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

+ CRL.M.C. 3092/2013

RAJIV CHHABRA

..... Petitioner

Represented by: Mr.J.P.Malviya, Adv.

versus

STATE & ORS

..... Respondents

Represented by: Mr.Akshai Malik, APP for State

Ms.Ritu Negi, Adv. for R-2 & R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER

% **15.09.2016**

1. The petitioner Rajiv Chhabra has filed above numbered petition seeking the quashing of the order dated July 08, 2013 passed by ASJ-02, (Central) Tis Hazari Courts, Delhi as well as the order dated March 14, 2013 passed by learned Metropolitan Magistrate-02, Mahila Courts (Central Distt.), Tis Hazari Courts, Delhi by which the application of respondent No.2 : Shivani Chhabra, the wife of the petitioner and respondent No.3; Aryan Chhabra the son of the petitioner and respondent No.2, for revival of their petition under Section 125 of the Cr.P.C. had been allowed.

2. The petitioner and respondent No.2 were married on April 26, 2004. On June 02, 2006. The petitioner filed a petition praying for dissolution of marriage between the petitioner and respondent No.2 under Section 13B(1) of the Hindu Marriage Act, 1955. On September 02, 2006, respondent

Nos.2 and 3 filed an application under Section 125 of the Cr.P.C. vide C.C.No.1293/3/06 for maintenance. On July 07, 2008, application dated September 02, 2006 under Section 125 was withdrawn by respondent No.2 because a settlement was reached between respondent No.2 and the petitioner. Subsequently, the petitioner and respondent Nos.2 started cohabiting along with their son respondent No.3.

3. But it was alleged by respondent No.2 that the petitioner reneged on the settlement agreed between the parties and ejected respondent No.2 and respondent No.3 from the matrimonial home on July 26, 2008. Thereafter, a second application for maintenance under Section 125 of the Cr.P.C. vide M.P.No.159/4/09 was filed by respondent Nos.2 and 3 on March 03, 2009.

4. Vide order dated December 12, 2010, the learned Metropolitan Magistrate granted interim maintenance in M.P.No.159/4/09 in the sum of ₹10,000/- (Rupees Ten Thousand only) per month to respondent No.2 and interim maintenance in the sum of ₹5,000/- (Rupees Five Thousand only) per month to respondent No.3.

5. On March 15, 2011, the second application for maintenance was also withdrawn by respondent No.2. It has been claimed by respondent No.2 that as a consequence of the assurances given by the petitioner to respondent No.2, a second settlement was reached between the parties and respondent No.2 rejoined her matrimonial home on January 14, 2011. The respondent No.2 alleges that after the application under Section 125 of the Cr.P.C. was withdrawn by her, the petitioner resumed physically and mentally harassing respondent No.2. Further, on May 13, 2011, the petitioner abandoned respondent Nos.2 and 3 at the parental home of respondent No.2.

6. As a consequence, respondent Nos.2 and 3 filed an application in the

Court of the Metropolitan Magistrate, Mahila Court, (Central Distt.), Tis Hazari Courts, for the revival of their application under Section 125 of the Cr.P.C. The Metropolitan Magistrate in order dated March 14, 2013 recorded that despite giving assurances to respondent No.2, in order to enter into a compromise and avoid payment of maintenance, the petitioner had failed to comply with the terms of the settlement between the parties and accordingly, the application of respondent No.2 and 3 for revival was allowed.

7. The petitioner preferred Crl.Revision No.101/2013 before the Additional Sessions Judge-02, Central, Delhi against the order of the Metropolitan Magistrate dated March 14, 2013.

8. Vide order dated July 08, 2013, the learned ASJ dismissed Crl. Revision No.101/2013, holding that requiring respondent No.2 to file a fresh application under Section 125 of the Cr.P.C. when she had already been forced to file two applications under Section 125 of the Cr.P.C. due to the failure of the petitioner to honour the settlement between the parties, would amount to denial of substantial justice for respondent No.2. The learned ASJ opined that if respondent No.2 was directed to file a fresh application under Section 125, the question of interim maintenance would have to be adjudicated afresh while this question had already been decided vide order dated December 12, 2010. Relying on judgment of the Bombay High Court reported as 2009 Crl.L.J. 70 Mandakini B. Pagire Vs. Bhausahab Genu Pagire and the judgment of the Calcutta High Court reported as 1991 Crl.L.J. 2035 S.K.Alauddin Vs. Khadiza Bidi, the learned ASJ has stated that magistrates had the power to restore proceedings initiated under Section 125 of Cr.P.C. Accordingly, the learned ASJ has confirmed the order dated

July 08, 2013 passed by the learned Metropolitan Magistrate but has held that respondent Nos.2 and 3 would not be entitled to maintenance for the period they were residing with the petitioner.

9. The only argument advanced today before me by the learned counsel for the petitioner that it is settled law that a Magistrate has no power to restore a case dismissed by the learned Magistrate.

10. The argument is noted and rejected for the reason said so called settled law relates to complaints alleging commission of an offence against an accused and if dismissed for whatever reason, cannot be restored by a learned Magistrate because there is no inherent power in a Magistrate to do so and no provision in the Cr.P.C. empowers a Magistrate to do so.

11. A proceeding under Section 125 Cr.P.C. does not relate to the commission of any offence.

12. The petition is accordingly dismissed.

CrI.M.A.No.11566/2013 (Stay)

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

SEPTEMBER 15, 2016

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