

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 4229/2015 & Crl.M.A. 15143/2015

Date of Decision : January 19th, 2016

TAYEEB

..... Petitioner

Through Mr.M.T. Malik, Advocate.
versus

KAUHHAR & ANR.

..... Respondents

Through None.

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

P.S.TEJI, J.

1. The present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) has been filed by the petitioner for setting aside the order/judgment dated 02.08.2014, passed by the learned Principal Judge, Family Courts, South, Saket Courts, New Delhi and for stay of the proceedings of the Execution Petition No.27/15, pending in the Court of learned Principal judge, Saket Courts, New Delhi. Vide judgment dated 02.08.2014, the respondents-herein have been awarded maintenance of Rs.10,000/- per month i.e. Rs.5,000/- per month each from the date of filing of the petition and directed the petitioner-herein to pay the same on or before the 10th day of each month. He is also directed to clear the

arrears within six months.

2. Factual matrix, emerges from the record, is that the respondent no.1-wife, namely, Smt. Kaushar and her minor daughter Ms.Ziya/ respondent No.2-herein filed a petition under Section 125 Cr.P.C. claiming the maintenance @ Rs.25,000/- per month. It was averred in the petition that the marriage between the petitioner and respondent no.1-wife was solemnized on 25.02.1996 according to Muslim rites and customs. In the marriage, the parents of the respondent no.1-wife spent more than Rs.6,00,000/-. After marriage, the respondent no.1-wife was taken to her matrimonial home at Meerut and she stayed there for only three days and thereafter she came back to her parental home in Delhi. It was agreed between the parties that the respondent no.1-wife would not go again to her matrimonial house till next three years as she was only 14 years old. After expiry of the said three years, the petitioner-husband along with his family members took the respondent no.1-wife to her matrimonial home. It was alleged that the petitioner-husband and his parents demanded more cash and dowry from the respondent no.1-wife and her parents. In the year 1999, due to certain heart problem, the father of the respondent no.1-wife sold

his house for a consideration of Rs.15,00,000/-. On coming to know about this, the petitioner-husband started demanding Rs.2,00,000/- from the father of respondent no.1 for starting a new business. Thereafter, the respondent no.1-wife was tortured and harassed. Father of the respondent no.1-wife expired on 08.10.2006 and after that the respondent no.1-wife gave birth to a male child who died immediately after birth. In the year 2008, the respondent-wife gave birth to a girl child/respondent no.2-herein due to which the respondent-wife was given beatings and she had to reside at her parental house for about 9-10 months. When she came back to her matrimonial house, she came to know that the petitioner-husband eloped with some other girl and he returned back home after a month along with his second wife. The respondents-herein were thrown out of the matrimonial house and thereafter, the respondents-herein started residing in Delhi on rental basis.

3. The petitioner-husband filed the written statement and denied the averments made in the petition. The learned Principal Judge vide judgment dated 02.08.2014, allowed the petition and directed the petitioner-husband to pay the maintenance @ Rs.5,000/- per month

each to the respondents-herein. Thereafter, the respondents-herein preferred the execution petition for execution of judgment dated 02.08.2014.

4. Feeling aggrieved by the passing of the impugned judgment and the initiation of execution proceedings, the present petition has been preferred by the petitioner.

5. The arguments advanced by the counsel for the petitioner are that the petitioner had filed a case for restitution of conjugal rights in the Family Courts, Meerut, Uttar Pradesh which is pending for disposal. It is further argued that the Trial Court has failed to appreciate that the respondent no.1 herself admitted that she had gone back to her native place i.e. Secunderabad, Bulandshahar, U.P. where her family members were residing. In the petition, the address of New Delhi was given by the respondent no.1-wife just to create jurisdiction of the Courts at Delhi, whereas the Courts at Delhi have no jurisdiction to try the case as it was contended by the petitioner that the respondent no.1-wife was a permanent resident of Bulandshahar, U.P. It is further submitted that the petitioner-herein did not appear before the Trial Court after filing of the written

statement as he was under the impression that mere filing of the written statement was sufficient to place all the facts on record.

6. It is not in dispute that the marriage of petitioner with the respondent no.1 was solemnized. The petitioner has also not disputed the birth of the girl child i.e. respondent no.2-herein out of the said wedlock. It was specifically contended by the respondent no.1-wife in her petition that the petitioner-husband is running his business of Ayurvedic Medicines Store and is also running a school in the name and style of Asif Sagar School. From his sources, the petitioner-husband is earning a sum of Rs.40,000/- per month. It was further contended that the respondent no.1-wife has no source of income to maintain herself and her girl child.

7. The petitioner-husband filed the written statement and denied the case of the respondent no.1-wife. But the fact remains that after filing of the written statement, he did not appear in the Court. He chose to stay away from the proceedings and had not contested the same.

8. In ***Chaturbhuj v. Sita Bai, (2008) 2 SCC 316***, the Hon'ble Apex Court held that :

“Section 125 CrPC 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. Veena Kaushal*¹⁵ falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. 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 13 (1997) 7 SCC 7 14 (2008) 2 SCC 316 15 (1978) 4 SCC 70 16 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*¹⁶.”

9. In *Shamima Farooqui v. Shahid Khan*, AIR 2015 SC 2025 it was held that :

“From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny.”

10. In view of the facts and circumstances discussed above and the laws laid down in ***Chaturbhuj's*** case (supra) and ***Shamima Farooqui's*** case (supra), this Court is of the considered opinion that Section 125 Cr.P.C. is a measure of social justice and has been enacted to protect women and children who have been deserted by the husband so that they are able to maintain themselves. It has been inserted keeping in view the guarantee enshrined in Article 15(3) and 39 of the Constitution of India. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. By entering into a marriage, the husband is duty bound to maintain and support his wife and children who have been deserted. The underline principle of Section 125 Cr.P.C. is loud and clear. It is based on a principle that nor the wife should be left as a destitute once her husband leaves her and neither the child born out of said wedlock should lead a life like a beggar. They have to be provided with the same standard of living as they would have been provided for in the matrimonial home.

11. As discussed above, there is no illegality or infirmity in the judgment dated 02.08.2014 passed by the Trial Court. Neither any

abuse to the process of law nor any failure of justice has been demonstrated. This Court is of the considered opinion that no interference is warranted in the present case under Section 482 of Cr.P.C. The petition is accordingly dismissed.

12. Application Crl.M.A. 15143/2015 is accordingly disposed of.

(P.S.TEJI)
JUDGE

JANUARY 19, 2016
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