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

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Judgment delivered on: 11.01.2018

+ CRL.REV.P. 748/2016 & CrI. M.A. 17954/2016, 17810/2017,
17811/2017

VISHAL KAPUR

..... Petitioner

versus

YASHNA KAPUR & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Dr. M.K. Gehlaut and Mr. Sanjay
Rohtagi, Advs.

For the Respondents : Ms. Deepika V. Marwah, Ms. Gayatri
Puri and Ms. Upasana Goel, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

11.01.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner is aggrieved by the order dated 29.08.2016 whereby the application of the respondents under Section 127 Cr. P.C. has been allowed and the application of the petitioner under Section 340 Cr. P.C. has been dismissed.

2. With regard to the application under Section 127 Cr. P.C. it is noticed that by order dated 02.05.2013 respondent no. 1 (wife) was awarded maintenance in the sum of Rs. 15,000/- and respondent no. 2 (daughter of petitioner) was awarded maintenance in the sum of Rs.

2,000/- . Vide the impugned order, learned trial court has enhanced the maintenance to Rs. 15,000/- for the daughter.

3. Learned counsel for the petitioner submits that respondent no. 2 had attained the age of majority on 13.09.2014 and as such under Section 125 Cr. P.C., she on attaining the age of majority, is no longer entitled to any maintenance.

4. Learned counsel for the respondents had relied on the decision of the Supreme Court in '*Jagdish Jugtawat Vs. Manju Lata & Ors.*' (2002) 5 SCC 422.

5. Learned counsel for the petitioner submits that the said judgment does not notice the provisions of Section 125 CrPC and as such should not be treated as a precedent in law and is not liable to be followed.

6. I am unable to accept the contentions of learned counsel for the petitioner. The law laid down by the Supreme Court has to be followed. The Supreme Court in *Jagdish Jugtawat* has specifically noticed the provisions of Section 125 Cr. P.C. and that Section 125 does not fix the liability of parents to maintain children beyond attainment of majority, but recognizes the right of a minor girl for maintenance from parents after attaining majority till her marriage under Section 20(3) of Hindu Adoptions and Maintenance Act. Noticing the two provisions, the Supreme Court upheld the decision of the High Court which, though accepted the legal position that under

Section 125 Cr. P.C. a minor daughter is entitled to maintenance only till she attains the majority, declined to interfere with the order passed by the Family Court.

7. The facts of the present case are identical to the facts in *Jagdish Jugtawat*. Though in the instant case, respondent no. 2 who had attained majority on 13.09.2014, the Family Court had still granted maintenance. It is an admitted position that respondent no. 2 is not married and is still studying.

8. In this view of the matter and keeping in view the provisions of Section 20(3) of Hindu Adoptions and Maintenance Act and the law as laid down by the Supreme Court in *Jagdish Jugtawat*, I find no reason to interfere with the impugned order passed by the trial court.

9. Coming to the application under Section 340 Cr. P.C. of the petitioner which has been rejected by the impugned order. The said application was premised on the contention of the petitioner that respondent no. 1 was employed and was receiving remuneration. To establish the said contention, the petitioner has placed on record certain photographs contending that petitioner no. 1 was teaching and the photographs depicted – petitioner standing in front of students.

10. The trial court dismissed the application holding as under:-

“32. From the above, it is amply clear that before invoking the provisions of Section 340 Cr. P.C., two ingredients must be fulfilled. First, a person files a false

affidavit and secondly, the opinion has been tendered by the Court that it is expedient in the interest of justice to make an injury.

33. It be seen that the hub of the provision is formation of an opinion by the Court that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion, the Court is empowered to hold a preliminary inquiry.

34. As has been observed (Supra), it is pointed out that pictures placed on record shows the presence of non applicant in front of the children but it cannot be said with impunity or authority that non applicant is receiving money out of the services rendered by her.

35. The non applicant has placed on record certain letters dated 16.01.2014, 26.02.2015 and 18.01.2016 which shows that Yashna Kapur is voluntarily serving towards the organization Mogly's.

36. No document whatsoever has been placed on record which could show if she is receiving any salary or amount towards her services rendered for social work. It appears that pro bono she is serving in an organization Mogly's. Moreover, it is a disputed question of fact if she is working as a Teacher for remuneration or honorary which can be only decided during the course of trial. At this stage, no prima facie view can be formed if Yashna Kapur is getting any remuneration from the said organization.

37. In view of foregoing reasons and discussions, it would not be expedient in the interest of justice that an inquiry be initiated against Smt. Yashna Kapur. No ground is made out for the indulgence of the Court."

11. The trial court has noticed that there is no prima facie evidence to establish that respondent no. 1 was receiving any salary or any amount towards the services being rendered as social work. The contention of respondent no. 1 was that respondent no. 1 is not gainfully employed as a Teacher and is engaged in spiritual Satsang/Chanting at 3/42, Shanti Niketan, New Delhi and has been voluntarily without remuneration visiting their school at Gurgaon for the purpose of spiritual guidance in the form of storytelling and meditation.

12. In view of the above, learned Judge was of the view that no prima view could be formed that respondent no. 1 had made any false averments and as such it was not found expedient to initiate inquiry. I find no reason to interfere with the impugned order rejecting the application under section 340 Cr PC.

13. In view of the above, I find no merit in the petition. The petition is accordingly dismissed. Consequently, the interim order dated 18.11.2016 stand vacated.

Crl. M.A. 18628/2017 (under Section 340 Cr.P.C.)

14. Learned counsel for the petitioner seeks leave to withdraw the application. The application is dismissed as withdrawn.

SANJEEV SACHDEVA, J

JANUARY 11, 2018/‘rs’