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

% *Date of Decision: 8th September, 2016*

+ **CRL.REV.P. 256/2015**

ANJUM

..... Petitioner

Represented by: Petitioner in person.

Versus

YUNUS SALEEM

..... Respondents

Represented by: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

Crl.M.A. Nos.6650/2015 and 6651/2015

1. Whereas Crl.M.A.No.6650/2015 has been filed seeking condonation of 256 days' delay in filing the revision petition, by way of Crl.M.A. No.6651/2015 prayer for condonation of 3 days' delay in re-filing the revision petition has been made.

2. Respondent is present in person and submits that he has no-objection if the delay in filing as well as delay in re-filing the revision petition is condoned.

3. Accordingly, the delay of 256 days in filing and delay of 3 days in re-filing the revision petition is condoned.

4. Both the applications are disposed of.

Crl.Rev.P. No.256/2015

1. The revisionist herein is aggrieved by the order dated April 15, 2014 whereby the petition filed by her for seeking maintenance under Section 125 Cr.P.C. for herself and her three daughters, has been dismissed.

2. The impugned order has been challenged by the revisionist mainly on the following grounds:-

- (i) The case law cited by her has not been properly appreciated by the learned Trial Court.
- (ii) The concealment and suppression of material fact by the respondent/husband has not been properly appreciated.
- (iii) The petitioner is entitled to maintenance so as to live as per the social status of her husband, which has been ignored by the learned Trial Court.
- (iv) The suppression of documents by the respondent/husband concealing his true income was not taken into account.
- (v) As a *Aanganwadi* worker she is drawing honorarium of ₹5000/- per month which is not sufficient to maintain herself.

3. Vide impugned judgment dated April 15, 2014 the petition under Section 125 Cr.P.C. has been dismissed for the following reasons:-

'27. The respondent in his affidavit deposed that on his application dated 08.07.2011 under RTI Act, he got information that petitioner no.1 is working in the department of WCD Govt. of NCT of Delhi as Anganwari member and posted at Centre No.85, Jafrabad area, Delhi and in view of the same, she is not entitled to any maintenance and the petition is liable to be dismissed. In her cross-examination, petitioner was asked about her employment and her emoluments. She admitted that she is employed at Anganwari, Jafrabad, since June 2011 and is receiving ₹4,000/- per months since then.

28. Petitioner herself never disclosed the factum of her employment to the Court. It is only during her cross-examination, she admitted that she is working and earning ₹4000/- per month.

29. Respondent in application under Section 127(1) Cr.P.C. dated 31.01.2012 which was filed before the Ld.Predecessor Court on 30.03.2012 and received in the present Court on 13.07.2012 prayed for discontinuance of the payment of interim

maintenance amount of ₹1000/- per month payable by him to petitioner No.1; pursuant to order of my Ld.Predecessor dated 29.06.2010 in view of the fact that petitioner No.1 is gainfully employed and is accordingly able to sustain herself. He sought a direction to petitioner no.1 to give correct date of her gainful employment. Petitioner No.1 in her reply to his application under Section 127 (1) Cr.P.C. did not disclose the date of her joining as Anganwari worker. Respondent, on account of silence of petitioner qua date of her employment in her reply, contended that she must have joined the said office even earlier than June 2011 which date she mentioned in her cross-examination. There is no evidence that petitioner No.1 got employed prior to June 2011. Respondent was at liberty to summon record from the department of WCT Govt. of Delhi to have information about the exact date of gainful employment of petitioner No.1 but he did not do so. Therefore, it is presumed that she got employment w.e.f. June 2011.

30. *In para 15 page 9 of his reply, respondent stated:-*

“Petitioner is also maintained by the respondent as she is using ration and other necessary things of respondent and residing in the house of respondent.”

Petitioner did not deny these averments in corresponding para 15 of her rejoinder.

31. *Petitioner is admittedly gainfully employed and is earning ₹4000/- per month since at least June 2011. She had been residing in the house of the respondent using ration and other facilities provided at his house. Respondent is drawing gross salary of ₹26,429/- per month (as per pay slip of March, 2014). He has the liability to maintain his three daughters also who are admittedly living with him. No other income of the respondent besides his salary is proved.*

32. *Respondent had filed an application under Section 127(1) Cr.P.C. on 30.03.2012 for reviewing order dated 29.06.2010 on the ground that since petitioner no.1 is gainfully employed since at least June 2011, operation of the said order*

may be discontinued. The case file shows that he continued to pay the interim maintenance amount as per order of the predecessor Court during pendency of the case. It is also relevant that petitioner No.1 has been living at house of respondent, using ration and other facilities available at his house. Further there is no complaint qua demand of dowry or physical or mental torture for a long period. There is further no evidence of any gender bias of respondent against his daughters. Rather there is evidence that daughters are happy with him, living with him on their own accord and are being maintained by him. So there is no evidence that respondent refused or neglected to maintain the petitioner. Petitioner has also failed to prove that she is unable to maintain herself. She has failed to prove any other income of the respondent besides his salary. Respondent has to maintain and educate his three daughters also with his meagre salary.'

4. During the course of hearing today the factum of she being gainfully employed is not disputed by her. Rather she contended that she gets her payment on 10th of every month and the amount which she receives is not sufficient to take care of her needs as per status of her husband.

5. During the proceedings under Section 125 Cr.P.C., the testimony of RW-2 Ms.Iram Saleem - daughter of the parties played a significant role in deciding the issue of award of maintenance to the wife. RW-2 Ms.Iram Saleem has stated that the appellant/wife used to harass, humiliate, abuse and mal-treat her, her two sisters and her father as well as other family members. She has further stated that the appellant/wife also used to hurt the dignity of her (RW-2's) father i.e. the respondent/husband herein and it was the routine of the appellant/wife to pick up quarrel with respondent/husband as well as with her and her two sisters without any reason and she made their lives a living hell which was spoiling her as well as her sisters' career. She has further stated that all the efforts made by her father to make the appellant/wife understand and change her behaviour went in vain.

6. The petition under Section 125 Cr.P.C. was filed by the revisionist impleading her three daughters as petitioners concealing the fact that her husband was taking care of all the three daughters and all of them were residing with him. She also concealed the factum of she being employed as *Aanganwadi* worker and getting ₹5000/- per month. The gross salary of respondent/husband as per his salary slip is ₹26429/- per month and after compulsory deductions, the respondent/husband is left with the amount just enough to support himself and his three daughters especially when it has come on record that the revisionist herein had been living in the same house and using ration and other facilities available in the house.

7. The object of awarding maintenance under Section 125 Cr.P.C. has come up for consideration before the Supreme Court in the decision reported as 2007 (13) SCALE 402 Chaturbhuj vs. Sita Bai. In paras 5 to 7 of the report it was observed as under:

'5. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125, Cr. P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. MANU/SC/0067/1978 : AIR 1978 SC 1807 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and

parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. 2005 (2) SC 503: 2005 (1) SCC 480: MANU/SC/0193/2005 : 2005 (1) ACR 1094 (SC).

6. *Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the Appellant has the requisite means.*

7. *But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The Appellant has placed material to show that the Respondent-wife was earning some income. That is not sufficient to rule out application of Section 125, Cr. P.C. It has to be established that with the amount she earned the Respondent-wife was able to maintain herself.'*

8. When the case of the revisionist is examined in view of the above legal position, I find that the revisionist is having sufficient means to maintain herself. She had been availing all the facilities at the house of respondent/husband. Otherwise also, she has sufficient means to lead her life as per social status of her husband.

9. Finding no illegality, irregularity or perversity in the impugned order, the revision petition is hereby dismissed.

10. No costs.

11. LCR be sent back alongwith copy of this order.

CM No.6648/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

SEPTEMBER 08, 2016/‘st’