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

Judgment delivered on: 14th December, 2015

+ CRL.M.C. 483/2009

IRFANA & ANR.

..... Petitioners

Represented by: Mr. Haneef Mohammad,
Adv.

versus

AYYUB KHAN

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioners seek directions thereby setting aside the order dated 12.02.2008 passed by Id. Trial Court whereby the petition under Section 125 Cr.P.C. filed by the petitioner no. 1 was dismissed.

2. Further seeks directions thereby modifying the order dated 12.08.2008 passed by the Id. Sessions Court in Crl. Appeal No. 18/2008 whereby the Appellate Court has awarded an amount of Rs.1,000/- in favour of the petitioner no.2, however granted nothing to petitioner no. 1.

3. Notice in the instant petition was issued vide order dated 18.02.2009. Thereafter, Mr. Mukesh Kumar and Mr. Badridas, Advs. appeared on behalf of the respondent on 15.01.2010 and were directed to file the reply to the instant petition. Accordingly, the reply was filed, which is on record.

4. Order sheets reveal that none appeared on behalf of the respondent on the last four consecutive dates. So is the position today. Accordingly, this Court is constrained to proceed with the matter.

5. It is stated in the instant petition that the marriage of petitioner no. 1 was solemnized with the respondent on 04.12.1999 as per the Muslim customary. However, she was compelled to leave the matrimonial home on 05.06.2000 due to continuous cruelties and harassment being made to her by the respondent and his family members on account of demand of dowry and that too when she was at the advanced stage of pregnancy. Thereafter on 24.08.2000, one male child, i.e., petitioner no. 2 was born out of the said wedlock.

6. In the month of February, 2002 petitioner no.1 filed a petition under Section 125 Cr.P.C. claiming thereby the maintenance for herself and for her child, i.e., petitioner no.2 along with an application seeking interim relief. Respondent filed his written statement thereto alleging therein that he had divorced petitioner no. 1 and denied the paternity of petitioner no. 2.

7. Ld. Trial Court vide its order dated 30.06.2003, directed the respondent to pay an amount of Rs.1,000/- per month (Rs.500/- each to both the petitioners). Thereafter, the petitioner no.1 filed her evidence on affidavit and was cross-examined by the respondent. On perusal of the evidence on record, it is revealed that respondent failed to lead any evidence despite opportunities granted to him by the ld. Trial Court. Accordingly, his right to lead evidence was closed vide order dated 16.10.2006. However, ld. Trial Court dismissed the petition filed by the petitioner holding therein that the contents of the petition could not be proved as petitioner no. 1 herself did not support her affidavit tendered in examination in chief and denied having knowledge of its contents. Moreover, the petitioner failed to establish on record the reasonable ground for living away from the company of the respondent or any evidence regarding the cruelty committed upon her by the respondent or his family members. She also could not establish that petitioner no. 2 was born from the wedlock as the paternity was specially being denied by respondent in his reply. Thus, it was recorded there was no such material on record to allow the aforesaid petition. Accordingly, claim of the petitioners was dismissed vide order dated 12.02.2008.

8. Being aggrieved, petitioner challenged the same in Crl. Appeal No. 18/2008. Same was disposed of vide order dated 12.02.2008 and the Appellate Court awarded maintenance of Rs.1,000/- per month for minor son, i.e., petitioner no. 2 and

disallowed the request for grant of any maintenance in favour of the petitioner no.1.

9. Undisputedly, the marriage had taken place between petitioner no.1 and the respondent on 04.12.1999. The respondent had taken a ground in his written statement that he had divorced the petitioner no.1. However, neither he was able to prove this fact nor any suggestion was put to petitioner no.1 in her cross-examination. Even there was a contradictory stand taken by the respondent in his written statement as in Para 8, he alleged that he had given divorce to the petitioner no. 1 on 20.08.2001, however, in Para 9 of reply on merits, he alleged that he had gone to Aligarh to bring petitioner no.1 back to the matrimonial home. He even failed to prove that petitioner no. 1 was having any source of income or she was an earning member. Merely retaining a mobile is not enough to prove that petitioner no.1 is not suffering from starvation as observed by Id. MM.

10. It is alleged by the petitioner no.1 that she was subjected to cruelty and harassment for demand of dowry at the hands of respondent and his family members. In her cross-examination she stated that her father gave an amount of Rs.10,000/- as dowry to respondent as demanded by him. However, no suggestion was put to the petitioner no.1 that no cruelty of any nature was ever committed upon her either by the respondent or any member of his family. However, during cross-examination, petitioner no. 1 shown her willingness to go with the respondent from the Court, but no

response had come from the respondent, which establishes that the respondent was not agreeable to live with the petitioners.

11. Respondent no. 2 has admitted that petitioner no. 1 left his company on 05.06.2000. But the fact is that the petitioner no. 2 was born on 24.08.2000. Thus it establishes that she was at the advanced stage of pregnancy at the time when she left the matrimonial home. Moreover, case under Section 498A/406/34 IPC is pending adjudication against the respondent.

12. The facts recorded above establish that there were sufficient reasons with petitioner no. 1 to leave her matrimonial home. As stated by the petitioner in the petition filed under Section 125 Cr.P.C. that respondent was earning an amount of Rs.15,000/-. However in the present petition, petitioner has prayed for an amount of Rs.5,000/- and Rs.2,500/- per month as maintenance to her and her son, i.e., petitioner no. 2.

13. Though, the respondent no. 2 has stated in his written statement that he was working at a shop and was earning an amount of Rs.2,000/- per month, it is undisputed fact that the written statement was filed on 04.12.2002. Thus, even if it is presumed that he was earning minimum wages, even at that point of time he was earning Rs.7,000 to Rs.8,000/- per month.

14. The main ground taken by the respondent in his reply to the petition that petitioner no.1 is married to one Harun has been denied

by the petitioner no.1. Moreover, the respondent has failed to prove this fact on record.

15. Therefore, keeping in view the facts and circumstances of the present case and the fact that respondent failed to establish that petitioner no.1 is an earning member, respondent is directed to pay an amount of Rs.3,000/- and Rs.2,000/- in favour of petitioner no. 1 and petitioner no. 2 respectively w.e.f from the date of filing of the present petition, i.e., February, 2009.

16. Consequently, order dated 12.02.2008 passed by the Id. Trial Court is set aside and order dated 12.08.2008 passed by the Appellate Court is modified.

17. Accordingly, the present petition is allowed.

18. *Dasti.*

SURESH KAIT, J

DECEMBER 14, 2015

jg