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

\+ CRL.M.C. 709/2021 & CRL.M.A.3464/2021

RAVINDRA PRATAP SINGH TOMAR ..... Petitioner

Through: Mr Prashant Mendiratta and Mr Jasmeet Singh, Advocates.

versus

RUBY CHAUHAN ..... Respondent

Through: Mr Alok Kumar, Sr. Advocate with Ms Manisha Aggarwal Narain and Mr Abhishek Paruthi, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **12.04.2021**

The petitioner, vide the present petition seeks the setting aside of the impugned order dated 05.08.2020 of the learned Principal Jude, Family Courts, North East District, KKD Courts, Delhi in M. No.19/18 as well as consequential stay of an order dated 07.11.2017 till disposal of the main petition under Section 127 of the Cr.PC pending before the learned Principal Judge, Family Courts, North East.

Pleadings qua this petition are complete and the submissions have been made on behalf of both the sides. The order dated 07.11.2017 passed in MT No.329/2016 of the Court of Principal Judge, Family Court, KKD disposed of an application under Section 125 of the Cr.PC filed by the petitioner thereof (the respondent to the present petition) seeking grant of interim maintenance. Vide the said order, the application for interim maintenance was partly allowed and the respondent to that petition (the petitioner herein) was directed to pay a sum of Rs.25,800/- per month to the petitioner's wife as interim maintenance with effect from 18.10.2016, the date of filing of the present petition and regularly, thereafter, till disposal of the main petition. Crl. Rev.P. 282/2018 was filed by the present petitioner before this Court along with Crl.M.A. 33856/2018 seeking stay of the operation of the order dated 07.11.2017, it having been submitted, *inter alia,* that the petitioner herein had sought modification of the directions dated 09.08.2018 in Crl.Rev.282/2018, whereby the Court had directed the petitioner to deposit the entire outstanding amount, submitting to the effect that there are some documents, which had come to the knowledge of the petitioner and, thereafter, vide order dated 08.10.2018 in Crl.Rev.282/2018 on the statement made on behalf of the petitioner that the petitioner would deposit the remaining 25% of the maintenance amount, i.e. Rs.1,12,500/- plus Rs.40,000/-, the same was directed to be deposited and the matter was re-notified for 16.10.2018. Crl.Rev.282/2018 was, however, dismissed as withdrawn vide order dated 12.10.2018 with liberty to the petitioner to pursue his remedies as may be available in law. It has been submitted on behalf of the petitioner that the said Crl.Rev.282/2018 was withdrawn qua which it has been submitted on behalf of the respondent herein that an application under section 127 of the Cr.PC seeking cancellation/modification of the order dated 07.11.2017 due to change in circumstances had been filed before the learned Principal Judge, Family Court, KKD, North East and the copy of the same was annexed to Crl.M.A.34056/2018. The averments made therein categorically in paragraph 6 thereof to the effect:-

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> *"6. That in the meanwhile, the respondent/husband was advised to file the present application since there are serious changed circumstances in his favour warranting dismissal of the claim of the petitioner for maintenance. The respondent/husband was advised that he should seek withdrawal of the Crl. Rev. Petition No.282 of 2018 titled as "Ravindra V/s Ruby." from the Hon'ble High Court of Delhi in order to move an appropriate application before this Hon'ble Court under Section 127 Cr.PC. in view of the change in circumstances. The respondent filed an application bearing Crl.M.A. No.34055/2018 whereby he sought permission from the Hon'ble High Court of Delhi to permit him to withdraw the said Crl.Rev. Petition No.282 of 2018 with liberty to file present application before this Hon'ble Court. The said application was allowed vide order dated 12.10.2018 passed by the Hon'ble High Court of Delhi. True copy of the order dated 12.10.2018 passed by the Hon'ble High Court of Delhi and application Crl.M.A.No.34055/2018 for withdrawal of the petition are annexed hereto as Annexure A-1 (Colly)."*

The premise of the petitioner is to the effect that the respondent had made a false statement that she was not working at the time of the order dated 07.11.2017. It having been submitted to the effect that the respondent infact had been working with IRIS KPO Resourcing (India) Pvt. Ltd. from 14.06.2017 till 27.12.2018 and had not brought the same to the knowledge of the learned Trial Court on the date (07.11.2018) and that the interim maintenance was awarded to her when in fact she was working. Reply has been filed on behalf of the respondent to the present petition wherein it has been categorically stated therein that *Ruby was unemployed and had no source of income at the time when she filed the application for her maintenance. However, Ruby got an employment with IRIS KPO at Chennai from 14.06.2017 at a salary of Rs.25,000.00 per mensum. Her salary was* *increased to Rs.27,759.00 per month from 01.05.2018. Shri Ravindra Tomar had not made any monetary provision for Ruby's maintenance. Therefore, she had to take out a job to eke out a living for her survival and soon after the maintenance amount was paid to her, she left the job at Chennai as it was not feasible for her due to her studies and being permanent resident of Delhi. Ruby resigned her job and was relieved from employment on 27.12.2018. Thus, she was earning the above salary from 14.06.2017 till 27.12.2018.*

Thus, stating to the effect that she was getting a salary of Rs.25,000/- per month from 14.06.2017, which was enhanced to Rs.27,750/- per month from 01.05.2018 and she was employed with IRIS KPO at Chennai from 14.06.2017 till 27.12.2018. The respondent through the reply apologises for not informing the Trial Court about her employment and also apologises that the factum of the employment was not disclosed in her examination-in-chief and states that she realizes her serious acts of omission and of making an incorrect statement in her affidavit and offers an unconditional apology for the same with her having undertaken to be more careful in future and to abide by the truth in her action and statements. The respondent further through this very reply states as under:-

"*Reply to the Grounds*

A. Denied as stated. Submissions made in preceding paragraphs be referred to. Ruby had already given up her claim for interim maintenance for the period 14.06.2017 to 27.12.2018 when she was employed with IRIS KPO. Shri Ravindra Tomar cannot escape his liability to pay the interim maintenance to Ruby for the balance amount. Other averments are denied.

B. *Denied. Para B of the grounds is repitative and its averments have been answered in previous paragraphs which may kingly be referred to.*

C. *Denied as stated. It is stated that this Hon'ble Court has to balance the equities. The conduct of the Petitioner has been despicable and even this Court has held him guilty of violating his undertakings to and the orders of his Hon'ble Court.*

D. *Denied. It is denied that the Respondent is reaping any fruit/benefits of the interim order. It is submitted that the Petitioner has not paid any amount towards interim maintenance after 12.08.2018. The Respondent is availing her rights available to her in law.*

E. *Denied. It is denied that the application is dismissed by the Learned Trial Court arbitrarily or without following the well-established principles of law. It is denied that the Learned Trial Court should have initiate proceedings against the Respondent or she has committed any perjury.*

F. *Denied. It is denied that the Learned Trial Court was indifferent to facts of lays down and any wrong trend which is against any principles of the interim maintenance under law. This Hon'ble Court may kindly balance the equities between the parties.*

G. *Denied. The averments in corresponding para are repetitive and have been replied to in previous paragraphs which may kindly be referred to. It is further submitted that the Respondent was not correctly guided by her earlier counsel. She is a layman and not conversant with the procedure of the Courts.*

H. *Denied. Order dated 07.11.2017 is matter of record. It is denied that the Respondent was working at IRIS KPO Resourcing with the name of Ruby Rani or the order dated 07.11.2017 ought to have been recalled or set aside.*

I. *Denied. The averments in corresponding para are repetitive and have been replied to in previous paragraphs which may kindly be referred to."*

The respondent has further stated through this reply that the petitioner had paid a total sum of Rs.4,90,000/- to her pursuant to the orders in Crl.Rev.P.282/2018 but that thereafter, he had not paid any further amount till date and that the arrears as on 18.03.2021 amount to Rs.13,86,320/-. She has further stated vide paragraph (l) of her reply that *Ruby hereby conveys that fortunately she has got an appointment as a Consultant with SandMartin Global Outsourcing LLP from 19.01.2021. Para 7 of the employment agreement specifically states that "this contract will be for the period from 19th Jan 2021 till 18th April, 2021...." A true copy of the said letter is filed herewith as Annexure A.*

thus, submitting to the effect that she has since been working with effect from 19.01.2021 till 18.04.2021.

It is submitted on behalf of the learned counsel for the respondent that a typographical error has crept in and that the amount ought to be read as Rs.13,67,400/- out of which a sum of Rs.4,90,000/- have been paid to the respondent with it having been submitted further on behalf of the respondent that a sum of Rs.49,880/- from 19.01.2021 to 18.03.2021 has also not been claimed from the petitioner and thus, the balance due is Rs.8,76,400/-, which the respondent thus submitted is the undisputed amount due be paid to the respondent.

It has also been submitted on behalf of the petitioner that the respondent has made an erroneous statement also before the Court in her testimony and before the Trial Court in her testimony recorded on 17.09.2018 placing reliance on the cross-examination of the respondent conducted on 17.09.2018 and 19.01.2019 before the learned Family Court to contend to the effect that erroneous statements have been made by the respondent stating to the effect:-

"I have only one bank account in State Bank of India, ITO. I can provide the bank account statement of last three years of my bank account. Again said, I had opened it only two years back so I can provide the statement of last two years. It is wrong to suggest that I have another bank account in Chennai. I have never demanded the Honda City Car from the respondent in writing.

It is wrong to suggest that I am working for IRIS KPO Resourcing India Private Ltd. It us wrong to suggest that I had joined IRS KPO Resourcing India Pvt. Ltd. by the name of Ruby Rani. I have no knowledge if PF Account NO.TLMAS/53526/10832 is my Provident Fund Account Number or not. I cannot say if the photograph Mark B contains the white scooty at point B which belongs to me. I can produce the RC of the scooty owned by me. I cannot say if the document Mark C relates to the scooty owned by me. I have used debit card of State Bank of India. I am using mobile phone no.8447798292. The said number is of Delhi. I come and stay in Delhi every month for about 10 to 15 days. I had shifted to the house of my brother in Chennai in 2017 but I do not remember the month. It is wrong to suggest that I am staying in Chennai since 2016. I had given my Delhi address in my income affidavit. I do not remember if I had disclosed in my income affidavit that I am residing in Chennai. From 1st January, 2018 to 1st September, 2018, I have been to Delhi about five times. The tickets for air travel between Delhi to Chennai in these last five occasions were paid by my brother and father. If given time, I can produce the prinouts of the air tickets by which I had travelled from Delhi to Chennai on these last five occasions. I do have Aadhar Card. I am not an income tax payee. I do not have any receipts/bills for buying petrol for my scooty. However, I might have bills for maintenance of the scooty and I can provide the same if given time. The scooty which is in Chennai gets service in Chennai and I spend about Rs.2000 to 3000 on every service of the scooty.

It is wrong to suggest that I do not have any expenses to pay for maintenance of my scooty and that is why I have *not produced any bills for the same. It is wrong to suggest that the Bio-Data Mark A belongs to me and the same was given by me to the respondents family before marriage. It is wrong to suggest that the honda city car was never demanded by the respondent or anyone from his family. I tis wrong to suggest that no talks ever took place between my father and respondent's father regarding higher model of a car."*

Reference has also been made on behalf of the petitioner to the testimony dated 19.01.2019 to the effect:-

"Currently I am having two bank accounts only. I am also having one another bank account that was opened by me for my mother somewhere in the year 2009 and was shut down last year in 2018. I have one bank account of SBI in Delhi and my other bank account is of IDFC Bank in Chennai but I do not remember the branch but I can tell the account number and the branch on the next date. It is correct that the bank account which I say I opened for my mother was opened only in my name and my mother's name was not there either as a joint account holder or as a nominee. I closed the said account in the year 2018 but I do not remember the month. The said account which was in my name which was close din 2018 was in Bank of Baroda, Bhajanpura Branch. It is correct that in any proceedings before any Court. I have neither disclosed the account number of those bank accounts nor disclosed what was the balance. It is wrong to suggest that I have some more bank accounts in my name, the details of which I ma hiding from the Court. It is wrong to suggest that I have ben issued any credit card by any financial institution. I have not been provided any credit card from any financial institution w.e.f. January, 2012 to December, 2018. Mostly the air tickets by which I travel from Chennai to New Delhi are booked by my brother. It is possible that I would have paid for my air tickets through my bank accounts. The entry transfers of Rs.62,500/- and Rs.50,000/- on 29.08.2018 have been transferred by the respondent. It is correct that I have provided only the number

of SBI Bank to the respondent and that is the reason the transfers of interim maintenance are only in the State Bank of India account at ITO, New Delhi. It is wrong to suggest that there are heavy transactions in the bank of baroda account which is in my name or the same is still operational. Voin, I had closed the same by giving written application to the bank in 2018. It is correct that my IDFC Chennai account is still operational. However, it is wrong to suggest that there are heavy transactions in the said bank account. I think, I had opened my IDFC bank account in 2017 but I do not remember the month or date. I do not remember the bank account number of my account with IDFC Chennai Branch. I can provide the bank account number of IDFC Bank on the next date. I can provide the bank account statement of IDFC Bank, Chennai Branch from the date of opening till date on the next date of hearing."

It has thus been submitted on behalf of the petitioner that the respondent has infact made a false statement stating that she has only one bank account in the State Bank of India, ITO.

At present, the Court is not entering into the domain of the aspect of alleged and deliberate falsity of the statements made by the petitioner. During the course of proceedings in MT No.329/2016 it is always open to the petitioner to seek further remedies in accordance with law for alleged false statement made by the respondent.

The reply of the respondent clearly states that she was working with IRIS KPO from 14.06.2017 to 27.12.2018 for which period the amount of maintenance amounts to Rs. Rs.4,82,460/- in terms of the order dated 07.11.2017 passed by the learned Family Court. It is apparent thus that there has been an unjust enrichment for the same to the respondent herein.

Reliance is sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Rajnesh v. Neha & Anr.: Crl.A.730/2020.*** Reliance has been placed on behalf of the petitioner thus to **Final Directions** detailed in the said judgment, which are reproduced below:-

> ***"Final Directions***
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> *In view of the foregoing discussion as contained in Part B - I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India :*
>
> ***(a) Issue of overlapping jurisdiction*** *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:*
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> *(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;*
>
> *(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;*
>
> *(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.*
>
> ***(b) Payment of Interim Maintenance***
>
> *The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.*

> ***(c) Criteria for determining the quantum of maintenance*** *For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.*
> ***(d) Date from which maintenance is to be awarded*** *We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B- IV above.*
> ***(e) Enforcement / Execution of orders of maintenance*** *For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI."*

Reliance is specifically placed on behalf of the petitioner on the declaration required to be submitted in terms of the said final directions of the Hon'ble Supreme Court in relation to the requirement of making a full and accurate disclosure of income, expenditure, assets and liabilities from all sources with it having been also specified herein vide clause 3 of the declaration to the effect that the deponent would understand that any false statement in this affidavit, apart from being contempt of Court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860.

Reliance has also been placed on the verdict of this Court in ***Kusum Sharma v. Mahinder Kumar Sharma: FAO 369/1996*** decided on 06.08.2020 with it having been submitted that the requisite declaration has been directed to be submitted therein also to the effect that:

> ***Declaration:***
>
> *1. I solemnly declare and affirm that I have made true, accurate and complete disclosure of my income, expenditure, assets and liabilities from all sources. I further declare and affirm that I have no assets, income, expenditure and liabilities other than set out in this affidavit.*
>
> ***2. I undertake to inform this Court immediately upon any material change in my employment, assets, income, expenditure or any other information disclosed in this affidavit.***
>
> *3. I hereby declare that the contents of this affidavit have been duly explained to me and have been understood by me.*
>
> *4. The copies of the documents filed with the affidavit are the true copies of the originals and I have self attested the copies after comparing them with their originals.*
>
> *5. I understand that any false statement made in this affidavit may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code, 1860 punishable with imprisonment up to seven years and fine, and Section 209 of Indian Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860."*

It is submitted on behalf of the respondent that at the time of institution of petition, in which the order dated 07.11.2017 has been made, the respondent herein was not working and a false statement had not been made.

In view of the statement made on behalf of the respondent by the learned counsel for the respondent that at the time of institution of the petition under Section 125 of the Cr.PC, 1973, the respondent herein i.e. the petitioner of the proceedings under Section 125 of the Cr.PC, was not gainfully employed as has already been observed above but this Court has not gone to the aspect of any alleged false statement, this Court has observed hereinabove that the maintenance for the period 14.06.2017 to 27.12.2018 was apparently not due to the respondent. In view thereof, a sum of Rs.4,82,460/- received by the respondent for the period 14.06.2021 to 27.12.2018 is directed to be deposited by the respondent to the present petition before the learned Family Court, North East in MT No.19/2018 in the form of an FDR within a period of twenty-one days, the release of which would be subject to the outcome of proceedings in MT No.19/2018.

The petition is disposed of, accordingly.

ANU MALHOTRA, J

APRIL 12, 2021
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