

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

% **Judgment delivered on: 17th November, 2017**

+ **CRL.REV.P. 408/2015 and CRL.M.A. 9582/2015**

ANEESH AHMAD

..... Petitioner

Through: Mr. R.G. Srivastava, Advocate.

versus

RUHI

..... Respondent

Through: Ms. Maheravish Rein,
Ms.Shamshravish Rein and
Mr.Aldanish Rein, Advocates with the
respondent in person.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner- Aneesh Ahmad under Sections 397 Cr.P.C. for setting aside the orders dated 18.05.2015 and 04.06.2015 passed by the learned Principal Judge, Family Courts, Karkardooma Courts, Delhi in Execution petition No. 26/15 arising out of the main petition, i.e. CC No.1257/14, under Section 125 Cr.P.C in case titled as "*Smt. Ruhi vs Sh. Anees Ahmad*".

2. The brief facts stated in the application for interim maintenance under Section 125 Cr.P.C. filed before the Court of Principal Judge, Karkardooma Courts, Delhi by the present respondent- Ruhi are that the marriage between the petitioner- Aneesh Ahmad and the respondent- Ruhi was solemnized on 10.09.2011 according to Muslim rites and customs. From the said wedlock a male child was born in the month of December 2013. It is alleged in the said application that all the in-laws and the petitioner pressurized the respondent to bring Rs. 5,00,000/- in cash, one house in the name of petitioner at Delhi and a luxurious car and till the respondent does not fulfill the above said demand, till then they will not keep the respondent happily and in consequences of that the in-laws used to beat the respondent mercilessly. Since the respondent was unable to fulfill their demands as mentioned above, she was forced to leave the Matrimonial home by the petitioner. It is further stated in the application that the respondent have no source of income as she is a housewife and dependent upon her parents and all the expenses are being born by her parents. It is further alleged that the petitioner is a man of means as he is a businessman and is running a business of Alumax Fabricators & Maintenances contractor; having many property in his name at different places, but the petitioner did not pay a single penny towards the maintenance nor paid any compensation or money for rent for residence for the respondent and the petitioner has no other liabilities except to maintain the respondent.

3. It is pertinent to mention here that the marriage between the respondent and petitioner has been dissolved on 18.08.2014 according to Muslim law by pronouncing Talaak to the respondent by the petitioner.
4. Consequently, the learned Principal Judge, Family Courts, Karkardooma Courts, Delhi after hearing the present respondent on her application seeking interim maintenance vide order dated 13.12.2014 directed the present petitioner to pay a sum of Rs. 15,000/- per month to the present respondent as ad interim maintenance till the disposal of the application.
5. Aggrieved from the said order the petitioner preferred an application under Section 126 Cr.P.C. to set aside the ex-parte order dated 13.12.2014 granting interim maintenance of Rs.15000/- per month to the respondent.
6. Thereafter, the respondent/Decree Holder moved an Execution petition against the petitioner/Judgment Debtor being Ex. No. 26/15 before the Court of Principal Judge (Family Courts) Shahdara, Delhi for an amount of Rs. 1,20,000/- covering a period of 8 months from June 2014 to January 2015 @ Rs. 15,000/- per month towards interim maintenance as against the petitioner/Judgment Debtor vide order dated 13.12.2014.
7. Subsequently, vide order dated 18.05.2015 the Family Courts, Shahdara District, Karkardooma Courts, Delhi directed the petitioner to pay Rs. 60,000/- which is 50% of the amount of Rs.1,20,000/- claimed by the respondent from the date of application, i.e. June 2014 to January 2015 @ Rs.15,000/- per

month, towards interim maintenance which will be without prejudice to the rights and contentions of the petitioner/Judgment Debtor.

8. Aggrieved from the aforesaid order dated 18.05.2015 the petitioner filed a petition before this Court being Crl. M.C. 2379/2015 and this Court vide order dated 28.05.2015 disposed of the same for want of infirmity in the said order.

9. Subsequently, the petitioner filed an application for review of the order dated 18.05.2015 before the Family Courts, Shahdara District, Karkardooma Courts, Delhi and vide order dated 04.06.2015 the learned Principal Judge, Family Courts, Shahdara District/Karkardooma Courts, Delhi in Execution petition No.26/15 after hearing on the said application from both the sides and after perusal of the earlier order dated 18.05.2015 dismissed the said application of the petitioner for want of merit.

Hence, the present revision petition.

10. The learned counsel for the petitioner has submitted that the Family Court illegally exercised the jurisdiction not vested in it and failed to decide the preliminary issue of jurisdiction before proceeding further in the matter. It is further submitted that the Family Court has acted unreasonably, capriciously and adopted unjudicial approach in passing the impugned order and has not exercised the jurisdiction in accordance with the settled principles of law.

11. The learned counsel for the petitioner has submitted that the Family Court ought to have decided the issue of territorial

jurisdiction before exercising the jurisdiction and passing the coercive order against the petitioner. Further the order dated 18.05.2015 requires to be reconsidered and recalled in the facts and circumstances of the case but the Family Court failed to exercise this jurisdiction in accordance with law. It is further submitted that the learned Principal Judge did not consider and failed to appreciate that unless there is failure to pay the amount without sufficient cause provided under Section 125(3) Cr.P.C there cannot be any enforcement and execution for payment of any amount. Therefore, the orders dated 18.05.2015 and 04.06.2015 be set aside in the interest of justice.

12. The learned counsel for the petitioner has further submitted that there was no document produced on record before the Family Court with regard to the income and job of the petitioner and there was no basis for ordering payment of interim maintenance of Rs. 15,000/- per month and further stated that the learned Principal Judge did not considered and failed to appreciate that the there could not be enforcement and execution of the ex-parte order dated 13.12.2014 thereby directing the petitioner to pay Rs. 15000/- per month as *ad interim* maintenance as an interim measure till the disposal of the application for an interim maintenance. This is contrary to the substantive and procedural law contained in Section 125/126 Cr.P.C.

13. On the contrary the learned counsel for the respondent has submitted that submits that the dispute before this Court only pertains to the interim maintenance. She further submits that it is an

admitted fact on record that the respondent and her minor child are not residing at the matrimonial house. She further submits that initially when the respondent was thrown out of the matrimonial home, at that point of time she was left with no other option but to join the house of her father.

14. It is further submitted that the respondent have no source of income as she is a housewife and is dependent upon her parents and all her expenses are being born by her parents. It is further submitted that the petitioner is a businessman and is running a business (contractor) by the name of Alumax Fabricators & Maintenance and earning Rs. 8-10 Lakh. Further he has many property in his name at different places and is leading best and luxurious life along with other family members but is not pay a single penny towards the maintenance or towards rent for alternate accommodation for the respondent. The petitioner has no other liabilities except to maintain the respondent.
15. 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 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.
16. The learned counsel for the respondent in support of her contentions has relied upon the judgment of the Hon'ble Supreme

Court in the case of *Shamima Farooqui vs. Shahid Khan*; **MANU/SC/0380/2015**.

17. In the instant case it is an admitted fact coming on record that the main maintenance petition under Section 125 Cr.P.C. is pending before the Trial Court. The determination of the maintenance amount 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.
18. The object of Section 125 Cr.P.C. is to provide speedy remedy to women and children who are unable to support themselves and are in distress. It is intended to achieve a social purpose and maintenance cannot be denied to the children on the premise that their mother is employed or has enough means to maintain them or that they are in the custody of their mother.
19. The Apex Court in *Chaturbhuj vs. Sita Bhai*; (2008) 2 SCC 316 held that grant of maintenance to wife has been perceived as a measure of social justice which is reproduced as under:-

“6. 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. 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 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.”

(Underlining supplied)

20. Since the petitioner is under legal obligation to maintain the respondent and his minor son, the petitioner cannot shy away from his statutory obligation of maintaining the respondent and has to render the maintenance amount granted by the Family Court in the Execution petition which is without prejudice to the rights and contentions of the parties as the same would be adjusted if is more in the future period.
21. Furthermore, the plea of the learned counsel for the petitioner that there was no document produced on record before the Family Court with regard to the income and job of the petitioner and there was no basis for ordering payment of interim maintenance of Rs. 15,000/- per month in favour of the respondent and the petitioner is unable to pay the maintenance amount is a matter of dispute which will be determined by the Trial Court during the course of trial and not by this Court at this stage.

22. However, the order dated 13.12.2014 passed by the Family Court is an interim maintenance and the determination of the main maintenance application under Section 125 Cr.P.C. is yet to be decided. The interim maintenance granted by the trial Court is without prejudice to the rights and contentions of the parties.

23. Therefore, in view of the aforesaid discussion, I find no infirmity in the impugned orders dated 04.06.2015 and 18.05.2015 passed by the learned Principal Judge, Family Court, Karkardooma Courts, Delhi in Ex. No. 26/15. Consequently, the revision petition filed by the petitioner is dismissed for want of merit.

However, this judgment shall not affect the merits of the case, as the determination of the maintenance amount will be done by the Trial Court after considering the evidence on record and income affidavits of the parties.

24. The present petition is disposed of in the above terms. The Trial Court is directed to dispose of the maintenance petition under Section 125 Cr.P.C. filed by the respondent as soon as possible and preferably within a period of six months from the date of this judgment.

25. Copy of this judgment be sent to the concerned Court. No order as to costs.

26. All the pending applications (if any) are also disposed of.

I.S.MEHTA, J

NOVEMBER 17, 2017