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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 102/2018**

SUNITA & ANR.

.....Petitioners

Through: Mr. Sunil Kumar, Advocate.

versus

YOGESH KUMAR

.....Respondent

Through: Mr. Ashok Mahipal, Advocate with
Respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners have approached this Court challenging Order dated 21.12.2017 passed by the learned Principal Judge, Family Courts, Karkardooma, Delhi dismissing an application under Section 125 CrPC as well as petition under Section 127 CrPC in MT No.451/2014.
2. The facts of the case leading to the present petition are as under:-
 - i. Petitioner No.1/wife got married to Respondent herein on 03.02.2005 as per the Hindu Rites and Customs. It is stated that out of the wedlock, a son, i.e., Petitioner No.2 herein, was born on 18.02.2006.
 - ii. It is stated that disputes arose between Petitioner No.1/wife and the Respondent/husband herein. Thereafter, Petitioner No.1 on 26.12.2006 left the matrimonial house.
 - iii. It is stated that in compliance of the mediation proceedings,



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- Petitioner No.1/wife rejoined the matrimonial house on 24.08.2007 and left her matrimonial house again on 26.08.2007.
- iv. It is stated that the wife filed a Police complaint on which FIR No.304/2007 was registered under Section 498A, 406 & 34 IPC at Police Station Usmanpur, Delhi against the Respondent/husband and his family
 - v. Subsequently, a petition under Section 125 CrPC was filed by Petitioner No. 1/wife claiming maintenance for herself and Petitioner No. 2/son.
 - vi. It is stated that the learned Metropolitan Magistrate, Mahila Court *vide* Order dated 09.06.2009 decided the interim maintenance payable to the Petitioners herein @ 1,200/- per month from the date of filing of the petition under Section 125 CrPC
 - vii. A petition under Section 127 CrPC was filed by the Petitioners in November, 2011 before the learned Principal Judge, Family Courts, Karkardooma, Delhi for the enhancement of the interim maintenance for the minor child from Rs.1,200/- per month to Rs.3,000/- per month.
3. Vide Order dated 21.12.2017, the learned Principal Judge, Family Court, Karkardooma, Delhi dismissed both the petitions under Section 125 CrPC & Section 127 CrPC on merits and observed the following:-
- i. The income affidavit of the Petitioner/wife that she has studied upto 12th Standard and she is not having any source of income of her own. It is also stated by the wife that the Respondent/husband is a graduate and is working as a driver in a private company and



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- is earning Rs.50,000/- per month.
- ii. On the other hand, the Respondent/husband in his income affidavit states that he has only studied upto 12th Standard and at present he is jobless. It is also stated that Petitioner No.1 is working as a beautician and is earning Rs.10,000/- per month.
 - iii. The contentions of the Petitioner regarding harassment, torture, beating by the Respondent herein on account of dowry demand is rejected for want of cogent and sufficient evidence and the Petitioner is trying to improve her case by exaggerating the facts.
 - iv. The contention of the Petitioner that the Respondent is living in an adulterous relation and has a child out of the said relationship cannot be accepted as much credence cannot be placed upon the birth certificate of the said child. It is further stated that the Petitioner has not called the original records from the issuing authority, i.e., MCD, and such a contention cannot be taken as proved simply on the basis of the statement of the Petitioner/wife.
 - v. The Petitioner/wife is not willing to live with the Respondent/husband and she has left her matrimonial home on her free will. The grant of maintenance under Section 125 CrPC is permissible only when the Petitioner proves that she has been neglected by the Respondent or he has refused to maintain her.
 - vi. The Petitioner is unable to prove that she was subjected to harassment or cruelty by the Respondent/husband or his family by demanding dowry from the Petitioner and the allegation of adultery has also not been proved. It is further stated that she used to go to Himigri Trust, Gurgaon without the wishes and consent of



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the Respondent/Husband. Hence, it cannot be claimed that she does not have a sufficient reason to live separately from the Respondent and is not entitled to maintenance either for herself or for the child.

4. It is this order passed by the learned Principal Judge, Family Court, which has been impugned in the present revision petition.
5. Learned Counsel for the Petitioner states that the learned Principal Judge has committed grave error in appreciating the testimonies of the Petitioner/wife. He states that the cross-examination took place almost three years after filing of the petition and an ordinary person may not retain the specific dates, incidents in their mind after such a long period. He further states that the cruelties mentioned in the petition were not committed on any particular date or time but was almost a routine and the Petitioner/wife was subjected to cruelties on daily basis.
6. Learned Counsel for the Petitioner states that the learned Principal Judge erred in holding that one of the causes of the trouble in the marriage was that the Petitioner and her family was associated and used to visit one Himgiri Maharaj Trust despite refusal of the Respondent/husband. It is further stated that in the deposition of the Petitioner, she deposed that it is incorrect that she used to visit the aforementioned trust despite refusal of the Respondent and she only used to go with her parents, from her parents house and not from her matrimonial home. It is contended that the learned Principal Judge has erred in holding that the Petitioner wilfully does not wish to live with her husband.
7. Learned Counsel for the Respondent states that the order passed by the learned Principal Judge does not warrant interference from this Court.



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He states that the learned Principal Judge has rightly rejected the petitions filed by the Petitioner herein under Section 125 CrPC and Section 127 CrPC since the Petitioner is earning handsomely while working as a beautician. Learned Counsel for the Respondent has taken this Court to the entire deposition to contend that the order passed by the learned Principal Judge does not require any interference in view of the categorical findings that the Petitioner/wife was living separately on her own and the reason for the Petitioner to live apart from the company of the Respondent/husband was only because the Respondent was not permitting her to visit Himgiri Maharaj Trust, which was being run by her uncle. He also states that the Petitioner did not permit the Respondent to meet the son. He states that the Trial Court on the material on record has found that there was no reason for the Petitioner to part with the company of the Respondent and which she did on her own because she did not want to live with him.

8. Heard learned Counsel for the parties and perused the material on record.

9. It is pertinent to note that *vide* Order dated 15.11.2018, this Court referred the parties to the Delhi High Court Mediation & Conciliation Centre and recorded the submission of the Respondent, who was present in Court, that he shall pay a sum of Rs.4,000/- per month towards maintenance of the Petitioner No.2, who was a minor at that point of time.

10. It is well settled that the object of Section 125 CrPC is to prevent vagrancy and destitution of a deserted wife by providing her maintenance for the food, clothing and shelter by a speedy remedy. Section 125 Cr.P.C has been brought in to bring down the agony and financial hardships faced by a woman who had to leave her matrimonial home because of harassment



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and cruelty meted out to her. Section 125 CrPC enables the deserted wife to sustain herself and her child by making some arrangements and the same is not to punish a person for his past neglect, but to prevent vagrancy. The Apex Court in Chaturbhuji v. Sita Bai, (2008) 2 SCC 316, has observed as under:-

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It 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. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503].

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is



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an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself."

(emphasis supplied)

11. After perusing the material on record, this Court is of the opinion that the wife did not leave her matrimonial house on her own free will but she had to as she was subjected to harassment and cruelty by the dowry demands being made by the Respondent/husband and his family.

12. This Court has gone through the depositions of the Petitioner herein. A reading of the depositions does not reflect that the Petitioner does not want to live with the Respondent. In the opinion of this Court, the findings by the Trial Court that the Petitioner does not want to live with the Respondent because she is being prevented from visiting Hingiri Maharaj Trust and therefore she cannot be allowed maintenance under Section 125(4) CrPC is perverse. From a reading of the cross-examination, it is not possible to arrive at the conclusion that the Petitioner/wife has abandoned the Respondent/husband and she is not interested to live with him which would disentitle her claim for maintenance under Section 125 CrPC.

13. Though it is settled law that the High Court while exercising its revisional jurisdiction though cannot substitute its conclusion to the one arrived at by the court below only because another view is possible but it is



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also equally well settled that if the view taken by the court below is based on nil evidence, the High Court while exercising its revisional jurisdiction can correct such an error. The material on record indicates that the Petitioner/wife has been forced to live apart with her son and the material on record does not bring out a case of desertion on the part of the Petitioner/wife. From the material on record, this Court can infer that the Petitioner/wife is living apart from the Respondent/husband only because she has been forced to live separately and that she has never refused to live with her husband or that the parties mutually agreed to live separately.

14. The Petitioner/wife and her son are entitled to maintenance under Section 125 CrPC and Section 127 CrPC. Therefore, this Court is inclined to set aside the Order dated 21.12.2017 passed by the learned Principal Judge and grant maintenance @ Rs.5,000/- per month to the Petitioner No.1/wife to be paid from the date of filing of the petition under Section 127 CrPC.

15. Petitioner No.2 has attained majority as on February, 2024 and therefore he would not be entitled to any maintenance post February, 2024. It was the legal and moral obligation of the Respondent/husband to maintain his wife and the child, which he has miserably failed to do so. The Petitioner/wife has single-handedly brought up her child on her own without any aid from her husband whatsoever. In view of the cost of living, this Court is of the opinion that the application under Section 127 CrPC ought to have been allowed and this Court is directing the Respondent/husband to pay maintenance @ Rs.5,000/- per month to the Petitioner/wife from the date of application under Section 127 CrPC till date. Even though the Petitioner No.2/son has attained majority, looking at the cost of living, this Court is of the opinion that Rs.5,000/- would be necessary for the



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Petitioner/wife to sustain herself. The Respondent is also directed to clear all the arrears within six months from today.

16. With these observations, the petition is allowed. Pending application(s), if any, stand disposed of.

OCTOBER 08, 2024
hsk

SUBRAMONIUM PRASAD, J