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

Reserved on: 17.03.2022

Decided on: 28.03.2023

+ **CRL.REV.P. 399/2020 & CRL.M.A. 6417/2023**

ELA CHAHAR (NAUHWAR)

..... Petitioner

Through: Mr. Mukesh Rana and Ms. Mamta,
Advocates.

Versus

KAPIL NAUHWAR

..... Respondent

Through: Mr Pradyumna Singh, Advocate along
with respondent.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J.:

1.0. Vide this petition, the petitioner has assailed the order dated 06.08.2020 (**'impugned order'** in short) of learned Principal Judge, Family Courts, Karkardooma Courts (East District), Delhi, dismissing the petitioner's petition under Section 125 of Code of Criminal Procedure, 1973 (**'Cr.P.C'** in short) for lack of territorial jurisdiction.

2.0. Ld. Counsel for the petitioner argued that the petitioner can choose the forum for filing petition under Section 125 Cr.P.C, in terms of Section 126 (1) Cr.P.C and placed reliance on the judgment of this Court in

‘Shikhar Goel vs. Robina Kaushik and Another’, 2021 SCC Online Del 4989. He further submitted that the proceedings under Section 125 Cr.P.C may be initiated against any person in any district where ‘*He/(husband) is*’ and is not confined only to the ‘residence’ of the husband and rather includes the place where the husband works for gain or even where he is available, even temporarily. In support, reference was made to the judgment of the Hon’ble Supreme Court in ‘Jagir Kaur vs. Jaswant Singh, AIR 1963 SC 1521’ and the order dated 17.12.2021 of this Court in Crl. Rev. P. 614/2018 titled as ‘*Asha Devi & Ors. Vs. Muneshwar Singh @ Munna*’.

2.1. Ld. Counsel submitted that the documents filed by the petitioner along with her petition under Section 125 Cr.P.C i.e. her voter card, marriage certificate, reply of the respondent dated 15.07.2020 to the petitioner’s legal notice dated 26.06.2020, audited account of saloon, her complaints dated 03.07.2020 and 13.07.2020 to the SHO, PS New Ashok Nagar, on which, FIR came to be registered at PS Tilak Marg, clearly demonstrate that the parties lived at A-81, New Ashok Nagar, Delhi-110096 ; and the respondent admittedly works/worked for gain/running the salon on the ground floor of the said property under the name and style of ‘Salon by Ela’ on the date of filing of the petition, which is also the permanent address of the respondent. Said address falls within the territorial jurisdiction of the Family Court, Karkardooma Courts (East District), Delhi. But the learned Trial Court failed to appreciate the facts and provisions of law and also overlooked the said documents filed by the petitioner in support of her petition.

3.0. On the other hand, Id. Counsel for the respondent sought dismissal of this petition submitting that the Id. Trial Court rightly dismissed the petitioner's petition under Section 125 Cr.P.C for lack of jurisdiction after duly considering the facts and documents filed by the petitioner along with her petition.

3.1. Ld. Counsel for the respondent submitted that the parties never resided at A-81, New Ashok Nagar, Delhi. They were always living at B-61, Sector-14, Noida, UP. Same can be seen from the respondent's aforesaid reply dated 15.07.2020 to the legal notice, wherein the very first para mentions the respondent's address as B-61, Sector 14, Noida, U.P. Further, in her own complaint dated 13.07.2020 to the SHO, petitioner mentioned her address as 'B-2, Type-4, Pandara Road, New Delhi-110003 and B-61, Sector-14, Noida, Gautam Budh Nagar UP and presently residing at 1305, Tower-27, Lotus Boluavard, Sector-100, Noida, UP. Learned counsel for the respondent denied that the respondent is working for gain at Delhi. He submitted that the aforesaid salon was being run by his mother and he has nothing to do with the same.

4.0. In rebuttal, Ld. Counsel for the petitioner submitted that in her aforesaid complaint dated 13.07.2020, she has mentioned the address of the respondent and her parents-in-law as A-81 New Ashok Nagar, New Delhi and also at B-61 Sector 14 Noida. Learned counsel for the petitioner further submitted that even otherwise, it is not the petitioner's address, which is to be seen as the petitioner has chosen the Forum where the

respondent 'is'. He submitted that the petitioner along with the respondent used to reside at both the addresses i.e. A-81, New Ashok Nagar, Delhi as well as at B-61, Noida, UP and they continued to live at both the addresses, off and on. Further, they were using A-81, New Ashok Nagar, Delhi, as their permanent address.

5.0. I have duly considered the submissions made by both the sides and have perused the record.

6.0. It be mentioned at the outset that Section 125 Cr.P.C is a social welfare legislation providing for maintenance for wives, children and parents, who do not have sufficient means to sustain themselves. Further, Section 126 (1) Cr.P.C, which lays down the procedure with respect to proceedings under Section 125 Cr.P.C, provides choice of forum to the petitioner. Sub section (1) of 126 Cr.P.C 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.”

6.1. From the plain reading of the above provision, it is clear that the petitioner/wife can file a petition under Section 125 Cr.P.C at any of the above places i.e. where the husband 'is' or 'resides' or where they last

resided (**‘Shikhar Goel’s case (supra)’**). Further, in **Asha Devi’s case (supra)**, (as relied upon by the petitioner), this Court observed that an option has been provided to the wife to proceed before a Court for maintenance and its execution, where either the husband ‘is’, or where either of the parties resides as well as the place where they used to reside. What is material is, *‘where the person against whom the claim is made, may be’*, and not where he is residing or where his permanent property is. What is to be seen is the presence of the person at the preferred jurisdiction, at the time of the application for maintenance.

6.2. Ld. Counsel for the respondent argued that *‘he’* in clause (a) of Section 126 (1) Cr.P.C does not refer to husband, who is covered only under clauses (b) and (c) ; clause (a) covers only a parent or a child. Suffice it to state that the interpretation suggested by the respondent is evidently perverse particularly in view of clear language of the provision.

7.0. The petitioner’s case is that after marriage, she along with her husband/respondent herein lived at A-81, New Ashok Nagar, Delhi, as well as B-61, Noida, UP ; earlier, she was running the salon from the ground floor of the property i.e. A-81, New Ashok Nagar, Delhi. Presently, the said salon is being run by the respondent, which is clear from his own reply to legal notice. Thus, he is very much available within the territorial jurisdiction of the East District, Karkardooma Courts, Delhi. On the other hand, ld. Counsel for the respondent argued that the parties never lived at A-81, New Ashok Nagar, Delhi and it is the respondent’s mother, who owns the said property/runs the salon.

8.0. To show that the petitioner very much resided at A-81, New Ashok Nagar, Delhi, Ld. Counsel for the petitioner has drawn this Court's attention to the documents filed by her along with her petition u/s 125 Cr.P.C. It is seen that the petitioner's voter I-card, which was issued on 09.07.2015 as well as parties' Certificate of Marriage, mention the address as A-81, New Ashok Nagar, Delhi. Ld. Counsel for the petitioner submitted that the respondent's name existed even in the Electoral Roll of 2022 with address A-81, New Ashok Nagar, copy of which has been placed on record and is not disputed. These documents belie the respondent's contention that they never lived at the aforesaid address.

8.1. With respect to her contention that the respondent works for gain and 'is' available at A-81, New Ashok Nagar, Delhi, attention of this Court is drawn to the respondent's reply dated 15.07.2020 to the legal notice issued on behalf of the petitioner herein and the statement of account/audited profit and loss account of the salon annexed therewith. It is submitted that the same were placed on record with her petition under Section 125 Cr.P.C. Perusal of the respondent's said reply to the legal notice shows that the respondent has mentioned that as the petitioner left the business of salon (being run from A-81, New Ashok Nagar, Delhi) unattended, the respondent continued to manage and operate the same by bringing in fresh investment and by employing new staff. Further, he also enclosed therewith the statement of account/profit and loss account of the business for the period March 2018 to July 2020.

8.2. With respect to submissions of the respondent that the said business is owned/run by his mother, Id. Counsel for the petitioner also pointed out that the respondent in his cross-examination in the petitioner's Suit for Passing off bearing CS(Comm) 171/2020 has himself stated that the said business was handed over to his mother in October 2020. Said fact is borne out from the copy of said cross-examination placed on record by the petitioner, which has not been disputed.

9.0. Id. Counsel for the petitioner also drew this Court's attention to the legal demand notice dated 03.11.2020 issued by the respondent himself to the petitioner's father. Said notice in the very first para mentions the respondent's residential address as A-81, New Ashok Nagar, Delhi.

10.0. In view of the above facts and circumstances, the respondent evidently worked for gain and was available within the territorial jurisdiction of the Id. Trial Court on the date of filing of petition under Section 125 Cr.P.C on 17.07.2020. Hence, the impugned order is set aside.

11.0. Parties shall appear before the Id. Principal Judge, Family Courts, Karkardooma Courts, (East District), Delhi on 11.04.2023, who shall proceed in the matter as per law.

12.0. The revision petition is disposed of, accordingly.

13.0 Pending applications, if any, shall stand closed.

POONAM A. BAMBA, J.

MARCH 28, 2023/csc