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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.(MAT.) 18/2024**
SH. NAGINA LAL SAHPetitioner

Through: Mr. Sudhantkar Singh, Mr. Rupesh
Raj and Mr. Sandeep Singh, Advs.

versus

SMT. SACHITA DEVIRespondent
Through: Mr. Manish Bhardwaj, Mr. Chetali
Sharma and Mr. Tejshwari Singh,
Advs.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER
02.09.2024

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CRL.M.A. 26158-59/2024

Exemption allowed, subject to just exceptions.

Applications stand disposed of.

CRL.REV.P.(MAT.) 18/2024 AND CRL.M.A. 26157/2024

1. Criminal Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner against order dated 08.07.2024 passed by learned Judge, Family Court-2, East, Karkardooma Courts, Delhi in MT No. 416/2021.
2. Issue notice. Learned counsel for the respondent appears on advance notice and accepts notice.
3. In brief, as per the case of the prosecution, marriage between the



petitioner and respondent was solemnized according to Hindu rites and ceremonies on 20.04.1992. A petition under Section 125 Cr.P.C. was preferred by the respondent (wife) on 06.10.2021 before the learned Family Court and since the petitioner (husband) did not appear, *ex-parte* judgment dated 23.12.2022 was passed against him directing him to pay Rs.16,666/- per month towards maintenance to respondent (wife) *w.e.f.* filing of the petition i.e. 06.10.2021.

4. Case of the petitioner (husband) is that summons/notice in response to petition under Section 125 Cr.P.C. was never received by him and he only became aware of the proceedings on receipt of summons in execution proceedings. Further, an application under Section 126 and 126(2) Cr.P.C. preferred by the petitioner (husband) against *ex-parte* judgment dated 23.12.2022 is stated to have been dismissed vide impugned order dated 08.07.2024.

5. Learned counsel for the petitioner submits that for the purpose of ascertaining the service upon the petitioner, learned Trial Court examined Chandan Kumar Sah (son of the parties). Grievance of the petitioner is that despite the categorical statement made by Chandan Kumar Sah (son of parties) that he did not remember whether he disclosed about the said summons to his father (petitioner) or not, the summons have been inferred to be duly served upon the petitioner.

6. Learned counsel for the respondent opposes the petition on merits and supports the impugned order by stating that service on an adult member of the family is to be construed as due service.

7. This Court is of the considered opinion that in view of statement made by Chandan Kumar Sah (son of parties) that he did not remember whether he



disclosed the service of the summons to his father or not, a finding could have been given by the learned Trial Court, in absence of any other evidence that service had been effected upon the petitioner, since the disputes pertain between father and mother of Chandan Kumar Sah.

8. Considering the facts and circumstances of the case, impugned judgment passed by the learned Trial Court is set aside. However, it is directed that the petitioner shall be liable to pay the maintenance amount in terms of judgment dated 23.12.2022 from the date of filing of the petition before the learned Trial Court upto December 2023, subject to the final outcome of the proceedings, since it is claimed before this Court that petitioner is jobless since 23.12.2023. The maintenance *w.e.f.* January, 2024 onwards shall be further determined by the learned Trial Court for the purpose of pending petition. Pending arrears of maintenance upto December, 2023 shall be paid by the petitioner in five equal monthly instalments, payable before 7th of each month commencing *w.e.f.* September, 2024, as undertaken by the petitioner. Parties to appear before the learned Trial Court on 03.10.2024.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

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

ANOOP KUMAR MENDIRATTA, J

SEPTEMBER 2, 2024

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