

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

+ **CRL.REV.P. 526/2018**

Date of Decision: 18.02.2020

IN THE MATTER OF:

SEHNAZ

..... Petitioner

Through: Mr. Vijay Kinger and Mr. Varun
Pawar, Advocates with petitioner in person

versus

NAZIM

..... Respondent

Through: Mr. Nasimuddin, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present application is directed against the order dated 11.05.2018 passed by the Principal Judge, Family Court, Karkardooma Courts, Delhi whereby the petitioner's application under Section 125 Cr.P.C. for grant of maintenance was dismissed.

2. Learned counsel for the petitioner submits that he has assailed the impugned order on the ground that the family court erred in recording a finding that the allegations of the respondent have remained un rebutted. He further contends that the finding recorded by the Family Court that the petitioner has left matrimonial home on her own without any reason, is incorrect. He has referred to the complaint dated 15.01.2015 filed by the petitioner before the CAW Cell, Delhi.

3. It is informed that the aforesaid complaint has resulted into a chargesheet.

4. In the petition, the complaint as well as her affidavit, the petitioner has stated that the marriage between the petitioner and the respondent was solemnised on 16.08.2014. Subsequently, the petitioner was harassed on account of demand of dowry by the respondent as well as his family members. It was alleged that there was dowry demand of Rs.1,00,000/- and a motorcycle. It was further alleged that the petitioner was threatened that unless the dowry demands are met, the harassment would continue. On 24.10.2014, the petitioner was physically beaten and thrown out of the house. She was told that unless the demands of Rs.1,00,000/- and a motorcycle are met she could not be allowed to enter the house.

5. Per contra, learned counsel for the respondent has supported the impugned order. He submits that the respondent, in his evidence, had deposed that the petitioner had actually left on 22.10.2014 i.e. two days prior to the alleged incident of beating, along with her brother and took all her jewellery articles with her. He submits that the said allegation has remained unrebutted by the petitioner in the cross-examination.

6. I have heard learned counsels for the parties and have also gone through the case records.

7. The petitioner in her evidence, by way of an affidavit, has clearly stated that there was continuous demand of dowry and that she was harassed with respect to demand of dowry by the respondent as well as by his family members. She has specifically mentioned the incidents prior to the filing of the complaint dated 15.01.2015. A copy of the

complaint was exhibited as Ex. PW-1/4 and the consequent FIR as Ex. PW-1/5. Even in the respondent's cross-examination, a suggestion was given regarding the incident of physical beating that occurred on 24.10.2014. The respondent has not denied the filing of the complaint by the petitioner as well as the consequent registration of the FIR.

8. Section 125(4) Cr.P.C. debars the wife, who is entitled to receive an allowance for maintenance or interim maintenance, if she refuses to live with her husband without any sufficient reason whereas in the present case, the testimony and the supporting material placed on record in the form of complaint and the FIR show that the petitioner was harassed continuously for dowry.

9. In the present case, there is evidence on record to show that the petitioner had to leave the matrimonial home on account of physical as well as mental harassment or on account of dowry demand. The petitioner has specifically deposed that she had to leave the matrimonial home on account of harassment. The complaint as well as FIR have been proved on record.

10. I deem it profitable to reproduce the observations of Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as (2014) 16 SCC 715 as follows:-

"6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the

appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

7. Inability to maintain herself is the pre-condition 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 post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, 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. ”

To the similar effect is the decision of a Coordinate Bench of this Court in Krishna Dhawan v. State and Another reported as **2012 SCC OnLine Del 2048**.

11. In view of the above discussion, the family court erred in returning its finding that the respondent's allegations have gone un rebutted. In the opinion of this Court, the findings recorded by the Family Court are without appreciating the petitioner's testimony and supporting document on record. The impugned order is set aside. The matter is remitted back to the family court to hear the learned counsels for the parties afresh.

12. List before the family court on 27.02.2020.

13. With the above direction, the petition is disposed of.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 18, 2020
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