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

DECIDED ON : APRIL 11, 2018

+ **CRL.REV.P. 368/2014**

SANGEETA KUMARI & ANR

..... Petitioners

Through : Mr.Rajesh Pandey, Advocate.

versus

SHITTAL PARSAD NEKIE

..... Respondent

Through : Ms.Suparna Sinha, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present revision petition has been preferred by the petitioners to challenge the legality and correctness of a judgment dated 26.03.2014 of learned Additional Principal Judge, Family Courts by which in the proceedings under Section 125 Cr.P.C. maintenance @ ₹7,500/- p.m. was granted to petitioner No.2 only declining it to the petitioner No.1. The revision petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. The petitioners had filed proceedings under Section 125 Cr.P.C. against the respondent. The petitioner No.1 examined herself as PW-1 and respondent appeared as RW-1 in the said

proceedings. After considering the rival contentions of the parties and on appreciating the evidence on record, the trial court by the impugned order declined to award any maintenance to petitioner No.1 as she did not comply with the decree passed under Section 9 of Hindu Marriage Act for restitution of conjugal rights. It was also noted by the learned trial court that petitioner No.1 despite having qualification did not give cogent reasons for not getting any employment.

3. The relationship between the parties is not at dispute. The petitioner No.1 is the legally wedded wife of the respondent and petitioner No.2 is their child. Petitioner No.2 is in petitioner No.1's custody and is getting education. In her petition, the petitioner No.1 claimed ₹5,000/- p.m. as maintenance for the child. However, the trial court by the impugned order granted maintenance @ ₹7,500/- p.m. No cogent evidence has emerged to infer as to if this amount of ₹7,500/- p.m. is not sufficient for the maintenance of the child. No further enhancement is called for at this stage.

4. Regarding petitioner No.1, the impugned order of the learned trial court whereby she was deprived of the maintenance under Section 125 Cr.P.C. solely on the ground of her non-compliance of the decree under Section 9 of Hindu Marriage Act cannot be sustained. It has come on record that various proceedings are pending between the parties. The respondent is facing criminal proceedings under Section 498-A IPC; and also under Dowry Prohibition Act. The respondent has also filed petitions seeking divorce and proceedings for custody of the child. Categorical case of the petitioner is that due to allegations of theft levelled by the respondent against her, it was not possible for her

to resume his companionship. She has also lodged FIR for physical and mental cruelty at the hands of the respondent. Under these circumstances, non-compliance of the ex-parte decree under Section 9 of Hindu Marriage Act cannot be considered as an obstacle to consider the petitioner No.1's claim for maintenance. Nothing has come on record to show if any execution proceedings were ever initiated by the respondent for compliance of the decree under Section 9 of Hindu Marriage Act. The remedy before the respondent was under Order XXI Rule 32 CPC to seek its execution. Non-compliance of the decree under Section 9 of Hindu Marriage Act could also be a ground for seeking divorce. Certainly its non-compliance is not a factor to decline maintenance under Section 125 Cr.P.C.

5. No clinching evidence has been adduced on record by the respondent if petitioner No.1 has any independent source of income to maintain herself. It is averred by the respondent that petitioner No.1 was running a cosmetic shop. However, no particulars of any such shop or the income being generated from it have been given. The allegations regarding taking tuitions are also vague and uncertain. The petitioner No.1 has informed that prior to marriage she was having a job @ ₹600/- p.m. She further informed that after marriage, she was on job for a monthly salary of ₹1500/- p.m. with Lal Path lab. Nothing has come on record to show if after the marriage during her stay with the respondent, she was in employment.

6. It has come on record that the respondent is working as a librarian at Government P.G.College, Jalaun, U.P. and is getting a gross

salary of ₹48,522/- p.m. Apparently, the respondent has means to maintain petitioner No.1 too.

7. In the light of the above discussion, this Court is of the view that petitioner No.1 is entitled for maintenance under Section 125 Cr.P.C.

8. Taking into consideration the income of the respondent, his responsibility to pay ₹7,500/- p.m. to petitioner No.2, status of the parties and other factors, the respondent is directed to pay maintenance @ ₹7,500/- p.m. to petitioner No.1 from the date of filing of the present revision petition.

9. The petitioner shall continue to pay ₹7,500/- p.m. to petitioner No.2 in terms of the impugned judgment.

10. The petition stands disposed of in the above terms.

APRIL 11, 2018/sa

**S.P.GARG
(JUDGE)**

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