

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

+ **CRL.M.C. 394/2014**

Date of Decision: June 13<sup>th</sup>, 2016

**MUNNA LAL**

..... Petitioner

Through: **Mr.R.P.S.Bhatti, Adv.**

versus

**KARAN & ORS.**

..... Respondent

Through **Ms.Suman Chauhan, Adv. for R-1 to R-3.**

**CORAM:  
HON'BLE MR. JUSTICE P.S.TEJI**

**P.S.TEJI, J.**

1. The present petition has been filed under Section 482 of the Cr.P.C. for setting aside the impugned order dated 19.12.2013 passed by the learned ASJ in Criminal Revision No. 122/2013 whereby the revision petition of the petitioner was dismissed.

2. The brief facts of the case are that the petitioner and respondent No.3 are husband and wife whereas respondent Nos.1 & 2 are their children. The respondent No.3/wife had filed a petition under Section 125 Cr.P.C. against the petitioner for maintenance to herself and her children in March, 2009 where the petitioner was initially proceeded

ex parte but on an application being made, the ex parte proceedings were set aside. It was alleged in the petition that the petitioner/husband is earning Rs.20,000/- per month by giving tuitions and doing farming on his land, but never remitted a single penny to the respondents/complainants.

3. The contentions made in the petition filed under Section 125 Cr.P.C. were opposed by the petitioner/husband on the ground that he filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against the respondent No.3 and thereafter she failed to appear and was proceeded ex parte. The petitioner denied imparting of any tuition and stated that he does not have any farm land and is dependent upon his father's pension for the expenses of his family. He also stated that he is unemployed and is without any means and certificate with respect of his unemployment has been issued by Gram Pradhan. The allegations of the petitioner were refuted by the respondent No.3 who stated that petitioner is well qualified being an M.Sc., earning Rs.30,000/- a month and has no other responsibility except maintaining the respondents. It was also stated that the father of the petitioner was also in a government job. The petitioner being the husband and father of the children is liable to

maintain them. Since it was an interim stage, the fact whether respondent No.3 left the company of the petitioner without any sufficient cause or not cannot be decided. Thus, in the given circumstances, his liability to maintain the respondents was fixed at Rs.1,300/- per month each from the date of filing of the petition till the disposal of the petition. The said order was challenged by the petitioner by filing a revision petition which was also dismissed.

4. The petitioner/husband had taken a ground in the revision petition that since his petition under Section 9 of the HMA Act had been allowed, the order passed passed by the Trial Court in a petition filed by the respondent No.3 is violative of the provisions of Section 125 Cr.P.C. which lays down that the right of maintenance cannot be availed by a wife who is guilty of living away from the husband for no justifiable reason. Respondent No.3 stated that she had put in appearance in the petition under Section 9 of the HMA filed by the petitioner/husband who exercised pressure on her by sending persons after her to prevent her from appearing in the Court. The respondent No.3 stated that she was willing to stay with the petitioner provided he takes care of her and her children. She admitted that she had been ill advised by her earlier counsel that she need not appear before the

matrimonial court and also named the advocates who gave her this advice.

5. The Revisional Court opined that the petitioner had not shown to the court that he had taken steps to take the custody of his children and therefore the maintenance qua them cannot be set aside on the ground that a civil decree had been passed against their mother by a civil court. As regards the allegation that the respondent No.3/wife had left the company of the petitioner/husband, it was observed that the same can be decided only after the trial and not at the stage of interim application.

6. It was an admitted position that the respondent No.3 was unrepresented before the Court in the Section 9 of HMA petition and her version remained unrepresented there. The finding in an ex parte decree, if unchallenged will remain binding on the petitioner, but it cannot become a ground for refusing the version of the respondent No.3 which was not put before the Court at all.

7. The fact that she had been prevented by the men of the petitioner/husband from entering appearance before the Civil Court is to be judged after the trial as per the evidence to be led by the parties. It was also to be appreciated by the Court that she had been misguided

by her previous counsel. Thus, it was inappropriate to bind the respondent No.3 by a decree in which her part of the story was not even heard by the court. As for the quantum of maintenance, the Revisional Court observed that the petitioner/husband himself had not come out clean on his source of income and thus there was no error in the finding of the Trial Court holding his income at Rs.6,500/- per month. However, it is made clear that any payment made in pursuance of the order granting interim maintenance shall be subject to the adjustment of the maintenance granted while passing final order by the Trial Court.

8. Before parting with, any observation made above shall not have any bearing on the merits of the case.

9. In the facts and circumstances as discussed above, this Court does not find any infirmity or irregularity in the finding arrived at by the court below in the order dated 19.12.2013.

10. Thus, the present petition is dismissed.

**(P.S.TEJI)**  
**JUDGE**

**JUNE 13, 2016**  
**dm**