

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

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Reserved on: 25.05.2017

Delivered on: 31.05.2017

+ CRL.REV.P.390/2013

ANIL KUMAR YADAV

..... Petitioner

Versus

SUMAN YADAV

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.P.S.Rao.

For the Respondent : Mr.Dinesh Chander Yadav with Mr.A.S.Rishi.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The petitioner has challenged the order dated 18.05.2013 passed by the learned Judge-01, Family Courts, Saket, New Delhi in Maintenance Petition No.285/2011 whereby the petitioner has been directed to pay to the respondent a monthly sum of Rs.6000/- from the date of filing of the petition which is 22.05.2006 to 28.05.2010 when the respondent got remarried. The order further directs that the maintenance amount be cleared within two months from the date of the passing of the order.

2. The petitioner was allegedly married to the respondent on 26.06.2004. The allegation against the petitioner is of having demanded additional dowry even when Rs.10 lakhs, a car and an additional sum of Rs.51,000/- was given to the petitioner at the time of the marriage. The demand, it has been alleged was of Rs.5 lakhs and one MIG flat in Vasant Kunj. The petitioner is also said to have committed unnatural sex with the respondent. The respondent is also stated to have been harassed and troubled by not only the petitioner but other family members as well.

3. The petitioner preferred a petition under Section 125 of the Code of Criminal Procedure seeking Rs.15,000/- per month as maintenance.

4. Before the Court below, the petitioner contested such petition and submitted that the respondent did not even know the name of her husband from whom she was demanding alimony. It was further submitted that the respondent was brought thrice to her matrimonial home but no sooner would she arrive at her matrimonial home, she would start behaving as if she was under the spell of some unholy spirit. It was submitted that a police complaint was lodged on 02.09.2005. Much prior to that, the respondent had refused to join the company of the petitioner. That apart, a vague statement regarding the income of the petitioner was given by the respondent. It was further argued that all the Istridhan and other articles belonging to the respondent were returned on 10.02.2006. Thus the sum and substance of the defence of the petitioner was that the marriage was a sham. Whatever it be, it could not be consummated and, therefore, it was a void marriage. The respondent, of her own volition, took divorce from the petitioner and has now remarried. Under such circumstances, any order of the Family Court directing him to pay maintenance to the

respondent is against and in the teeth of the provisions of Section 125 sub clause (4).

5. It appears from going through the records that the petitioner who examined herself as PW-1 has admitted in her cross examination that she is a graduate and that her father was employed in DTC as a driver. No statement has been made by her with respect to one Jage Ram who according to the petitioner was instrumental and helpful to the respondent in lodging of the case at CAW, Nanakpura where he was employed as an ASI. In her cross examination, the respondent has admitted of having received Rs.50,000/- through cheque during the hearing of the bail petition of the petitioner. With respect to the return of the articles belonging to her, she has admitted that car and other belongings were returned.

6. However, the respondent has categorically denied the suggestion that she had refused to live with the petitioner.

7. What appears rather strange is that under such conditions the respondent has admitted that a divorce petition was filed by her which was decreed ex-parte against the respondent.

8. During the course of cross examination no definite statement could be given by the respondent regarding the cruelty/harassment perpetrated on her at the instance of the family members of the petitioner.

9. No definite reply also could be given about her assessment of the income of the petitioner. A bald statement was made by the respondent that the petitioner owned three houses in Gurgaon and some property in his native village in Haryana. However, she did not offer any proof of the possession of such properties by the petitioner.

10. The fact of her remarriage has been admitted by the respondent.

11. The Family Court though has dealt with the law on the issue of maintenance and the provisions of Section 125 Cr.P.C but has not at all adverted to the issue as to whether the respondent lived with the petitioner for any substantial time during the subsistence of the marriage. There is no discussion about the stage or the result of the complaint lodged by the respondent. The Court below has also not taken into account as to when, how and on what grounds divorce petition filed by the respondent was allowed ex-parte. If a divorce petition is filed by a wife, which is decided ex-parte it becomes really doubtful as to whether the spouses lived together.

12. The narration of the respondent in her complaint do provide an inkling that perhaps the marriage was not consummated and that she did not stay for any substantial period in her matrimonial home.

13. While the Family Court was deciding the issue of maintenance and it was brought to the notice of the Court that the wife had remarried, it was incumbent upon the Court to have enquired as to how and at whose instance the divorce was effected.

14. Apart from the above, the assumption of the monthly income of the petitioner has also been made without any evidence. The guesstimate of the Court also is not based on any sound principle.

15. The order impugned does not appear to be sustainable in as much as it does not give any finding about whether the respondent lived with the petitioner in her matrimonial home and if not whether separation was voluntary or by mutual consent. The factum of remarriage of the respondent also confounds the issue. The fact of the respondent having

filed the divorce petition which was decided ex-parte, to some extent, raises suspicion that the respondent, of her own volition left her matrimonial home. All the articles including the car were returned to the respondent immediately after the lodging of the complaint which is also decisive of the fact that some kind of a settlement/arrangement must have been effected whereby the parties were not required to stay together as spouses. The acceptance of the respondent of having received Rs.50,000/- at the time of hearing of the bail petition of the petitioner further confirms the view that the respondent did not stay with the petitioner for any substantial period.

16. This Court has not been informed of the result of the complaint. That would have really clinched the issue as to whether the respondent stayed with the petitioner for some time and she, because of the harassment, had to leave the matrimonial home. However, taking into account the fact that there is no proper assessment of the income of the petitioner and the fact that the respondent has remarried which does not, now, require her to be maintained by the petitioner, this Court is inclined to interfere with the order impugned.

17. For the period when the respondent was not married, it would have been the duty of the petitioner to maintain her but in the absence of any discussion in the order about whether the respondent had left the home voluntarily or was forced to leave matrimonial home and proper estimate of the income of the petitioner, no order could be passed, directing the petitioner to pay maintenance.

18. For the aforesaid reasons, the order is not capable of being sustained in the eyes of law and is set aside.

Crl.M.A.10544/2013

1. In view of the main petition having been dismissed, this application becomes infructuous.
2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 31, 2017
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