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

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Judgment delivered on: 16.01.2019

+ CRL.REV.P. 332/2017 & CrI. M.A. 7397/2017

KAMLESH SHARMA & ORS

..... Petitioners

versus

STATE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Umesh Sinha and Mr. Anil Kumar Singh, Advs.

For the Respondent : Mr. Hirein Sharma, Addl. PP for the State
Mr. Umesh Singh, Adv. for complainant/R-2

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 06.01.2017 whereby the application of the petitioner under Section 125 Cr. P.C. has been rejected. Application of petitioner no. 2 and 3, daughter and son of the parties were rejected solely on the ground that they are major.

2. It is an admitted position that the subject application was filed on 06.07.2013. The date of birth of petitioner no. 3 i.e. son is 27.09.1996 which makes him less than 18 years on the date of the presentation of the application. The age of the daughter on the date of the application is 23 years. Learned counsel for the petitioner has relied on the judgment of the Coordinate Bench of this Court in '*Mansi Vohra Vs. Ramesh Vohra*' CrI. M.C. 2474/2012 dated 22.11.2012 whereby this Court has clarified that the

daughters are entitled to maintenance till the time of their marriage.

3. Learned counsel for the respondent submits that the daughter was employed and in a position to maintain herself and as such was also disentitled to any maintenance.

4. It is noticed from the impugned order that the aspect that the daughter was earning and in a position to maintain herself has not been considered by the trial court and the application has been rejected solely on the ground children were major. As far as the petitioner no. 2 and 3 are concerned, the matter is liable to be remitted.

5. In so far as the petitioner no. 1 is concerned, the trial court has rejected the application on the ground that she is employed and has not filed her income affidavit.

6. Trial court has relied on a report of the detective agency – Bajaj Detective Services produced by the respondent, wherein the agency has reported that petitioner no. 1 is employed as a Lab Assistant in Safdarjung Hospital, though not on permanent basis but on project basis.

7. Perusal of the report shows that there is no foundational document, fact or evidence referred to in the same, based on which such a finding was given by the detective agency.

8. Perusal of the record shows that parties have not filed their income affidavit in terms of judgment in FAO No. 369/1996 titled *Kusum Sharma Vs. Mahinder Kumar Sharma*.

9. Keeping in view the facts and circumstances of the case, I am of the view that the impugned order cannot be sustained and the matter needs to be remitted to the trial court for having a fresh look.

10. Accordingly, impugned order dated 06.01.2017 is set aside. Parties are granted four weeks' time to file their affidavit of income and expenditure in the format as laid down in *Kusum Sharma Vs. Mahinder Kumar Sharma (supra)*. After filing of the above affidavits, the trial court shall re-examine the matter and decide the application under Section 125 Cr. P.C. afresh. Trial court shall also be entitled to consider and pass an order on interim maintenance if the circumstances so warrants.

11. It is informed that the respondent was proceeded exparte before the trial court. In the facts and circumstances of the case, the order proceeding exparte against the respondent is also set aside. Respondent is permitted to join the proceedings.

12. Parties are directed to appear before the trial court for directions on 30.01.2019.

13. The petition along with all the pending applications are disposed of in the above terms.

14. Order *dasti* under signatures of the Court Master.

JANUARY 16, 2018
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SANJEEV SACHDEVA, J