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

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Judgment delivered on: 03.04.2018

+ CRL.REV.P.480 /2015

PREETI NAGAR

..... Petitioner

versus

STATE (GOVT.) OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr G.P.Thareja with Mr Satyam Thareja, Mr Sushant Sharma and Ms Neha Mishra.

For the Respondent : Mr Akshai Malik, APP.
SI Prempal Singh, PS Bhajanpura.
Mr S.P.Aggarwal and Mr Pradeep Kumar for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

03.04.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 20.04.2015 of the Trial Court whereby the application of the petitioner seeking interim maintenance under Section 125 of the Code of Criminal Procedure (Cr.P.C.) was rejected.

2. The sole reason for rejection of the application, as noticed by the Trial Court, is that considering the educational qualification, it could not be said that the applicant – wife was unable to maintain

herself -- for the reason that she has got many avenues to make out her livelihood. The Trial Court was of the view that since the petitioner was qualified and could maintain herself, she could not maintain the application for maintenance against her husband.

3. It is an admitted position that the Trial Court, at that stage, did not go into the merits of the matter to assess the income, if any, of the petitioner and the income of the respondent.

4. Learned counsel for the petitioner relies on the decision of the Supreme Court in *Sunita Kachwaha & Others versus Anil Kachwaha* 2014(16) SCC 715 to contend that merely because the petitioner was a qualified person would not be sufficient ground to hold that she is in a position to maintain herself. Learned counsel contends that the Trial Court was obliged to examine as to whether the petitioner was able to maintain herself or not.

5. Learned counsel for the respondent though concedes the Trial Court has not considered the merits of the matter, however, submits that the petitioner has sufficient income, which has been brought on record of the Trial Court and, as such, the petitioner is even otherwise disentitled to any order of interim maintenance in her favour.

6. The Supreme Court in *Sunita Kachwaha (supra)* has held as under:-

“7. *Inability to maintain herself is the precondition for*

grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

“8. The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

(underlining supplied)

7. The Supreme Court has specifically held that merely because the claimant – wife is qualified would not be sufficient ground to hold that she is in a position to maintain herself. A wife must positively aver and prove that she is unable to maintain herself, in addition to the

fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. Merely because the wife was earning something, would not be a ground to reject her claim for maintenance.

8. The Trial Court has rejected the application for interim maintenance solely on the basis of the qualification of the petitioner and her capacity to earn. The Trial Court has clearly erred in rejecting the application solely considering the educational qualification and thereby holding that it could not be said that the applicant – wife was unable to maintain herself and further based on her qualifications she had many avenues to make out her livelihood.

9. The Trial Court has not considered the question as to whether the petitioner was able to maintain herself or not. The Trial Court could not have rejected the application without at least considering as to whether the petitioner was unable to maintain herself, as alleged by her, or was having sufficient means to maintain herself, as contended by the respondent.

10. Since the Trial Court has rejected the application without considering the merits of the matter, the decision fall foul of the ratio in *Sunita Kachwaha* (supra). The impugned order is clearly unsustainable and an order of remit if liable to be passed.

11. Accordingly, the impugned order is set aside. The matter is remitted to the Trial Court to reconsider the application of the

petitioner seeking interim maintenance, in accordance with law.

12. It is clarified that this Court has neither examined nor commented on the merits of the respective contention of the parties. The Trial Court would be at liberty to pass appropriate orders on the application without being influenced by anything stated in this order.

13. I am informed that the matter is listed before the Trial Court for recording the evidence of the petitioner on 11.04.2018. The parties shall appear before the Trial Court on the said date.

14. The Petition is disposed of in the above terms.

15. Order *Dasti* under signatures of the Court Master.

APRIL 03, 2018

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SANJEEV SACHDEVA, J

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