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

+ **CRL.REV.P. 1040/2023 & CRL.M.A. 26841/2023,**
CRL.M.A. 26842/2023, CRL.M.A. 26843/2023

HARISH CHANDRA PRASADPetitioner
Through: Mr. Kamlesh Kr. Mishra,
Ms. Renu, Mr. Prem
Shankar Jha, Ms. Shivani
Verma and Ms. Chandana
Debnath, Advs.

versus

GEETA DEVI AND ANR.Respondents
Through: Mr. Rakesh Sachdeva,
Adv.

+ **CRL.REV.P. 1223/2023 & CRL.M.A. 31077/2023,**
CRL.M.A. 31078/2023, CRL.M.A. 31079/2023,
CRL.M.A. 31080/2023

HARISH CHANDRA PRASADPetitioner
Through: Mr. Kamlesh Kr. Mishra,
Ms. Renu, Mr. Prem
Shankar Jha, Ms. Shivani
Verma and Ms. Chandana
Debnath, Advs.

versus

GEETA DEVI AND ORSRespondents
Through: Mr. Rakesh Sachdeva,
Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER
18.12.2024

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1. The petitioner challenges the order dated 08.05.2020



(hereafter '**impugned order dated 08.05.2020**') passed by the learned Principal Judge, Family Courts, Dwarka, New Delhi in MT No. 614/2017 whereby the learned Family Court, in a petition filed by Respondent No. 1 under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'), passed an *ex-parte* judgment, and awarded maintenance for a sum of ₹7,500/- per month to Respondent No. 1. An application was also preferred by the petitioner under Section 126(2) of the CrPC seeking setting aside of the impugned order dated 08.05.2020 which was also dismissed by the learned Family Court *vide* order dated 22.07.2023.

2. The petitioner has also impugned the orders dated 23.02.2021, 06.03.2021 and 02.08.2023, passed by the learned Trial Court in Execution Petition No.77/2020, whereby the amount lying in the petitioner's pension account was attached.

3. The learned counsel for the petitioner submits that Respondent No. 1 is not the legally wedded wife of the petitioner and is consequently not entitled to any maintenance. He submits that the petitioner could not join the proceedings before the learned Family Court since there was no effective service of notice, and consequently there was no willful disobedience on the part of the petitioner. He submits that the impugned order dated 08.05.2020 was passed *ex-parte* and the petitioner became aware of the passing of the said order only when his pension was attached pursuant to the orders dated 23.02.2021, 06.03.2021 and 02.08.2023, passed in Execution Petition No. 77/2020, arising out of the said impugned order dated 08.05.2020.

4. The learned counsel for Respondent No. 1 submits that Respondent No. 1 is an illiterate woman and the marriage



certificate is in the possession of the petitioner. He submits that the petitioner had willfully failed to join the proceedings before the learned Family Court despite service through substituted mode of service. He submits that the very conduct of the petitioner disentitles him from the grant of any relief by this Court. He submits that no amount till date has been paid by the petitioner to Respondent No. 1. He consequently prays that the present petitions be dismissed.

5. I have heard the counsels for both the parties and perused the material on record.

6. The learned Family court, by the impugned order dated 08.05.2020, noted that Respondent No. 1, in order to support her stance concerning her marriage with the petitioner had appended a joint photograph, a copy of the ration card, and a copy of the LIC Policy Intimation letter wherein the name of Respondent No. 1 appeared as the wife of the petitioner. It was noted that the monthly pension of the petitioner during the period between January 2015 - December 2019 came around ₹22,733/- per month. Consequently, in compliance with the judgment of this Court in **Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99**, the learned Family Court awarded maintenance for a sum of ₹7,500/- to the petitioner.

7. The subsequent application filed by the petitioner under Section 126(2) of the CrPC seeking setting aside of the impugned order was dismissed by the learned Family Court *vide* order dated 22.07.2023. From a perusal of the order dated 22.07.2023, it is apparent that the learned Family Court considered the contentions raised by the petitioner regarding non-service of effective notice to him and his consequent non-appearance and



non-joining of the proceedings. It was noted that the petitioner failed to appear despite his service through publication. It was noted that prior to the service of the petitioner through substituted mode of service, that is, through publication, the petitioner had been ordered to be served several times through ordinary mode of service. It was noted that the address given by the petitioner in the memo of parties in his application under Section 126(2) of the CrPC was the same as one given by Respondent No. 1 in her application under Section 125 of the CrPC. Consequently, it was noted that the petitioner willfully avoided the registered posts which were sent for his service at his address. Consequently, the application filed by the petitioner under Section 126(2) of the CrPC was dismissed.

8. Undisputedly, the statement made by the learned counsel for the petitioner was recorded where he volunteered to pay a sum of ₹10,000/- every month, starting from the month of January, 2024, which led to this Court passing an order dated 03.01.2024 thereby staying the operation of impugned order dated 08.05.2020.

9. It is also undisputed that no amount has been paid till date despite the statement of the learned counsel for the petitioner being recorded. The omission to fulfil the obligation to pay the requisite sum despite having availed the benefit of interim protection signifies an attempt to take undue advantage of the judicial process. The conduct of the petitioner thus, in the opinion of this Court, is not *bona fide*.

10. The interim order is consequently vacated.

11. The learned Trial Court is at liberty to proceed with the Execution Petition No. 77/2020.



12. The conduct of the petitioner, in the opinion of this Court, militates against the grant of any indulgence by this Court.

13. Even otherwise, the only ground raised by the petitioner is that the respondent is not the legally wedded wife of the petitioner. It is argued that the petitioner had known the respondent as she had been engaged as a house help in the petitioner's house when his wife was suffering from kidney ailments. It is further argued that the respondent has failed to prove the existence of a valid marriage between her and the petitioner.

14. The learned Family Court has noted that the respondent has proved the contention in relation to her marriage with the petitioner by exhibiting a photograph, a copy of her ration card, and a copy of the LIC Policy Intimation letter which materialized the petitioner as the husband of Respondent No. 1. It is relevant to note that the said exhibits have not been disputed by the petitioner.

15. Respondent No. 1 had also exhibited a reply by the Office of the petitioner which was purportedly given in relation to an application moved by the petitioner for changing the next-of kin in the service book, and informing about his second marriage. Document shows that the application was rejected for want of proof of second marriage.

16. Though the application was rejected by the office of the petitioner for want of proof of marriage but it cannot be ignored that such an application had been preferred in relation to a second marriage. It is not the case of the petitioner that he had married someone else instead. The act of the petitioner giving an application to his office informing about his second marriage



show that the petitioner was at least staying in a domestic relationship with Respondent No. 1.

17. The Hon'ble Apex Court in ***Chanmuniya v. Virendra Kumar Singh Kushwaha : (2011) 1 SCC 141*** had opined that an expansive interpretation ought to be accorded to the term "wife" as appearing in Section 125 of the CrPC. It was noted that a strict proof of marriage is not a prerequisite for grant of maintenance under Section 125 of the CrPC, and the same can be granted even if the parties had been living as husband and wife in a domestic relationship. From the documents on record, it can safely be presumed that the petitioner was living with Respondent No.1 as husband in a domestic relationship.

18. In view of the foregoing discussion, this Court does not find any reason to interfere with the impugned order. The present petitions are, therefore, dismissed.

19. Pending application(s) also stand disposed of.

20. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

DECEMBER 18, 2024