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

+ **CRL. REV. P. 1314/2019 & Crl. M. A. 43276/2019 (stay)**

Date of Decision: 23.12.2019

IN THE MATTER OF:

DEVENDER SINGH

..... Petitioner

Through: Mr. Manish Gandhi and Mr.
Hemant Verma, Advs.

Versus

ANGOORI DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

Crl. M. A. 43277/2019 (exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CRL. REV. P. 1314/2019 & Crl. M. A. 43276/2019 (stay)

1. By way of the present revision petition, the petitioner has challenged the impugned order dated 28.09.2019 passed by the Additional Principal Judge, Family Court, Tis Hazari Court, Delhi whereby it has been directed that the petitioner, being the son of the respondent, shall pay interim maintenance @ Rs.15,000/- per month till pendency of the proceedings before the Family Court.

2. The respondent, the mother of the petitioner, had filed an application before the Family Court seeking grant of interim maintenance. It was stated that the respondent was 71 years old and suffering from various old age ailments. During the life time of the husband of the respondent, three properties at Karampura, New Delhi were purchased by her whereafter, construction/renovation was carried out. The gold and silver ornaments of the respondent were sold to generate funds for the said construction/renovation. In March, 2014, husband of the respondent gave her beatings and threw her out of the house at the instigation of the petitioner and his wife. Thereafter, the respondent stayed at an Ashram for some time. She had earlier filed a maintenance case against her husband as well as her son i.e. present petitioner which resulted into a settlement. On 14.03.2017, the respondent's husband expired. After the demise of the respondent's husband, she was thrown out of her matrimonial home as well as her own house i.e. I-187, Karampura, New Delhi, which is stated to be in her name. The respondent took shelter in an Ashram in Rajouri Garden and thereafter the respondent's daughter has been taking care of her. It was further stated that thereafter, the petitioner has been in illegal possession of the aforesaid three properties out of which two have been rented out. It was also stated that after the demise of the respondent's husband, the amount lying deposited in her husband's bank accounts was withdrawn by the petitioner and the FDRs are also in his possession.

3. In the reply filed by the petitioner before the Family Court, it was stated that the respondent was getting old age pension every month from Delhi Government and that he is willing to keep the respondent with him. The Family Court on appearance of the petitioner, recorded his statement

under Section 165 of the Indian Evidence Act, 1872 where he admitted that property bearing no. I-187, Karampura was in the name of the respondent though he subsequently stated that the same was in the name of his father. The Family Court noted that two SBI insurance policies were also purchased by the petitioner for which he paid the premium of Rs.50,000/- each on 12.06.18 and 14.06.18. It was also noted that after the death of his father, the petitioner received a sum of Rs.6,28,722/- on closure of one account and Rs.05,03,643/- twice on closure of other accounts. In all, he received a total sum of Rs.17 lacs. On being enquired, learned counsel for the petitioner has submitted that the same has been converted into an FDR in the name of the grandchildren. He has admitted that the respondent was one of the legal heirs of his deceased father and was entitled to her share. The Family Court further noted the transactions in the petitioner's SBI account and also noted that the statement of account with respect to an account in Bank of Baroda was not placed on record. The Family Court also noted that the petitioner did not file the statement of account with respect to his account in the Bank of Baroda.

4. Another argument was raised that the petitioner's sister i.e. daughter of the respondent also has the responsibility to maintain the mother. The Family Court noted that the daughter is a house wife who is totally dependent on her husband and living in a rented accommodation. The Family Court has awarded interim maintenance @ Rs.15,000/- per month during the pendency of the proceedings and also awarded litigation expenses of Rs.11,000/- to be paid to the respondent.

5. In terms of Section 125 Cr.P.C., the petitioner is under the duty to maintain his mother. The petitioner has not denied the existence of three immovable properties at Karampura. The petitioner has also not denied

the receipt of about Rs.17 lacs on closure of his father's account. The respondent has not been given any share in the aforesaid properties. The aforesaid amount of Rs.17 lacs was received by the petitioner subsequent to the death of his father on 14.03.2017 and since then has been used by the petitioner. The Family Court has observed that if any other maintenance is awarded to the respondent, the highest of the said amounts shall be payable.

6. From the aforesaid discussion, I find no ground to interfere in the order dated 28.09.2019 passed by the Family Court in so far as grant of interim maintenance to the respondent is concerned.

7. Learned counsel for the petitioner contended that the petitioner had moved an application for impleading his sister which came to be dismissed without issuance of notice to her.

8. The responsibility to maintain a parent lies on a son as well as on the daughter. The issue as to whether Section 125(1) Cr.P.C includes daughter is settled since the decision in Dr. (Mrs.) Vijaya Manohar Arbat v. Kashirao Rajaram Sawai & Anr. reported as (1987) 2 SCC 278, where it has been held as under :-

“8.....It is true that clause (d) has used the expression 'his father or mother' but, in our opinion, the use of the word 'his' does not exclude the parents claiming maintenance from their daughter. Section 2(y) Cr.P.C. provides that words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Indian Penal Code lays down that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of section 8 IPC read with section 2(y) Cr.P.C., the pronoun 'his' in clause (d) of section 125(1) Cr.P.C. also indicates a female. Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything

repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun 'his' as used in clause (d) of section 125(1) Cr.P.C. includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.”

9. A perusal of impugned order shows that the application for impleading the daughter was dismissed without seeking a response and on the arguments done on behalf of the counsel for the respondent. The impugned order is set aside only to the aforesaid extent. The Trial Court shall seek a response from the daughter and then dispose of the application without being influenced by the present order in any manner.

10. The petition along with pending application is disposed of, in above terms.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 23, 2019

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