home at any cost. Taking note of the aforesaid candid statements made by the petitioner in camera proceedings before the court of Mr.SanjivAggarwal, the learned Addl. Principal Judge, Family Court concluded that as the petitioner did not join the matrimonial home under the pressure of her parents, she shall not be entitled to grant of any maintenance and granted maintenance in favour of the child only.

11. According to sub-section (4) of the Section 125 of the Cr. P.C., the wife would not be entitled to grant of maintenance/ interim-maintenance in three situations i.e. (a) if she is living in adultery; or (b) if without any sufficient reason she refuses to live with her husband or (c) if both the husband and wife are living separately by mutual consent.

12. Undoubtedly, Section 125 contained in Chapter IX of Cr. P.C. is a social piece of legislation mainly enacted to provide a speedy remedy to the women and children for the grant of maintenance so that they are not forced to lead a life of destitute during the lifetime of husband/father who are statutorily liable to maintain them. Also, proceedings under

Section 125 of the Cr. P.C. are summary proceedings so that no delay takes place in providing such remedy to the wife and the children. Any neglect on part of the husband to maintain his wife and children is sufficient to grant maintenance in favour of the wife and the children. If the wife lives separately from the husband due to the circumstances created by the husband himself, then the husband would not be obviated from his liability of paying maintenance towards his wife on the ground that the wife refused to live with him. However, such position differs in cases where the wife herself leaves the company of her husband without there being any justifiable grounds, as the wife is expected to live with her husband and discharge her matrimonial obligations while entering into the pious relationship of marriage and cannot claim the amount of maintenance from her husband by living separately without there being any sufficient reasons for such separate living. *See Satya Devi v. Gurdeep Singh, 1987 (2) Crimes 672(J&K), Anil Kumar Mamgain v. State of Uttaranchal, 2007 Cr. L.J. (NOC) 725 (Uttra).*

13. In the facts of the present case, the petitioner herself has admitted that she was always ready and willing to join the company of her husband and stay in the matrimonial home but was pressurized by her parents to live with them at her parental house and was not in a position to muster the courage to defy the wishes of her parents. With such admissions on the part of the petitioner, it has become quite evident that

the Respondent – husband cannot be blamed at all for the separate living of his wife as he was always ready and willing to live with her.

14. The case of the petitioner is, thus, squarely covered under the sub-clause (4) of Section 125 of Cr. P.C. and the petitioner has been rightly denied any amount of maintenance from the respondent. Also, in view of the aforesaid admissions made by the petitioner before the learned Additional Sessions Judge, the judgments cited by counsel for the petitioner will not be applicable to the facts of the present case.

15. Finding no illegality and infirmity in the impugned order dated 4th June 2010, the petition filed by the petitioner is hereby dismissed.

16. It is ordered accordingly.

KAILASH GAMBHIR, J

MAY 02, 2013

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