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

+ CRL.M.C. 1310/2015 & CrI. M A Nos. 4804/2015 & 12582/2015

SAURABH KUMAR DUBEY Petitioner

Through: Ms. Ekta Mehta with Mr. Shreyans
Singhvi, Advocate

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Ms. Meenakshi Dahiya, APP for the
State

Mr. R K Singh, Advocate for R-2
SI Amit Chaudhary, PS: Shahdara

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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28.08.2018

In the proceedings arising out of application under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against M.P. No. 108/3/2011 taken out by the second respondent-wife against the petitioner (husband), the Metropolitan Magistrate, by order dated 30.01.2012, directed that an amount of Rs. 12,000/- per month to be paid as interim maintenance from the date of filing of the petition i.e. 03.08.2011, till the final disposal of the main case.

The said direction was challenged by the petitioner husband before the Court of Sessions by CrI. Rev. No. 57/12 (17.08.2012), CrI. Rev. No. 28/13 (RBT). The Revision Petition, however, was dismissed vide order dated 25.4.2015.

It appears that during the pendency of the execution proceedings (Execution No. 718/2014), which were taken out by the

respondent-wife, the petitioner-husband appeared in person on 21.2.2015 and his undertaking to deposit the amount of maintenance directly into the saving bank account of respondent (wife) was recorded, he also acknowledging that, in the event of default, he might be sent to jail.

The petitioner brought the petition at hand under Section 482 of the Code of Criminal Procedure, 1973 to bring challenge to the aforesaid proceedings recorded on 21.02.2015, primarily with the submission that the undertaking was recorded under duress, there being no amount due as on the date such undertaking came to be recorded. In this context, it was explained by the counsel for the petitioner that the petitioner (husband) seeks adjustment of Rs. 6.5 lacs which he had paid, in instalments, pursuant to the offer made before the Court of Sessions at the time of consideration of his application for release on bail on 08.08.2012, in case FIR No. 332/2011 of Police Station, Shahdara which had been lodged at the instance of the respondent's wife for offences under Sections 498/406/34 IPC.

The respondent (wife), in her reply, while resisting the above-mentioned contentions has placed reliance upon certain other orders passed by the Court of Sessions in the proceedings arising out of the Bail Application.

While the main petition was pending, the petitioner came with Crl. M A No. 12582/2015 bringing a challenge to the subsequent order dated 17.08.2015 passed by the executing court in the same

proceedings as aforesaid whereby the salary of the petitioner was directed to be attached.

At the hearing, it was fairly conceded by learned counsel on both sides that prior to passing of the impugned order dated 21.02.2014, the trial court had not passed any order determining the amount which was due from the petitioner unto the second respondent in terms of the interim order of maintenance under Section 125 Cr.P.C. There is no finding recorded till date by the trial court/executing Court as to whether the amount of Rs. 6.5 lacs (which the petitioner claims to have paid to the respondent-wife) is to be adjusted against his liability in terms of the interim maintenance order under Section 125 Cr.P.C.

Without inquiry being made into such claims and counter-claim and without a clear finding being returned as to the amount due, the execution of the order, that too with threat of incarceration is neither just nor fair. The impugned order, therefore, is set aside. The trial court is directed to hear the parties with regard to the above issues and pass a clear order as to the amount due under the interim order of maintenance and, thereafter, proceed further to enforce its recovery, in accordance with law.

With these directions, the petition is disposed of.

R.K.GAUBA, J.

AUGUST 28, 2018

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