

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

Date of decision: 16th NOVEMBER, 2021

IN THE MATTER OF:

+ **CRL.REV.P. 347/2021 & CRL.M.A. 17299/2021**

SHIKHAR GOEL

..... Petitioner

Through Ms. Roma Bhagat, Advocate along
with the petitioner – in person.

versus

ROBINA KAUSHIK & ANR.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 397/401 Cr.P.C read with Section 482 Cr.P.C is directed against Order dated 07.03.2020 passed by the Ld. Principal Judge, Family Court, Patiala House Courts wherein it dismissed the application filed by the Petitioner herein under Section 126 Cr.P.C.

2. Facts, in brief, leading to the present petition are stated as under:

- a) The Petitioner/husband and the Respondent/wife got married on 04.02.2014 in Faridabad, Haryana. On 29.01.2016, a daughter was born to the Petitioner and the Respondent.
- b) On 02.08.2014, i.e. almost six months after the marriage, the Petitioner herein rejoined his previous company, Qatar Airways, and relocated to Qatar, and the Respondent/wife went to Qatar to stay with the Petitioner. The Respondent/wife, along

with the minor child, returned to India on 13.06.2016, but she did not go to her matrimonial home, i.e. Sector-7, Faridabad. It is alleged that when the Petitioner came to India on 21.07.2016, the Respondent/wife refused to allow him to meet their child.

- c) Due to the disputes between both the parties, a number of cases have been filed by them against each other which are as follows:
- i. CAW Cell complaint was filed by the Respondent/wife on 20.07.2016 in New Delhi.
 - ii. Child custody case was filed by the Petitioner/husband on 29.07.2016 in Faridabad.
 - iii. DV Act Complaint filed by Respondent/wife on 10.08.2016 in New Delhi.
 - iv. A complaint under Section 125 of Cr.P.C was filed by the Respondent/wife on 24.08.2018 in New Delhi.
- d) The Respondent/wife then filed an application under Order 7 Rule 10 CPC on 15.04.2017 in the child custody petition filed by the Petitioner herein before the Ld. Family Court, Faridabad. The Ld. Family Court, Faridabad, after relying on the documents filed by the Respondent/wife in support of her DV case i.e. doctor's bills, electricity bills etc. dismissed the said application *vide* Order dated 20.07.2017 holding that the Respondent/wife does not live in Delhi and, hence, Faridabad was the correct Jurisdiction. The said Order was upheld by the Division Bench of Punjab and Haryana High Court *vide* order dated 30.04.2019.

- e) The Petitioner then moved an application under Section 126 of Cr.P.C. before Family Court, New Delhi, based on the Order dated 20.07.2017 of the learned Family Court, Faridabad. He further filed a list of evidences on 05.05.2019 in support of his claim in Family Court, New Delhi. The Respondent/wife also filed her reply and documents in order to support her stance about Delhi as jurisdiction.
 - f) The learned Principal Judge *vide* order dated 07.03.2020 dismissed the application filed by the Petitioner/husband under Section 126 of Cr.P.C. stating that based on the documents submitted by the Respondent/wife, she is presumably staying in Delhi, and therefore, the jurisdiction for purposes of maintenance under Section 125 Cr.P.C. would be Delhi.
 - g) It is this Order dated 07.03.2020 passed by the Ld. Principal Judge, Family Court, New Delhi, which has been challenged in the instant petition.
3. Heard Ms. Roma Bhagat, learned counsel appearing for the Petitioner, and perused the material on record.
4. Ms. Roma Bhagat, learned Counsel for the Petitioner, contends that the impugned Order dated 07.03.2020 is arbitrary and the learned Principal Judge has failed to apply his mind to the substantial evidence that has been produced by the Petitioner. She submits that the learned Principal Judge has failed to appreciate the significance of the fact that even though the police had refused to register an FIR on the grounds that the address given by the respondent/wife was untraceable and forcing her to correct the same on 04.10.2016, she used the incorrect address in her petition filed under Section

125 Cr.P.C. after two years. She further states that the learned Principal Judge has failed to appreciate that in all the documents filed by the Respondent/wife, she has provided a non-existent address.

5. The learned Counsel for the Petitioner submits that the learned Principal Judge has not taken into account the contents of the original complaint which had been filed by the Respondent/wife before the CAW cell on 20.07.2016 wherein she has stated that she has only taken temporary shelter in Vasant Kunj. Ms. Bhagat argues that this stance of the Respondent/wife changed when she filed a petition under the DV Act before the Patiala House Courts, wherein she stated that the Petitioner would beat her on the way to the Vasant Kunj building or in the parking lot of Vasant Kunj building.

6. The learned Counsel for the Petitioner states that the Respondent/wife has now come up with a fictitious story of her and the Petitioner having lived in Vasant Kunj for a brief time, solely to invoke jurisdiction under Section 126 of Cr.P.C. The learned Counsel for the Petitioner contends that the issue as to whether the Respondent/wife resides in Delhi has been conclusively decided in the child custody petition which is pending in Faridabad wherein it has been held that the Respondent/wife herein does not reside in Delhi. She states that this Order has been upheld by the High Court of Punjab and Haryana and, therefore, the same is pending between the parties. She states that in view of the said order, the petition under Section 125 Cr.P.C could not have been entertained in Delhi.

7. Ms. Bhagat further states that all the documents filed by the Respondent/wife, i.e. her Aadhar card, her bank account passbook, mediclaim and insurance policy, etc., to substantiate her address, are all

without any outside verification. She further argues that the learned Principal Judge has not taken into account the significance of the omission of the address in the passport of the Respondent/wife as changing address in a document like a passport would require police verification whereas for changing address in Aadhar card would be dependent on the statement of the Respondent/wife only. She further contends that the learned Principal Judge has failed to appreciate that the Respondent/wife had opened a new bank account in Sector-9, Faridabad branch on 18.03.2016 i.e. barely three months before the desertion, and she opened a new bank account on 30.06.2016 in SBI Bank, Vasant Kunj branch solely to justify her stay in Vasant Kunj.

8. The learned Counsel for the Petitioner further submits that the submission made by the Respondent/wife that she has lived in the Vasant Kunj house with her daughter is false as a perusal of the electricity bills and water bills submitted by the Respondent/wife does not show any major fluctuation which should not have been the case had the Respondent/wife and her daughter been occupants of the Vasant Kunj flat. Ms. Bhagat also submits that the learned Principal Judge has failed to appreciate that all the medical treatments availed by the Respondent/wife in the months between June 2016 - August 2016 were from Faridabad and not from Delhi. It is, therefore, the contention of the learned Counsel for the Petitioner that had the Respondent/wife truly been living in Vasant Kunj, she would not have embarked on a one-hour drive from Vasant Kunj to Faridabad to get medical treatments for emergencies like gastroenteritis.

9. Ms. Bhagat submits that the Respondent/wife has failed to file documentary proof of any money expended by her during her stay in Vasant

Kunj to substantiate her expenditure, except for electricity bills which can be paid remotely, and the learned Principal Judge has failed to appreciate this fact while arriving at the impugned Order. She further contends that the learned Principal Judge has not relied on the statements of the Respondent/wife in the cross examination in the child custody case, wherein she has stated that she has been living in Vasant Kunj since 2009 and that this was contradicted by her own previous admission that she was living in Faridabad just before going to Qatar in May 2016. She submits that the learned Principal Judge has failed to appreciate the Memo of Recovery of Stridhan, according to which the articles were loaded and sent to House No.214, Sector - 09, Faridabad and not to the Vasant Kunj flat.

10. Ms. Bhagat, learned Counsel for the Petitioner further states that the summons delivered by the Court bailiff on 23.02.2019 at the Vasant Kunj flat were received by one lady called Rani Bhatia which indicates that the Respondent/wife did not live in Vasant Kunj House. She further submits that the Petitioner has acquired a fresh and direct video evidence of the unknown lady occupying the Vasant Kunj flat and that the Respondent/wife was not found in the Vasant Kunj flat on various occasions during the lockdown period.

11. The learned Counsel for the Petitioner makes the submission that the Respondent/wife has falsely created a Delhi jurisdiction in order to avail maintenance under Section 125 of Cr.P.C. Ms. Bhagat, therefore, submits that the impugned Order dated 17.03.2020 of the learned Principal Judge, Family Courts, New Delhi, should be set aside.

12. Section 125 of the Code of Criminal Procedure pertains to the Maintenance that is to be given by a man to their wife, parents and children

in order for them to sustain themselves. It is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities.

13. In Bhuwan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353, the Supreme Court examined the underlying purpose as well as social context of Section 125 of the Code, and observed as follows:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home forth e reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation

of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

14. Therefore, while adjudicating matters pertaining to this statutory provision, it must be borne in mind that the same was enumerated to further the cause of social justice and that the interpretation of this Section should be done in a manner to prevent a situation wherein the wife or children are inadvertently nudged into vagrancy and destitution. It is meant to provide a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

15. In this context, while deciding a matter of maintenance, it is important for the Courts to bear in mind that technicalities such as jurisdiction should not impede the object that is sought to be achieved by a provision such as Section 125 Cr.P.C which is essentially a social welfare legislation. Therefore, the Court should endeavour to ensure that the wife and/or child of the husband are not left to destitution and vagrancy if they do not have the means to maintain themselves.

16. A perusal of the impugned Order herein shows that the learned Principal Judge has carefully analysed the material on record before coming to the conclusion that territorial jurisdiction of the learned Court can be conferred in the case which has been instituted by the Respondent/wife.

17. In order to comprehend the same, it is pertinent to analyse Section 126 of the Cr.P.C which reads as under:

“126. Procedure.

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases: Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms at to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.” (emphasis supplied)

18. As per Section 126 Cr.P.C, proceedings under Section 125 Cr.P.C. may be instituted against any person in any district where he is, or where he or his wife resides, or where he last resided with his wife, or as the case may

be, with the mother of the illegitimate child. In the case of Mst. Jagir Kaur & Anr. v. Jaswant Singh, **1963 AIR 1521**, the Supreme Court had observed as follows:

“5. The crucial words of sub-section (8) are, 'resides', 'is' and 'where he last resided with his wife'. Under the Code of 1882 the Magistrate of the district where the husband or father, as the case may be, resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This in our view, has been designedly done by the legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language.”
(emphasis supplied)

19. In Vijay Kumar Prasad v. State of Bihar and Ors., **(2004) 5 SCC 196**, the Supreme Court, while deciding whether the same benefit that is given to wife and children for initiating proceedings at the place where they reside would be given to parents, had deliberated upon the enlarging of the venue of proceedings on the basis of certain observations made by the Law Commission which had noted that often deserted wives were compelled to live with their relatives far away from the place where the husband and wife last resided together. Therefore, the Supreme Court ostensibly noted that the essence of the widening of jurisdiction was to ensure that the object of Section 125 Cr.P.C remained intact. A reading of Section 126 Cr.P.C as well as legal precedent on the same indicates that the territorial jurisdiction has

been widened on the ground that the remedy which is sought is for the maintenance of a helpless person and, therefore, the same should be liberally construed.

20. In the Order impugned herein, the learned Principal Judge has stated that the learned Counsel for the Respondent/wife, in support of his contention that the Respondent/wife lives in Vasant Kunj, has filed a copy of the Respondent's Aadhaar card, SBI pass book, health card of Petitioner No.2 therein, Mediclaim policy, hospital bills, Order of Ld.MM in DV Act case dated 27.03.2018, FIR No. 649/16, and a copy of summons. Therefore, it can safely be stated that the Principal Judge has carefully analysed the material on record before coming to the conclusion that the Trial Court had territorial jurisdiction while deciding the case.

21. Furthermore, the scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. The Supreme Court in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, has observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based

on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. **Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.***

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. **Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done.** The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim*

quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

22. Similarly in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Supreme Court observed as under:

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

23. As per the impugned Order herein, the fact that the parents of the Respondent/wife have two houses, i.e. one in Faridabad and the other in Vasant Kunj, Delhi, can only mean that territorial jurisdiction can be conferred in both Faridabad as well as Delhi. Further, the filing of the DV Act petition, the DIR as well as lodging of the FIR by the Respondent/wife with Police Station Vasant Kunj only justifies the contention of the Respondent/wife that she is residing at Vasant Kunj, and this has been adequately considered by the learned Principal Judge.

24. In view of the above, this Court is of the opinion that the Order of the learned Principal Judge is well-reasoned and that there is no legal infirmity in the same. This Court, therefore, does not find any reason to interfere with the Order passed by the learned Principal Judge.

25. Accordingly, the petition is dismissed along with the pending applications.

SUBRAMONIUM PRASAD, J

NOVEMBER 16, 2021

Rahul