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

Date of Decision: 02.02.2023

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+ **CRL. REV. 272/2018**

ANJU

..... Petitioner

Through: Mr. G.B. Sewak, Advocate

versus

ANIL & ANR.

..... Respondent

Through: Mr. Deepak Vats and Mr. Sunil
Kumar , Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of the present petition under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C."), the petitioner seeks setting aside of the impugned order dated 10.01.2018 passed by learned Principal Judge, Family Courts, Shahdara Court, Karkardooma Courts, Delhi (hereinafter "Trial Court") in Complaint Case No. 80/2015 titled as "*Anju v. Anil*", whereby the petition under Section 125 Cr.P.C. filed by petitioner herein was dismissed.

2. Brief facts, leading to the present petition, are that the petitioner had got married to respondent no.1 on 09.11.2008 and thereafter, as alleged, she was harassed and tortured by respondent no.1 and his family members. Later, on 25.11.2014, the petitioner was diagnosed with breast cancer and since then, she started living with her parents and

was undergoing treatment, and all her expenses since then had been borne by her poor parents and no help or support was provided by respondent no.1. Aggrieved by the same, a petition under Section 125 of Cr.P.C. was filed by petitioner against respondent no.1 seeking maintenance, along with a petition under Section 9 of Hindu Marriage Act. On 04.04.2016, both the matters were referred to a Court Counselor, but the parties failed to settle amicably. Thereafter, a reply to the petition under Section 125 Cr.P.C. as well as affidavit of income/assets was filed by the respondent no.1, as recorded in order dated 09.11.2015, and the petitioner also filed an affidavit of income/assets, as recorded in order dated 14.03.2017. During the course of these proceedings, petitioner was also granted *ad interim* maintenance. Later, petitioner could not appear in person due to her illness and was told by her counsel that she will be informed as and when her physical appearance would be required before the Court. As per the case of petitioner, she was kept in dark as she was not informed about the hearings before the learned Trial Court by her counsel, who was consistently avoiding her calls and other forms of communication. Consequently, a new counsel was engaged by the petitioner, who after inquiring, informed the petitioner that on 24.07.2017 and 10.01.2018, no one had appeared on her behalf before the learned Trial Court when the matter was put up for arguments on interim maintenance and her evidence, and thus, her petition under Section 125 of Cr.P.C. was dismissed vide order dated 10.01.2018 for lack of evidence.

3. Aggrieved by the order dismissing her petition, the petitioner has approached this Court seeking setting aside of the said order and

seeking restoration of her petition under Section 125 Cr.P.C. For a quick reference, the impugned order dated 10.01.2018 is reproduced as under:

“It is 12.00pm, case has been called thrice since morning but no one has appeared for petitioner. Even on 1st date no one has appeared for the petitioner.

Accordingly, PE is closed, counsel for respondent submits that since there is no PE, he also does not want to lead any RE.

RE is closed.

Since there is no evidence, the petition is dismissed. File be consigned to Record Room.”

4. Learned counsel for petitioner submits that the impugned order is unjustified, unreasonable and in contravention of the established principles of law as the matter was dismissed without considering the fact that on all previous dates, the petitioner had appeared before the learned Trial Court. It was further contended that the non-appearance on 24.07.2017 and 10.08.2018 was neither intentional nor willful and there was genuine reason for non-appearance as the petitioner was undergoing treatment for breast cancer, and further that her counsel had neither intimated her about the date of hearing nor the counsel had appeared on her behalf. It was further contended that since the medical records were already available before the learned Trial Court and the same were not considered, the impugned order, is erroneous. It is prayed that the petition be restored to its original position and the learned Trial Court may decide the matter as per law since the parents of petitioner are already bearing all her expenses of treatment, and petitioner will

suffer irreparable loss and injury in case the impugned order is not set-aside.

5. Learned counsel for respondent no.1, on the other hand, submits that there is no infirmity in the impugned order as ample opportunities were granted to the petitioner to appear and pursue her case as per law, and due to petitioner's carelessness and negligence, the petition was dismissed by the learned Trial Court. It is further stated that petitioner was granted *ad interim* relief on two dates i.e. 12.08.2015 and 09.11.2015 whereby the petitioner was granted a sum of Rs. 70,000/- and 1,00,000/- respectively, and when the matter was put up for arguments on interim maintenance on 24.07.2017, petitioner did not appear willfully.

6. This Court has heard the submissions of both the counsels and has perused the material placed on record.

7. The short question for consideration in the present petition is whether the learned Trial Court has erred in dismissing the petition filed by the petitioner under Section 125 of Cr.P.C. for non appearance of petitioner by closing her evidence and whether the petition should be restored to its original form.

8. The purpose and intent of Section 125 of Cr.P.C. is to ensure that relief is provided to legally wedded wife, children and parents who are unable to maintain themselves. In ***Vimala (K) v. Veeraswamy (K)*** (1991) 2 SCC 375, while discussing the object and intent of Section 125 Cr.P.C., it was opined by the Hon'ble Supreme Court as under:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent

vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife...”

9. Further emphasizing on the purpose behind Section 125 Cr.P.C., the Hon'ble Supreme Court in the case of *Kirtikant D. Vadodaria v. State of Gujarat & Anr.* (1996) 4 SCC 479, observed as under:

“15. ...While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and **primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose.** The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation...”

(Emphasis supplied)

10. A perusal of the impugned order reveals that the learned Trial Court has dismissed the petition of the petitioner by closing the evidence since the petitioner was not present on the day when the matter was fixed for hearing arguments and for recording petitioner's evidence. The learned trial court, if at all, was inclined to dismiss the petition, it could have simply dismissed the same for non-prosecution so as to enable the petitioner to have approached the learned Trial Court for restoration of the same under section 125 Cr.P.C. However, the petition was dismissed by specifically stating that the evidence of petition stood

closed. In such a situation, the petitioner had no option than to approach this court by way of present petition.

11. Further, the order sheets passed by learned Trial Court reveals that except on the last two dates of hearing, either the petitioner herself or her family member or her counsel had been physically present before the concerned Court on almost all the dates. During the course of these proceedings, reply was filed by respondent no.1, affidavits of income/assets were filed by both the parties, salary certificate/slip was also filed by respondent no.1, and arguments were also heard on the point of ad-interim maintenance. After considering the prima facie case and the material on record with respect to income of the parties, petitioner was granted relief in the form of ad-interim maintenance of Rs.70,000/- and Rs.1,00,000/- on 12.08.2015 and 09.11.2015 respectively by the learned Trial Court. Subsequent order sheets also confirm the compliance of the order of learned Trial Court. Thereafter, *vide* order dated 24.07.2017, the matter was adjourned to 10.01.2018 for arguments on interim maintenance/petitioner evidence, and when the matter was taken up on 10.01.2018, the learned Trial Court was pleased to dismiss the petition filed by the petitioner. The orders dated 24.07.2017 and 10.01.2018 also records that neither the petitioner nor her counsel were present before the concerned Court on these dates.

12. It is pertinent to note that the legal battle before the learned Trial Court would have been a challenge for the petitioner as she was undergoing diagnosis and treatment related to breast cancer on one hand, and pursuing her case seeking monetarily relief from the respondent no.1 by way of petition under Section 125 Cr.P.C. on the

other. These circumstances escaped the notice of the learned Trial Court during the course of proceedings. In these facts and circumstances, a Court Notice could have been issued to the petitioner, though the same is not warranted in each and every case. Granting another opportunity to the petitioner might have saved her from undergoing further hardships in approaching this Court for the purposes of restoration of her petition. It is relevant to note herein that the rules and procedures of Courts must not be employed and used in a mechanical manner so as to defeat the basic cannons of justice.

13. As per the case of petitioner, since she was undergoing treatment related to breast cancer, her counsel had assured her of full-cooperation that she would be kept informed of the ongoing proceedings. However, though the negligence in neither appearing nor informing the petitioner about the date of hearing was committed by the counsel for petitioner, the victim, unfortunately, is the petitioner who is facing the consequences of dismissal of her petition by the learned Trial Court. This Court notes that the present case is not one where either there was any lapse on part of petitioner in filing relevant documents or her affidavit of income/assets, or in appearing before the learned Trial Court to pursue her matter, except on last two dates. As perused from the order sheets, the petitioner was regularly appearing before the Trial Court, the cases had even been forwarded to counsellors for exploring the possibilities of settlement, and on failure of same, arguments were also to be heard by the learned Trial Court.

14. When the petitioner had been granted ad-interim maintenance on previous occasion, and when the matter was fixed for arguments on

interim maintenance/PE for 10.01.2018, the learned Trial Court could have provided at least one more opportunity to the petitioner as on the said date, the matter was put up for arguments on interim maintenance only for the first time. The medical condition and past conduct of the petitioner was not considered before coming to the conclusion that petitioner was not interested in pursuing the matter, and closing her evidence in her absence.

15. In view of the foregoing discussion, this Court is of the opinion that since the PE was closed in the absence of the petitioner, the same demands re-consideration. Thus, this Court is inclined to set aside the impugned order dated 10.01.2018 passed by learned Principal Judge, Family Courts, Shahdara Court, Karkardooma Courts, Delhi in Complaint Case No. 80/2015.

16. Accordingly, the present petition stands allowed and the petition under Section 125 Cr.P.C. is hereby restored to its original form and the learned Trial Court is hereby directed to hear and decide the petition expeditiously in interest of justice.

17. It is, however, clarified that no observations made in this order shall have any bearing on the merits of the case before the learned Trial Court, which shall be decided as per law.

18. A copy of this order be forwarded by the Registry to the learned Trial Court forthwith for information and compliance.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/ns