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

Date of decision: 13.01.2020

+ CRL.M.C. 5539/2019 with CRL.M.A. 39257/2019

SHAMSI AZMI

..... Petitioner

Through: Ms. Rebecca M. John, Sr. Adv with
Mr. Aman Sareen, Mr. Santosh
Kumar, Mr. Harmeet Singh, Mr.
Gurpratap Singh and Ms. Pravita,
Advs.

versus

SAHER KHAN

..... Respondent

Through: Mohd. Nizam Pasha, Adv. for
respondent with respondent in person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present, petitioner seeks directions thereby to set aside directions dated 30.09.2019, whereby the petitioner has been directed to file his income affidavit in a sealed envelope. The petitioner further prays for necessary directions to the learned trial Court that the maintainability of the case bearing MT No. 208/2018 titled as '*Sheba Khan and Ors. Vs. Shamsi Azmi and Ors.*' be decided first before proceeding further in the case.

2. The petitioner herein is the father and the respondent is his daughter

from his first wife. The petitioner married Ms. Sheba Khan (first wife) on 01.03.1996. They were blessed with a girl child, respondent herein, on 19.02.1997. Due to extreme incompatibilities between the petitioner and his wife, the petitioner divorced her by pronouncing *triple talaq* on 19.11.1997. Thereafter, on 24.04.2003, the first wife filed petition under Section 125 Cr.P.C. for grant of maintenance for her as well on behalf of respondent (Saher Khan) before the Court of Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. The said Court was pleased to direct the petitioner herein to pay Rs.8,000/- P.M. to Ms. Sheba Khan for the maintenance towards respondent herein. In the meanwhile, Ms. Sheba Khan, petitioner's first wife also got registered an FIR bearing no. 126/2003, under Section 498A/406 IPC, against the petitioner and his relatives, with Police Station - Tilak Marg. Afterwards, with the intervention of friends, relatives and well wishers of petitioner and Ms. Sheba Khan, a compromise was arrived between them and in furtherance of which Memorandum of Understanding (MOU) was signed by them on 29.05.2005. The respondent, at that point of time, was a minor, aged 8 years and was being represented by her natural guardian, Ms. Sheba Khan. The MOU contains detailed terms and conditions with respect to alimony of Ms. Sheba Khan, maintenance to

be paid to respondent and rights and liabilities of Ms. Sheba Khan towards the respondent. The terms and conditions relevant to the context of rights and liabilities of petitioner in regard to maintenance to be paid to respondent are as follows:-

“That the party no. 1 has agreed to pay a lump sum amount of Rs.12 lacs to party no.2. Six lacs for Sheba & the other six lacs for the minor daughter with liberty to Sheba to use this money as per her wishes without any hindrance whatsoever. However in case at the time of attaining majority Saher repudiates the present agreement, Sheba, would be liable to repay the amount of six lacs along with the benefits to Miss Sehar. The said amount is being paid to Saher in a lump sum in full and final settlement of her entire claims of maintenance (past, present, future) including schooling, higher studies, and marriage expenses etc and of any other kind against the party of the First Part and/or his relatives. In case Sheba Khan purchases any flat/property from the alimony of Rs.12 lacs or any part thereof the same would be purchased jointly in the name of Miss. Saher and Sheba Khan.

That the party no. 1 also has agreed to pay a sum of Rs.8,000/- per month to Saher for the maintenance till she attains the age of 21 years or till she gets married whichever is earlier. Which as per the orders of the court is being deposited in the account of Sheba Khan for the same. Sheba Khan would also contribute her share of 1/3rd of maintenance i.e., Rs.4000/- per month for the welfare of Saher for which Sheba Khan would be answerable, in case at the time of attaining majority Saher repudiates the present agreement.”

3. Thereafter, the petitioner preferred petition before this Court, bearing CRL. M.C. No. 2585 of 2005, under section 482 Cr.P.C. seeking quashing

of FIR bearing no. 126/2003, u/s 498A/406 IPG, PS. Tilak Marg and the proceedings emanating therefrom on the ground that compromise has been arrived at between the Petitioner and Ms. Sheba Khan, which was allowed vide order dated 31.05.2005.

4. Learned counsel appearing on behalf of petitioner submits that in order dated 31.05.2005, it was recorded that the parties have amicably settled the matter and as per the settlement, Rs.12 lakhs was paid in Court by way of demand draft bearing No. 025852 drawn by UTI Bank Limited in total, out of which Rs.6 lakhs was meant for Complainant/Wife (Ms. Sheba Khan) and Rs.6 lakhs for the child Saher (respondent herein) towards her maintenance. Apart from this, the petitioner shall pay Rs.8000/- per month towards the maintenance of her child till the age of 21 years.

5. The terms of agreement were recorded in the memorandum. As per order dated 30.05.2005 passed by this Court, the compromise of payment of Rs.8000/- per month will be deemed to be order of Metropolitan Magistrate under Section 125 Cr.P.C. and will be treated as an order under Section 125 Cr.P.C for the purpose of execution.

6. It is not in dispute that the petitioner has been regularly paying monthly maintenance of Rs.8,000/- in favour of the respondent and there

have been no pending arrears towards the petitioner.

7. Vide the present petition, the petitioner seeks directions thereby to set aside the order dated 30.09.2019 passed in the petition filed under Section 125 Cr.P.C. by the respondent herein whereby the petitioner is directed to file his income affidavit in a sealed envelope.

8. The present petition has been filed on the ground that the pleadings in the said case are not yet complete in view of the fact that the application for dismissal of the said case on the ground of maintainability has been filed by the petitioner on 07.09.2019 and is pending till date. The application strikes the very basis of the case filed by the respondent and therefore, the interest of justice demands that the application for dismissal may be decided at the outset before deciding the application for grant of interim maintenance. As the interim maintenance can now only be demanded by a major daughter like Respondent herein only when she satisfies the conditions enumerated in Section 125(1)(c) Cr.P.C., however, the entire application filed by her on the face of it does not satisfy any of the grounds. Despite the same, the learned trial Court pleased to fix the matter for hearing of arguments on maintainability on 04.11.2019 and directed the petitioner to file Income Affidavit on the said date itself in sealed envelope. Thus, the said order is

erroneous as the respondent being a major is now covered under Section 125 (1) (c) Cr.P.C and therefore, *prima facie*, the said fact whether she is unable to maintain herself owing to some physical or mental abnormality has to be ascertained *prima facie* firstly and foremostly before directing the petitioner to file his Income Affidavit.

9. This Court interacted with the petitioner and respondent who are personally present in Court. This Court specifically asked the petitioner his monthly income, as on date. He replied that he is working as an employee with M/s ST Microelectronics Ltd. and earning a monthly salary of Rs.4,50,000/- plus and he has one daughter from his second (present) wife, who is a house maker and old widow mother. He does not have any other income, rental or from other sources. However, he has one dwelling unit, which is his self acquired property, wherein he is staying with his family.

10. The respondent, who is daughter of his first wife, is pursuing her fashion designing course from Raffles Designing Institute, to which the Government of India has withdrawn the affiliation. Thus, she has to complete her course from the campus, which is now in Singapore. Respondent states that she spent huge amount on her schooling and the college education, which was born by her maternal grandfather, who is

retired from the Government of India. She submits that if her father (petitioner herein) pays a lumpsum amount of Rs.25 lakhs as maintenance for the past, present and future and also for the expenses of her marriage and education, then she would withdraw the petition filed under Section 127 Cr.P.C. pending before the trial Court.

11. The petitioner who is personally present has agreed thereto, with lot of deliberation and counselling advanced by this Court and Ms. Rebecca M. John, Senior Advocate, who is appearing on behalf of the petitioner. He has agreed to pay an amount of Rs.30 lakhs on or before 24.02.2020 in her savings bank account bearing No. 50035468488 (IFSC – ALLA0212185), Allahabad Bank, Sector – 44, Noida – 201303 for all type of maintenance for present, past and future.

12. I hereby make it clear that both the parties shall be bound by the statements made before this Court, failing which legal action shall be taken against the defaulting party.

13. Petition is accordingly disposed of with the aforementioned directions. Pending application also stands disposed of.

14. The petition filed by the respondent under Section 127 Cr.P.C. stands

closed.

Order *dasti* under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 13, 2020
PB

