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

% *Date of Decision : September 07, 2016*

+ **CRL.REV.P. 176/2015**

BINDA DEVI

..... Petitioner

Through: Mr.S.Sethi, Advocate with petitioner
in person

versus

DABBOO YADAV @ SANJEEV YADAV

..... Respondent

Through: Mr.Nitin Yadav, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

Crl.M.A. No.4307-4308/2015

1. For the reasons stated in the application 395 days delay in filing and 395 days in re-filing the appeal is condoned.
2. Application stands disposed of.

CRL.REV.P. 176/2015

1. The revisionist is aggrieved by the order dated December 01, 2012 whereby the petition filed by her against the respondent Dabboo Yadav @ Sanjeev Yadav to seek maintenance, claiming herself to be his wife, was dismissed by the learned Judge, Family Court.
2. In this revision petition she has also assailed the order dated January 29, 2013 whereby the learned Judge, Family Court dismissed the review application filed by her.

3. Admittedly there is no documentary evidence to prove the relationship of husband and wife between the parties. While disposing the application under Section 125 Cr.P.C. learned Judge, Family Court has recorded the following reasons:

*“Interestingly, Smt. Binda Devi (Petitioner No.1) has claimed in her petition that she was married to Sh.Surender Rai. She came to Delhi with him, fifteen years before filing the present petition (i.e. in the year 1989 – since the petition was filed in the year 2004). She, allegedly, lived as a tenant with Sh.Surender Rai in the house of the Respondent. She has claimed in her petition that the Respondent established physical/sexual relationship with her forcibly in the said rented house in the absence of her husband (Sh.Surender Rai). She has, also, claimed that the Respondent, thereafter, started representing her (before other people) as his second wife, despite the serious objections raised by her husband Sh.Surender Rai who was employed with Maruti Udyog Ltd. She has alleged that the Respondent started providing wine and meat regularly, to her husband. Sh. Surender Rai, allegedly, turned alcoholic, started absenting from his duties/job and ultimately, lost the same. **She, further, claimed that 10 years before filing the petition (i.e. in the year 1994), the Respondent put ‘sindur’ in her head in the presence of her husband Sh.Surender Rai. She, also, claimed that he started providing her a sum of ₹4,000/- per month towards maintenance.***

4. Again in para 26 & 27 of the impugned order learned Judge, Family Court noted that while in the petition she claimed to be having two children born from the respondent, during her cross-examination she stated that she had three children. However record revealed that in her application dated April 24, 2008, she claimed to be having four children from the respondent

and even maintenance was claimed for four children. Since the respondent denied the relationship of husband and wife as well the fact of being biological father of the four children, he filed an application for DNA test for which the petitioner refused stating that the children could have been fathered by the persons brought by the respondent to rape her.

5. The petition seeking maintenance under Section 125 Cr.P.C. was dismissed on failure of the petitioner to prove the relationship between the parties so as to entitle them to seek maintenance.

6. The review petition filed by her was dismissed recording that there was no error apparent on the face of the record for the reason that the petitioner although filed an application seeking amendment but failed to file amended petition and the affidavit filed in support of averments made in the petition being beyond pleading could not be considered.

7. During the course of hearing the revisionist was present in person and was questioned at length about any proof with her to prove the relationship of husband and wife between her and the respondent, she stated that she was not having any proof except the photographs placed on record. Learned Judge, Family Court has already noted that the ceremony necessary to perform the marriage i.e. 'Saptapadi' was not performed even as per the petitioner.

8. It is her own case that she was already married to Surender Rai who was made alcoholic by the Sanjeev Yadav (respondent herein). The surprising thing is that even as per the petitioner in the year 1994 the respondent put sindoor in her head in the presence of her husband Surender Rai. How there can be a legal and valid marriage during the subsistence of

her first marriage. Even otherwise putting of 'sindoor' by the respondent in presence of her husband cannot confer status of a 'wife' on her.

9. Learned Judge, Family Court has considered the evidence in correct legal perspectives. The impugned orders do not suffer from any illegality of infirmity hence the revision petition is dismissed.

10. No costs.

September 07, 2016

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PRATIBHA RANI, J.

