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

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Judgment delivered on: 05.08.2019

+ CRL.REV.P. 774/2017 & CrI.M.A.17058-17059/2017

INDER SINGH

..... Petitioner

versus

SUMITRA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms.Tanya Agarwal, Advocate

For the Respondent : Ms.Manika Tripathy Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner/husband impugns order dated 24.05.2017 whereby the Trial Court has assessed the monthly income of the petitioner and directed the petitioner to pay a sum of Rs.10,000/- per month as an ad-interim maintenance to the respondent/wife.

2. Learned counsel for the petitioner submits that the Trial Court has erred in not appreciating that on 25.02.2017 respondent had withdrawn application seeking interim maintenance and thus she was disentitled from receiving any maintenance.

3. Learned counsel further submits that it is not the case of the

petitioner neglecting to maintain his wife but the respondent wife was charged in a case under Section 302 IPC of having murdered the mother of the petitioner and further that she is living in adultery.

4. Further it is contended that on the date when the impugned order was passed, there was a request for adjournment on behalf of the petitioner on the ground that his counsel was not available and it is so recorded in the order and despite such a request the impugned order was passed.

5. Learned counsel for the respondent contends that the interim application seeking interim maintenance was withdrawn as the respondent wife was hopeful that the matter would conclude shortly and final maintenance would be fixed.

6. It is submitted that the order records that the application was withdrawn for expeditious disposal and for grant of final maintenance.

7. Learned counsel further submits that respondent was falsely charged for having allegedly committing the murder of the mother of the petitioner, she has already been acquitted after trial. Though an appeal has been preferred.

8. Learned counsel further submits that apart from a bald allegation that respondent is living in adultery, there is no material placed on record to substantiate the said allegation.

9. Coming to the contention of learned counsel for the petitioner that respondent had withdrawn her application and as such she is disentitled to any maintenance, it must be kept in mind that the object of the said provision is beneficial and to provide subsistence or maintenance to a wife, so that she does not live a life of a destitute pending the matrimonial dispute.

10. Perusal of order dated 25.02.2017 shows that counsel for the petitioner had withdrawn the application and requested the Court for expeditious disposal and grant of final maintenance. Said application was not withdrawn consequent to some adverse material coming on record but was withdrawn only for the purposes of expeditious grant of final maintenance. 2½ years have since passed and the case is still at the stage of trial and respondent is without any maintenance.

11. Section 125 Cr.P.C. reads as under:-

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained

majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty

days from the date of the service of notice of the application such person.

Explanation.- For the purposes of this Chapter,-

- (a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;*
 - (b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*
- (2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, of so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be..*
- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:*

Provided that no warrant shall be issued for the recovery of any amount due under this section

unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

- (4) No Wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*
- (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."*

12. Second proviso to sub section (1) to Section 125 Cr.P.C. stipulates grant of interim maintenance. Reading of second proviso does not in any manner indicate that making of an application seeking

interim maintenance is a pre-condition for grant of interim maintenance.

13. The Third proviso to sub section (1) to Section 125 Cr.P.C. stipulates disposal of an application for grant of interim maintenance within a time bound manner.

14. If the second and third proviso to sub section (1) to Section 125 Cr.P.C are read keeping in view the very object of the statute, it shows that there is no requirement stipulated by the statute for making an application for grant of interim maintenance pending consideration of the petition under section 125 Cr.P.C. and the Court would be empowered to pass an order assessing interim maintenance even in a case where no such application has been filed by the person claiming maintenance. However, where such an application is made, the same would have to be disposed of by the Trial Court within the time stipulated therein.

15. If a narrower interpretation were to be given to the provision i.e. that an application is a pre-condition for grant of interim maintenance, the same would militate against the very object of the scheme of providing maintenance to a dependant, who is unable to maintain himself/herself, where the person who has sufficient means has refused or neglected to maintain the dependant.

16. Keeping in view the beneficial object of the statute, it is held

that the filing of an application seeking interim maintenance would not be a precondition for grant of interim maintenance pending consideration of the petition seeking maintenance under section 125 Cr.P.C.. It would be open to the trial court to grant interim maintenance, in the facts and circumstances of the case, pending consideration of the application for grant of maintenance under section 125 Cr.P.C.

17. I find no merit in the contention of the learned counsel for the petitioner that since respondent had withdrawn her application, she had forgone her right to claim maintenance. Said application was withdrawn for expeditious disposal but expeditious disposal has not happened. Two and a half years have passed since the withdrawal and the wife is without any maintenance.

18. With regard to the second contention of learned counsel for the petitioner, that petitioner has not neglected or refused to maintain his wife but she is disentitled to maintenance on the ground that she was charged for having murdered the mother of the petitioner, it may be seen that respondent has already been acquitted of the said offence after a trial. Merely because an appeal has been preferred by the complainant impugning the judgment of acquittal would not give reason sufficient to the petitioner to neglect or refuse to maintain his wife.

19. In view of the above, I find no merit in the contention of

learned counsel for the petitioner that respondent is disentitled to grant of interim maintenance on the above two grounds.

20. However, with regard to the allegation that respondent is further disentitled as she is living in adultery, it is a matter of trial. It is for the petitioner to show before the trial court as to whether there is sufficient material to suggest that respondent is living in adultery.

21. There does appear merit in the contention of the petitioner that on the date when the impugned order was passed there was a request for adjournment on behalf of the counsel for the petitioner on the ground that his mother was unwell and no opportunity was given to the petitioner to point out to the material to show that the respondent was living in adultery.

22. Keeping in view the facts and circumstances of the case, I am of the view that the matter, therefore, requires a remit to the limited extent of grant of an opportunity to the petitioner to point out to material with regard to the allegation of adultery and also for assessing the quantum of ad interim maintenance to be paid by the petitioner to the respondent, if any.

23. In view of the above, the impugned order dated 24.05.2017 is set aside. The matter is remitted to the Trial Court for ascertaining if there is material available on record to show that respondent is prima facie living in adultery and thus disentitled to interim maintenance and

if not, for assessing the quantum of interim maintenance, to be paid by the petitioner to the respondent, pending fixation of the final maintenance.

24. It is clarified that this Court has not expressed any opinion on the merits of the contention of either party. All rights and contentions of parties are reserved.

25. Trial Court is directed to expedite the proceedings and endeavour to pass an order on interim maintenance within two months from the next date fixed before the Trial Court.

26. Petition is disposed of in the above terms.

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

AUGUST 05, 2019
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SANJEEV SACHDEVA, J