

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

% **Date of Decision: 28th August, 2017**

+ CRL.M.C. 2682/2015 & CRL.M.A. 9569/2015

NITIN VIJ

..... Petitioner

Through: Mr.Manjit Singh Ahluwalia, Advocate
with the petitioner in person.

versus

POOJA

..... Respondents

Through: Mr.R.S. Dakha and Mr.Sunny Jain,
Advocates with the respondent in
person.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I.S. MEHTA, J.

1. By way of the instant petition, the petitioner/husband-Nitin Vij is invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to set aside the impugned judgment dated 22nd May, 2015 passed by the learned Additional Sessions Judge/Special Judge(NDPS) (West), Tis Hazari Courts, Delhi, in Criminal Revision No. 01 of 2014 whereby the learned ASJ dismissed the revision petition wherein the petitioner challenged the interim maintenance order passed by the learned Metropolitan

Magistrate (Mahila Court), West District, THC/Delhi vide order dated 15th May, 2013 under Section 125 Cr.P.C.

2. The brief facts stated are that, the marriage between the petitioner/husband and the respondent/wife was solemnized on 18th September, 2010 as per Hindu rites and customs and out of the wedlock a child was born on 24th August, 2011. Thereafter, the respondent was forced to leave the matrimonial home with her minor child and she is completely dependent on her parents. It has been alleged by the respondent that the petitioner had neither taken her back nor made any provision for maintaining her and his minor child.
3. Subsequently, on 06th December, 2012, the respondent filed an interim maintenance application under Section 125 Cr.P.C. against the petitioner herein, in the Court of Chief Metropolitan Magistrate, Delhi.
4. The learned Metropolitan Magistrate after hearing the arguments of both the parties and after considering the complaint, affidavit and other material on record, passed the order dated 15th May, 2013 in case bearing No. 213/4 directing the petitioner herein to pay maintenance of Rs.5,000/- per month in favour of the respondent/wife from the date of the petition, i.e. 06.12.2012 till further orders/remarriage of the respondent/wife and maintenance of Rs. 8.000/- in favour of the minor child from the date of filing till further orders/majority of the minor child.

5. Aggrieved by the aforesaid order dated 15th May, 2013, the petitioner filed a revision petition under Section 397 Cr.P.C. bearing Criminal Revision No. 01/2014 before the Court of Additional Sessions Judge, Tis Hazari Courts, Delhi on 21st December, 2013.

6. Consequently, the learned Additional Sessions Judge vide impugned judgment dated 22nd May, 2015 dismissed the aforesaid revision petition of the petitioner for want of merit.

Hence, the present petition.

7. The learned counsel for the petitioner has submitted that the judgment dated 22nd May, 2015 passed by the learned ADJ is bad in law and is liable to be set aside. It is against the law and facts and is based upon conjecture and surmises.

8. The learned counsel for the petitioner has further submitted that the respondent/wife has left the matrimonial house on her own will, without any fault of the petitioner/husband and has filed a petition just to satisfy personal grudge and to put financial pressure on the petitioner. Therefore, the impugned judgment is liable to be set aside.

9. On the other hand, the learned counsel for the respondent has submitted that the impugned judgment dated 22nd May, 2015 passed by the learned ADJ against the petitioner and in favour of the respondent has been rightly passed and does not suffer from any illegality or infirmity and the revision petition of the petitioner has rightly been dismissed by the learned Sessions Court.

10. The learned counsel for the respondent has further submitted that the order under challenge in the present petition is an interim order and is not the final order. The pleadings of the petitioner in the present writ petition are false and the same raises disputed question of facts which cannot be adjudicated in the writ jurisdiction. The same are required to be proved in the evidence by the petitioner before the Trial Court and not before this Court. Hence, the present petition is meritless and deserves to be dismissed.
11. It is a settled principle of law that both the parents have a legal, moral and social duty to provide to their child the best education and standard of living within their means. The mere fact that the spouse with whom the child is living is having a source of income, even if sufficient, would in no way absolve the other spouse of his obligation to make his contribution towards the maintenance and welfare of the child.
12. The Apex Court in *Noor Khatoon vs. Mohd. Quasim; 1997 CrL. L.J. 3972* has made the observation that a father having sufficient means has the obligation to maintain his minor children who are unable to maintain themselves till they attain majority and in case of females till they get married.
13. It is an admitted fact coming on record that the main application under Section 125 Cr.P.C. is pending before the Trial Court. The determination of the same will be done by the Trial Court after leading of evidence by the respective parties

and on the basis of material documents and income affidavits of the parties.

14. Since the respondent and her minor child are to be maintained by the petitioner, in the absence of denial of existence of the marriage and denial of paternity of the minor child, who is stated to be in need of medical care, the petitioner cannot shy away from his statutory obligation of maintaining his legally wedded wife and his minor child.

15. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds. Reliance is placed on the judgment of the Hon'ble Punjab and Haryana High Court in the case ***Dr. R.K. Sood vs. Usha Rani Sood; 1996 (3) 114 PLR 486*** and the relevant paragraph is reproduced as under:-

"17. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he

cannot be permitted to limit this claim of the child on flimsy and baseless grounds."

16. In view of the aforesaid, I find no infirmity in the judgment dated 22nd May, 2015 passed by the learned Additional Sessions Judge/Special Judge(NDPS) (West), Tis Hazari Courts, Delhi, in Criminal Revision No. 01 of 2014 affirming the order dated 15th May, 2013 passed by learned Metropolitan Magistrate.
17. Consequently, the instant petition filed by the petitioner is dismissed. However, this judgment shall not affect the merits of the case, application under Section 125 Cr.P.C. pending between the parties as the determination of the same will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.
18. The present petition is disposed of in the above terms. Pending applications (if any) are also disposed of. The Trial Court is directed to dispose of the application under Section 125 Cr.P.C. filed by the respondent-wife as soon as possible and preferably within a period of six months from the date of this judgment.
19. Copy of this judgment be sent to the concerned Court(s).
No order as to costs.

I.S.MEHTA, J

AUGUST 28, 2017/sr