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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 08.09.2016
Judgment Pronounced On: 16.12.2016

CRL. REV. P. 742/2010

LALITA YADAV

..... Appellant

Through: Mr. Jitender Dhingra, Advocate with
Revisionist in person.

versus

STATE & ANR.

..... Respondents

Through: Mr. Amit Sharma, Mr. Praveen Nagar
and Mr. Som Prakash, Advocates for
Respondent No.2 along with
Respondent No.2 in person

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present criminal revision petition under section 19(4) of the Family Courts Act, 1984, read with sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') assails the judgment and order dated 13.04.2010, rendered by the Court of Principal Judge, Family Court, Dwarka, Delhi, in case bearing M.No. 52/2009 titled as

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'*Ms. Lalita Yadav v. Mr. Mamraj Yadav*'; and seeks an order granting maintenance in the favour of Ms. Lalita Devi, the revisionist herein.

2. The matrimonial dispute between the revisionist and *Mamraj Yadav*, respondent No.2 (hereinafter referred to as 'respondent/husband') has culminated into various proceedings before different legal fora, where numerous allegations and counter allegations have been made by the parties to the marriage, against each other. It is relevant to note that by way of order dated 19.02.2007, passed in proceedings under sections 19 and 20, read with section 23 (1) of the Protection of Women against Domestic Violence Act, 2005 filed on behalf of the revisionist, interim maintenance in the amount of Rs.10,000/- has been granted in favour of the revisionist. Further, in proceedings under section 24 of the Hindu Marriage Act, 1955 filed by the revisionist the Court of Ld. ADJ, by way of its order dated 01.05.2009, has granted maintenance in the sum of Rs.2,500/- per month (Rupees Two Thousand Five Hundred), in favour of the revisionist.

3. The said petition being M.No. 52/2009 was filed by the revisionist under section 125 CrPC, on 27.09.2004, against the respondent/husband and his relatives, seeking an order granting maintenance in the sum of Rs.5,000/- (Rupees Five Thousand). By way of order dated 23.12.2006, the Ld. Trial Court granted interim maintenance in the sum of Rs.1,500/- per month

(Rupees One Thousand Five Hundred), in favour of the former. However, subsequently by way of the impugned judgment and order dated 13.04.2010, the Ld. Trial Court was pleased to dismiss the said petition seeking maintenance; and it is this order that is in challenge before this Court, in the instant revision petition.

4. For the adjudication of the present revision petition, the conspectus of the facts, as have been averred on behalf of the revisionist are summarised hereinbelow:

- i. The revisionist and respondent/husband solemnised their marriage on 15.05.2002, as per Hindu rites, customs and ceremonies at Village Pandwala Khurd, Delhi.
- ii. Dowry articles, including a 'Santro' car, were received by the respondent/husband from the parents of the revisionist.
- iii. The Respondent/husband and his relatives treated the revisionist with cruelty and demanded further dowry from her. Pertaining to the physical cruelty meted out to the revisionist, she reported the matter to the police authorities and was medically examined in that behalf. In order to pressurise the revisionist to fulfill the dowry demands, the respondent/husband got a false complaint lodged against the revisionist.

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- iv. On various occasions, the revisionist was illegally restrained by the respondent/husband and his family members from entering her matrimonial house at Village Rajokri.
 - v. The revisionist filed a complaint before the Crimes Against Women Cell (hereinafter referred to as 'CAW Cell'), Vasant Vihar, Delhi, on 06.05.2004.
 - vi. The respondent/husband got a false case registered under section 325 Indian Penal Code (hereinafter referred to as 'IPC'), at Police Station Vasant Kunj, Delhi, in order to pressurise her to withdraw the complaint before the CAW Cell, Vasant Vihar, Delhi.
5. The counter-allegations made on behalf of the respondent/husband are adumbrated hereinbelow:
- i. The revisionist has been living separately from the respondent/husband, of her own accord, since 2004.
 - ii. The respondent/husband and his family members have been continuously harassed due to the false complaint filed by the revisionist before the CAW Cell.
 - iii. A suit being CS(OS) No. 347/2004 was instituted by the father of the respondent/husband, seeking an order of permanent injunction against

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the revisionist, restraining the latter from entering the house premises of the former.

- iv. The mother of the respondent/husband faced assault at the hands of the revisionist, pursuant to which FIR No. 358 dated 18.05.2004 was got registered by the respondent/husband, under section 325 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and a complaint under section 94 read with section 151 of the Code of Civil Procedure, 1908, was instituted before this Court by father of the respondent/husband, against the revisionist.
- v. An order restraining the revisionist from entering the house premises of the father of the respondent/husband was passed by a Single Judge of this Court on 27.05.2004.
- vi. During the proceedings in the complaint filed before the CAW Cell, the 'Santro' car, registered in the name of the revisionist, was returned to her.
- vii. An FIR under sections 498-A and 406, IPC, at Police Station Jafarpur Kalan, based on false allegations and in order to harass the respondent/husband and his relatives, was got registered on 27.12.2005, by the revisionist against the former. However, proceedings in the said FIR have been stayed against the distant

relatives of the respondent/husband by way of an order of this Court dated 03.04.2006.

viii. Allegations of dowry demand, cruelty meted out by the respondent/husband and his relatives and, of wrongfully restraining the revisionist from entering the matrimonial house, have been vehemently denied.

6. Learned counsel appearing on behalf of the revisionist, in assailing the impugned order dated 13.04.2010, would make a three-fold submission. Firstly, it would be urged that the Ld. Trial Court incorrectly rendered a finding that the revisionist was unable to successfully discharge the burden of proof requisite to show that she was unable to maintain herself, inasmuch as, the Ld. Trial Court relied upon the bank account statements which pertained to the revisionist's mother and not her. Additionally, it would be urged that the Ld. Trial Court erred in holding that the revisionist was a woman of means. Secondly, learned counsel would urge that the revisionist is, in fact, unemployed; has no source of income and is thereby dependent on her parents for her sustenance. Thirdly, it would be asseverated that the Ld. Trial Court erred in holding the revisionist guilty of filing false affidavits and concealing and suppressing material facts from the knowledge of the Ld. Trial Court.

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7. To buttress these submissions made on behalf of the revisionist, reliance would be placed on the pleadings made on behalf of the revisionist in the petition filed under section 125 CrPC, wherein the latter stated that she had no source of income and was dependent on her parents for her sustenance.

8. Further, reliance would be placed on the Rejoinder dated 02.08.2006, filed on behalf of the revisionist, to the written statement filed on behalf of the respondent on 24.04.2006. In the said written statement, it had been stated that the revisionist is a post-graduate and was earning a sum of Rs.10,000/- (Rupees Ten Thousand) per month, approximately, by imparting coaching at her residence. In the Rejoinder, it would be stated on behalf of the Revisionist that the submissions made in the written statement were wrong and specifically denied, whilst stating that the revisionist was not a post-graduate in Science. It would further be urged that it had been reiterated by way of her Rejoinder, that the revisionist was unemployed and was not earning a sum of Rs.10,000/- (Rupees Ten Thousand) per month.

9. To further fortify the submissions made on behalf of the revisionist, attention of this Court would be drawn to the evidence by way of Affidavits dated 27.04.2007 and 23.11.2006, filed by the revisionist, wherein she

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averred that she was at the mercy of her parents and had no source of income.

10. Furthermore, in support of the submissions made on behalf of the revisionist, attention of this Court would be been drawn to her cross-examination dated 10.03.2008, wherein she had deposed that she had pursued a Bachelor's degree in Arts from the University of Delhi. It had been further asserted therein, that at the time of her marriage, she was a graduate and was pursuing her B.Ed. degree from Meerut University, which she completed after her marriage. The revisionist further deposed that she worked as a teacher only for a period of 15 days, on contractual basis. It was also stated in her cross-examination, that apart from this employment period of 15 days, the revisionist had always remained unemployed.

11. To further cement the three-fold submissions and to challenge the correctness of the impugned order dated 13.04.2010, attention of this Court would be drawn to the order dated 01.05.2009, passed by the Court of Ld. ADJ, whereby maintenance, under section 24 of the Hindu Marriage Act, 1955, in the sum of Rs.2,500/- per month (Rupees Two Thousand Five Hundred), was granted in favour of the revisionist.

12. Lastly, whilst praying for the grant of maintenance, it would be canvassed on behalf of the revisionist that the respondent/husband is earning

more than the former and that the former is unable to maintain herself and is therefore entitled to maintenance from the latter. To support this argument advanced on behalf of the revisionist, it has been alleged that the respondent/husband is employed as a lab technician with M/s Unique Medical Lab, Bijwasan, New Delhi and draws a salary (with allowances and expenses) to the tune of Rs.39,000/- (Rupees Thirty Nine Thousand) per month; that his income from rented property at Village Rajokri is Rs.15,000/- (Rupees Fifteen Thousand) per month and; that he earns a sum of Rs.5,00,000/- (Rupees Five Lacs) per annum, approximately, from agricultural land, measuring about 51 acres.

13. Learned counsel appearing on behalf of the respondent, in order to refute the submissions made on behalf of the revisionist, would urge that the latter is disentitled from claiming any maintenance from the respondent on the ground that the revisionist is an educated lady and has been gainfully employed and that even otherwise has sufficient means to maintain herself.

14. In support of this submission made on behalf of the respondent, reliance is placed on the evidence by way of affidavits dated 27.04.2007 and 23.11.2006 filed by the revisionist, to urge that these affidavits do not disclose the factum of the latter's employment. Furthermore, it would be urged that no explanation has been forthcoming on behalf of the revisionist

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as to why she concealed the factum of her employment in the first instance and tried to obtain a favourable order by misleading the Court.

15. I have heard learned counsel appearing on behalf of the parties and perused the evidence on record.

16. The issue that arises for consideration in the present revision petition is, *whether the revisionist was unable to maintain herself and is therefore, entitled to the grant of maintenance.*

17. For adjudicating this issue, it would be relevant to observe that this High Court is empowered, to satisfy itself on the question of the legality, propriety and correctness of a final order as well as the regularity of a proceeding, before a Family Court within its jurisdiction. For convenience, the provisions of section 19(4) of the Family Courts Act, 1984 are reproduced as hereinunder:

“Section 19(4), Family Courts Act, 1984.

19. Appeal. –

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(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the

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order, not being an interlocutory order, and as to the regularity of such proceeding.”

18. Chapter IX of the CrPC which deals with Order for Maintenance of Wives, Children and Parents, whereinunder, section 125 is enshrined and reads as under:

“125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if

the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

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(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

19. A bare reading of the above provision makes it sufficiently clear that the necessary concomitants for the grant of maintenance to a wife under this section are two-fold; firstly, that the husband has sufficient means to maintain his wife and he neglects or refuses to do so and; secondly, that the wife is unable to maintain herself.

20. The provisions under Section 125, CrPC have been enacted to benefit persons in dire need, who, despite sincere and sufficient efforts are unable to maintain themselves and provide for a reasonable standard of living for themselves. Maintenance is not merely a legal right; reasonableness demands the extension of the right of maintenance in favour of a spouse in need. [Ref. *Kusum Sharma v. Mahinder Kumar Sharma*, in FAO 369 of 1996, decided on 14.01.2015 by a Single Bench of this Court.]

21. The Hon'ble Supreme Court in *Bhuwan Mohan Singh v. Meena & Ors*, reported as AIR 2014 SC 2875, whilst adjudicating on the issue of

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delay in granting maintenance by the Family Courts, rendered the following observations with regard to the object of section 125, CrPC:

"3. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to

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get maintenance from the husband on any legally permissible grounds.”

(Emphasis supplied.)

22. A reading of the above-extracted paragraphs of the Report elucidates the object and thrust of section 125, CrPC; which is to ameliorate the suffering of a wife, by preventing vagrancy and destitution and to provide for a good and reasonable standard of living for a wife, whose husband refuses/neglects to provide for her maintenance where she is herself unable to maintain herself.

23. The provisions of Section 125, CrPC, fall within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India, 1950. Whilst granting maintenance under this section, the Courts are called upon to determine, whether the wife is unable to maintain herself and whether the husband has sufficient means to maintain her and has neglected/refused to provide for her, in the facts and circumstances of each case. [*Ref. Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.* reported as AIR (1978) SC 1807]. Therefore, it is needless to state that in order to seek an order granting maintenance in her favour, it is essential for a wife to establish that she is unable to maintain herself. [*Ref. Chaturbhuj v. Sitabai* reported as 2008 (2) SCC 316.]

24. There is no further gainsaying that, a wife who holds eminent educational qualifications but is desirous of remaining idle, cannot be permitted to survive on maintenance to be provided by the husband. (Ref. *Shobhana Srivastava v. Manoj Menon* in MAT. APP. (F.C.) 2/2014, decided on 30.08.2016 by a Division Bench of this Court; *Rupali Gupta v. Rajat Gupta* in MAT. APP. (F.C.) 143/2014, decided on 05.09.2016 by a Division Bench of this Court.)

25. In the light of the aforestated legal position *qua* the import of section 125, CrPC, the very object of this section would be rendered ineffective, in the event Courts were to countenance a state of affairs in society, wherein a wife willingly opts to stay out of the workforce but seeks to saddle the burden of her maintenance upon her husband. Permitting such a state of affairs to continue would also override the basic tenet of equality enshrined in the Constitution of India. A beneficial piece of legislation enables a section of the society to stand on the strength of its pillars. However, its abuse would lead to nullifying the sacrosanct jurisprudential principles of equality and justice. The Courts ought not to, thus, read the provisions of a beneficial piece of legislation in a manner which would render the principles of natural justice and equality as mere constitutional claptrap.

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26. Coming now to the first submission made on behalf of the revisionist; that the Ld. Trial Court erred in holding that the deposits/withdrawals made in/from the Bank Account No.1519000100488654 maintained at Punjab National Bank, Najafgarh, Delhi Branch, pertained to her and not to her mother.

27. A bare perusal of the relevant bank statement of said Bank Account No.1519000100488654, pertaining to the time period from 04.01.2005 to 19.09.2007, reveals that the said account is maintained in the name of the revisionist and not in the name of her mother. It is also evident that cash deposits and withdrawals have also been made from the same from time to time during the check period.

28. The deposits in the said bank account of the revisionist, as on 19.09.2007, were in the total sum of Rs.11,52,100/- (Rupees eleven lacs fifty two thousand and one hundred). The withdrawals thereof, as on 19.09.2007, were in the total sum of Rs.11,47,250/- (Rupees eleven lacs forty seven thousand two hundred and fifty).

29. No evidence has been brought on record on behalf of the revisionist in support of her contention that the said deposits pertained to her mother and not to her. The only argument urged on behalf of the revisionist in this regard is that, on account of her mother being a senior citizen, banking

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transactions for her mother were effected through the bank account of the revisionist. This bald averment made on behalf of the revisionist, without any cogent evidence on record, cannot be accepted.

30. It would be relevant to note that certain submissions have been made on behalf of the revisionist, by way of filing a brief written synopsis in support of her submissions, to explain the cash deposits made in her bank account maintained at Punjab National Bank. These submissions were not made at the Bar during the course of arguments addressed on behalf of the parties, and have also not been pleaded by the revisionist in the present revision petition. Be that as it may, for effective adjudication of the issue, the same are being dealt with, hereinbelow.

31. It has been stated in the said written synopsis, that the cash deposits pertained to the money received, by the revisionist from the respondent/husband, during the proceedings dated 29.12.2004 before the Court of Ld. Additional Sessions Judge, which arose from the FIR registered by the revisionist against the respondent/husband, under sections 498A and 406, IPC, at Police Station, Jaffarpur Kalan.

32. A perusal of the said proceedings/order sheet, dated 29.12.2004, before the Court of Ld. Additional Sessions Judge, would reveal that a sum of Rs.2,00,000/- (Rupees Two Lacs) was directed to be paid to the

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revisionist by the respondent/husband as was undertaken by the respondent/husband before the Court of LD. Additional Sessions Judge. However, no explanation has been forthcoming on behalf of the revisionist *qua* the other cash deposits made in the revisionist's bank account, apart from the said deposit of Rs.2,00,000/- (Rupees Two Lacs) on 06.01.2005, which amounted to a total sum of Rs.11,52,100/- (Rupees eleven lacs fifty two thousand and one hundred) as on 19.09.2007.

33. It would also be relevant to note that, a reading of the cross-examination of the revisionist, dated 10.03.2008, shows that in order to explain the cash deposits in question, she had deposed that the source of the cash deposits was the agricultural income of the revisionist's mother. However, *qua* the said cash deposits, there is admittedly no evidence or material on record to support this assertion made on behalf of the revisionist that the source of the said cash deposits pertain to the purported agricultural income of her mother.

34. In view of the foregoing, these bald submissions made on behalf of the revisionist that the said bank transactions pertained to her mother, unsupported by any positive evidence on record, do not hold water and have to be, rejected. Thus, in my view, the Ld. Trial Court was correct in concluding that the banking transactions as depicted in the bank statement

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pertaining to Bank Account No.1519000100488654, maintained at Punjab National Bank, pertained to the revisionist and not to the revisionist's mother.

35. With regard to the second and third submissions made on behalf of the revisionist, the entire evidence on record and in specific, the evidence to which the attention of the Court has been drawn to, has been considered.

36. A perusal of the record of the case would reveal that the petition under section 125 CrPC, supported by her affidavit, was filed by the revisionist on 27.09.2004, before the Ld. Trial Court, wherein, it has been stated that the revisionist has no source of income and is fully dependent on her parents for sustenance. The contentions made by the revisionist in her petition have been reiterated by her in her rejoinder dated 02.08.2006, which is also supported by an affidavit of even date, to the effect that she is unemployed and has no source of income.

37. By way of the written statement filed on behalf of the respondent, it has been stated that the revisionist was earning a monthly income of Rs.10,000/- (Rupees Ten Thousand), by imparting coaching at her residence. Further, it has been stated that the latter holds a Post Graduate degree in Science. By way of the rejoinder dated 02.08.2006, filed by the revisionist, she has specifically denied the assertion that she was earning a monthly

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income of Rs.10,000/- (Rupees Ten Thousand) by imparting coaching at her residence and has also denied holding a Post Graduate degree in Science.

38. A perusal of the evidence by way of Affidavit dated 23.11.2006, tendered on behalf of the revisionist, would reveal that, it has been averred that though she was unemployed as on date of filing the affidavit, she was employed as a school teacher in Jaitpur Primary School, Jaitpur, Delhi, for a period of 15 days. Further, it has been averred that the contract for the said employment was to operate from 03.10.2006 to 31.01.2007, and the same was terminated by the said school's authorities. It has been further averred in the said affidavit that she holds a Bachelor's degree in Arts from University of Delhi, by way of a correspondence course and thereafter she pursued a B.Ed. degree from Meerut University.

39. A perusal of the evidence led by the revisionist by way of an affidavit dated 27.04.2007, reveals that it has been stated on oath by her that she is living with her parents and is at their mercy.

40. Upon a bare reading of the cross-examination of the revisionist dated 10.03.2008, it is revealed that as on 12.02.2007, she was gainfully employed as a teacher with an MCD school, on contract basis for certain periods of time, earning Rs.165/- per day, whereas the period of employment and the name of the School where she was employed have not been disclosed by her.

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41. It is further observed that the revisionist has stated in her cross examination that she was employed on approximately 2-3 occasions for about 2 months each. It has also been deposed by her that she volunteered to stay out of the workforce thereafter and that it is on her own volition that she has opted not to remain gainfully employed.

42. Furthermore, it would be relevant to note that a perusal of a certificate dated 07.02.2009, issued by the Principal of MCD Prathmic Bal Vidyalya, Sanjay Colony, Okhla Phase-II, Delhi, under the seal of the District and Sessions Judge, reveals that the revisionist was employed as a teacher on contract basis, in the said school from 24.01.2008 to 04.03.2008.

43. Ironically, the averment *qua* the revisionist's employment, as has been urged on behalf of the respondent/husband, has found support in the former's testimony itself. In view of the foregoing discussion on the evidence on record, it is patently clear that the revisionist had been employed at various occasions in the past, as a school teacher and that it is on her own volition that she has opted not to remain gainfully employed.

44. Further, it is conspicuous upon a bare perusal of the entire evidence on record that the revisionist willfully concealed and suppressed the fact *qua* her employment and income, from the Ld. Trial Court. It is only at the stage of tendering evidence by way of affidavit dated 23.11.2006, that the

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revisionist disclosed the fact *qua* her employment as a school teacher but stated that she was only employed only for 15 days out of the total contract period of employment from 03.10.2006 to 31.01.2007. In her evidence tendered by way of affidavit dated 27.04.2007, she again asserted that she was unemployed. However, during her cross-examination on 10.03.2008, she admitted that she was employed as a school teacher in an MCD school as on 12.02.2007, on contract basis and had worked for certain periods of time. She further admitted that she was employed on approximately 2-3 occasions for about 2 months each and that further, that she had volunteered to stay out of the workforce thereafter. Therefore, it is evident that the fact *qua* her employment was willfully concealed and suppressed from the Ld. Trial Court at the time when she tendered her evidence by way of affidavit dated 27.04.2007.

45. Also, the period of employment and the name of the school where she was employed were conveniently not disclosed by the revisionist in her cross-examination on 10.03.2008. It was only through a certificate dated 07.02.2009, issued by the Principal of MCD Prathmic Bal Vidyalaya, Sanjay Colony, Okhla Phase-II, Delhi, under the seal of the District and Sessions Judge, that it was brought to the knowledge of the Ld. Trial Court that the revisionist was, in fact, employed as a school teacher during the period from 24.01.2008 to 04.03.2008.

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46. The revisionist has also sought to challenge the correctness of the impugned order dated 13.04.2010, predicated on the finding of the Court of Ld. ADJ in her favour allegedly, in its order dated 01.05.2009. Therefore, it would also be relevant, at this juncture; to peruse the order dated 01.05.2009, passed by the Court of Ld. ADJ, whereby maintenance under section 24 of the Hindu Marriage Act, 1955, was granted in favour of the revisionist.

47. It is observed that the Court of Ld. ADJ, whilst deciding the issue of maintenance under section 24, Hindu Marriage Act, 1955, relied upon the documents, material and evidence placed before it. The discrepancies, in the depositions and averments made by the revisionist, came to light only subsequently upon a conjoint reading of the entire evidence on record, adduced before the Ld. Trial Court which delivered the impugned judgment dated 13.04.2010. It is thus clear that the material facts *qua* the employment of the revisionist and her financial status were suppressed and concealed by her, before various fora, including in the proceedings under section 24, Hindu Marriage Act, 1955. Therefore, in my view, the reliance placed on the order of the Court of Ld. ADJ, granting maintenance in favour of the revisionist, under section 24 of the Hindu Marriage Act, 1955, is misplaced, inasmuch as, the relevant material and evidence were not placed on record on behalf of the revisionist and were in fact, suppressed by her to obtain favourable orders.

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48. In view of the foregoing discussion, it is evident that the revisionist was gainfully employed from time to time as a school teacher and it was of her own accord that she chose to remain unemployed during other times.

49. It is observed that the entire case of the revisionist is predicated on the asseveration that she was unemployed and was solely dependent upon her parents for her survival and sustenance. It is not the case of the revisionist that though she was employed, she was unable to maintain herself and lead a good standard of life.

50. In the instant case, the revisionist holds a Bachelor's degree in Arts and a B.Ed. degree. She has been able to secure employment in the past and therefore, holds sufficient professional experience. Her state of unemployment has been out of her own accord and thus, the burden of her unemployment ought not to be made to be borne by her husband. The bank account statements pertaining to the revisionist, as discussed hereinabove, also reveal that even otherwise she has sufficient means to maintain herself and that she is in fact, eminently employable.

51. Apart from making bald assertions to the effect that the revisionist was dependent on her parents for her survival and sustenance, no positive evidence has been brought on record on behalf of the revisionist to discharge the burden of proof that she lacked sufficient means to sustain herself.

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52. In view of the foregoing, in my opinion, the revisionist has been unsuccessful in discharging the burden of proof requisite to show that she was unable to maintain herself.

53. In the present case, the revisionist, admittedly, did not disclose the fact *qua* her employment and also filed affidavits concealing and suppressing material facts *qua* her employment and income, from the Court. The act of filing affidavits and making pleadings by suppressing and concealing material facts with the intent to obtain favourable orders has been condemned by the Ld. Trial Court, vide the impugned judgment as well. The relevant paragraphs of the impugned judgment are reproduced as hereunder:

“9. When it comes to the income under Section 125 Cr.P.C. it is a common fact that both the parties conceal their true income. The provisions under Section 125 Cr.P.C. have been enacted by the Legislature with the intention to prevent the vagrancy and to grant quick relief in the form of maintenance to the wife and children. The provision is a measure of social justice and the aim is to provide speedy remedy to the deserted woman. The petitioner cannot be allowed to misuse this process under 125 Cr.P.C. by making false submissions and raising false contentions regarding her vagrancy before the court.

10. In this case the petitioner has clearly stated in her petition that she has no source of income and she is fully dependent upon her parents. Her petition is dated 27.09.2004 which is supported by her

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affidavit dated 27.09.2004. She again reiterated her these contentions in her replication/rejoinder which is dated 02.08.2006 and is also supported by the affidavit dated 02.08.2006. Not only she has reiterated her contentions in the replication, she has also specifically denied the contentions of the respondent in the WS that she is having an income of Rs.10,000/- per month and stressed upon the fact that she is unemployed and she is having no source of income. Believing and relying on the contentions of the petitioner which is supported by affidavit, my Id. Predecessor while disposing of the application for interim maintenance observing that *"However, petitioner has filed affidavit on record wherein she has stated on oath that she is unemployed and does not have any source of income."* The petitioner has again while submitted her affidavit in evidence has stated in the affidavit in para 20 that she has no source of Income, rather she is at the mercy of her parents. Again In para 21, she has stated on oath that she Is living with her parents and is leading a miserable life on the mercy of her parents. This affidavit is dated 27.04.2007. According to these contentions of the petitioner, therefore, she had always remained unemployed and had never been having any source of income and has been totally at the mercy of her parents. In the cross examination however, she has stated that on 12.02.2007 she was working and she has volunteered that it was her last job. It is, therefore, apparent that the petitioner while filing her affidavit in evidence dated 27.04.2007 has not disclosed that she had been working and her job had lasted till 12.02.2007. She has also admitted in her cross examination that she had worked In MCD School as a teacher on contract basis. She has however, not disclosed the period during which she has worked as a teacher in MCD School. She has stated in the cross examination that she was unable to say when she had worked as a teacher. She has also refused to disclose

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the name of the school where she had worked as a teacher. She has further stated in the cross examination that she used to get Rs.165/- per day on dates when she worked but she has not disclosed the period when and during which she worked in the school. She has further stated in the cross examination that she had worked for two months each for about 2/3 times but she has not disclosed the period for which she had worked in the school but that has to be prior to 12.02.2007. Since her case is pending before the court and she had come up before this Court with the plea that she had no source of income and that she is at the mercy of her parents, it was her duty to disclose to the court in her evidence while filing the affidavit as to when and on what dates she was able to get the employment. She has concealed that fact she from the knowledge of this court. However this fact that she had been under the employment of the school as a teacher clearly shows that she is a qualified lady and possess the qualifications of earning her livelihood. There is one certificate got issued under the seal of the court of District & Sessions Judge which is dated 07.02.2009 and issued by the Principal of MCD Prathmic Bal Vidyalaya, Sanjay Colony, Okhla Phase-II wherein the Principal of the said school has certified that Smt. Lalita Yadav i.e. the petitioner had been in the employment of the school as a teacher from 24.01.2008 to 04.03.2008. It therefore is clear that even after the cross examination of the petitioner was competed she had been able to get the employment and she had been in the employment but had been concern the true facts from the knowledge of this court. She possesses the qualification."

54. The practice of concealment of income and status of employment, by parties, with an intention to obtain favourable orders from the Courts and to

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secure pecuniary benefits thereby, tantamounts to abuse and derogation of a beneficial piece of legislation enacted for social welfare and justice.

55. In *Kusum Sharma v. Mahinder Kumar Sharma* (*supra*), whilst adjudicating on the issue of filing of affidavits disclosing the incomes of parties to a marriage for maintenance, the Court observed as hereinunder:

“5. The basis of the claim for maintenance is that the claimant has no independent income to support herself and the Court has to take into consideration the income of both the parties. It is common knowledge that in maintenance cases parties rarely disclose their true income...

9. Truth should be the Guiding Star in the Entire Judicial Process.

9.1 It is the duty of the Court to ascertain the true income of the parties and then pass the appropriate order relating to maintenance. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.”

56. In *Dalip Singh v. State of U.P.*, reported as (2010) 2 SCC 114, the Hon'ble Supreme Court rendered the following observations on the practice of litigants resorting to make false claims before the Courts:

“2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving

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their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

57. In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria* reported as (2012) 5 SCC 370, the Hon'ble Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences, observing as hereinafter:-

"82. This Court in a recent judgment in *Ramrameshwari Devi and Ors.* (supra) aptly observed at page 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Courts' otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it

may not be possible to maintain purity and sanctity of judicial proceedings.”

58. The question that arises for consideration is whether this Court ought to permit a woman, who has the requisite educational qualifications and experience to pursue a career independently and, who out of her own will elects to remain out of the workforce; to claim maintenance from her husband, predicated on suppression of material facts including the details of her employment and financial status. The above question can, in my considered opinion, only be answered in the negative.

59. It has to be the endeavor and duty of this Court to impart justice whilst ensuring equality and fairness. Therefore, this Court is required to go beyond the mere aesthetics of a provision and must refuse to bestow the benefits of a provision, when a beneficial piece of legislation is demonstrably sought to be exploited, as in the present case. Welfare laws must be so read as to be effective delivery systems and ought not to be permitted to be abused.

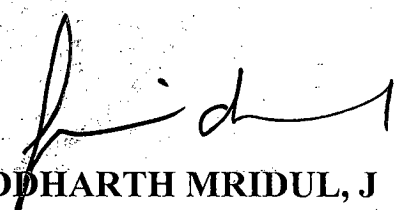
60. In view of the foregoing discussion, the observations made by Ld. Trial Court whilst denying the grant of maintenance in favour of the revisionist, in my view, are not erroneous or without substance. They are on the contrary, justly warranted.

61. It is relevant to observe that this Court censures the practice adopted by the revisionist in the present case to conceal her true income and status of employment, with the intent to obtain favourable orders from the Court. However, it is made clear that without condoning her acts of omission/commission as aforementioned, no costs are being imposed upon her at this stage, for her conduct and practice.

62. Be that as it may, since the revisionist has been unable to prove that she was unable to maintain herself, therefore, the prayer seeking grant of maintenance in her favour, is also rejected.

63. In view of the foregoing, the present revision petition is devoid of merit and is accordingly dismissed.

64. Trial court record be sent back, forthwith.



SIDDHARTH MRIDUL, J

DECEMBER 16, 2016

dn/sb