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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 30th August, 2024*+ **CRL.M.C. 1436/2010**

MEENA DEVI

.....Petitioner

Through: Ms. Naomi Chandra, Advocate.

versus

VIJAY KUMAR

.....Respondent

Through: Mr. M.L. Yadav, Advocate.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. A Petition under Article 227 of the Constitution of India read with Section 482 of Cr.P.C has been filed on behalf of the petitioner to challenge the *Order dated 19.12.2009 of learned Principal Judge, Delhi, whereby the petitioner Meena Devi has been granted maintenance of Rs.600/- per month towards under Section 125 Cr.P.C.*

2. **Briefly stated**, the petitioner Meena Devi got married to respondent Vijay Kumar according to Hindu Rites and Ceremonies on 16.07.1986 and one son was born from their wedlock, on 09.09.1987. According to the Petitioner, she once saw the respondent in a compromising position and was thereafter beaten up thrice. The respondent's family made an attempt three times to kill her. The respondent got married to another lady Head Constable Smt. Krishna Thakur on 16.10.197 and one daughter was born on 02.10.1998 at Kansal Nursing Home, Uttam Nagar, Delhi on 02.10.1998.



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3. Eventually matrimonial disputes arose between the parties leading to filing of a complaint of dowry demand in CAW Cell, Nanakpura, by the petitioner. The father of the respondent agreed to pay her Rs.2,500/- as maintenance allowance from 15.12.1998. She was given the amount for six months, but thereafter it was stopped.
4. An FIR No.102/2000 under Section 498A/406 IPC was eventually registered against the respondent and other family members. She was forced into a compromise and Rs.2 lakhs were paid towards full and final settlement and she was made to leave the matrimonial home.
5. The petitioner, thus filed a petition under Section 125 Cr.P.C. claiming Rs.5,000/- per month as maintenance.
6. The *respondent/husband contested the petition* and claimed that the petitioner had been harassing and compelling him to demand his share in the property of his family. Further, he had purchased an immovable property bearing No.D-232A, Rama Vihar, Karala, Delhi in the name of the petitioner and she is residing there and leading a luxurious life. It is alleged that the petitioner has been doing the business of Beauty Parlour at Rama Vihar and earns about Rs.500-600/- per day.
7. On the other hand, the respondent drives an auto rickshaw on rent for which he has to pay Rs.125/- per day to the owner of the TSR. He earns about Rs.3,000/- per month out of which he pays Rs.800/- per month to his father since he is living in the property of his father at RZ-1106A, Gali No.14, Sadh Nagar, Palam Colony, New Delhi. He has a liability to take care of his aged parents and his son who, at the time of filing of the petition, was studying in Class 10th.
8. It is claimed that the petition is liable to be dismissed.



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9. The *learned Principal Judge, Family Court*, noted that pursuant to Order dated 12.03.2014, the respondent has been paying an interim maintenance of Rs.500/- per month from the date of filing of the petition.

10. It was observed that the Petitioner was a Beautician by profession and had been running a Beauty Parlour, the office of which was being maintained by her, in her in-laws house, though her claim was that her business was destroyed by the respondent and his family members and that when she tried to take up other jobs, her efforts were all frustrated by the respondent.

11. The learned Principal Judge on the basis of the evidence also concluded that the monthly income of the respondent is about Rs.3,000/- per month, as he was an auto rickshaw driver by profession.

12. Considering the testimony of the parties, it was observed that from the monthly income the respondent has to support his second wife and two children aside from the petitioner and their son from the first marriage. In all, he had six members of the family to support. Therefore, he was directed to pay Rs.600/- per month as maintenance to the petitioner vide the final Order dated 19.12.2009.

13. Aggrieved by the said Order, the petitioner had filed the present Writ Petition against the said Order.

14. The *basic assertions made on behalf of the petitioner* are that she has been doing odd jobs from time to time but has no regular source of income. She is not educated and is dependent upon her father and son. She had tried to run the Beauty Parlour, but was not successful. She herself is not keeping well and has no independent earnings.

15. *The learned counsel on behalf of the respondent*, however, has



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pointed out that all her litigation including Criminal Case under Section 498A IPC; petition under Domestic Violence Act; FIR under Section 494 IPC and other cases instituted by the petitioner, have already been dismissed. Moreover, the parties have already taken divorce pursuant to a Mutual Settlement and Rs.2 lakhs have also been accepted by the Petitioner in full and final settlement of all her claims.

16. Learned counsel on behalf of the respondent has further argued that the Petitioner is living in House No.5/13, First Floor, Gali No.2, Karala, which had been purchased by him, in her name. She has an independent property and all her needs are well taken care of. There is no merit in the present petition, which is liable to be rejected.

17. Submissions heard.

18. Admittedly, the parties got married in 1986 and one son was born from their wed-lock on 09.09.1987 and is about 37 years old. The parties got separated, but the petitioner had continued to stay in her matrimonial home, while his family members had shifted out and started residing on rent. It has also not been disputed that during the pendency of the present litigation, the matrimonial home was sold and Rs.4 lakhs were given to the Petitioner for vacating the premises. She also is having her own independent flat in which she is residing. Pertinently, it is also submitted that of and on she does odd jobs, though she does not have any regular source of income. It cannot be overlooked that the son of the Petitioner, who was born on 09.09.1987 is now aged about 37 years old.

19. Furthermore, there is no challenge to the findings of the earnings of the respondent being around Rs.3,000/- per month at the time of the decision in the petition under Section 125 Cr.P.C. The respondent has got a second



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wife and two children in addition to maintain. It has been rightly observed by the learned Principal Judge, Family Court that he has the responsibility of six family members.

20. Learned counsel for the Petitioner had argued that there are contradictory pleas taken by the respondent. On one hand, he has denied his second marriage but on the other hand, the second wife and two children have been taken into consideration while determining the quantum of maintenance. The factum of marriage may have been denied, but there is no denial of there being a second woman and two children. Whether they were validly married or not is not the concern, but the question is that he has taken on additional responsibility of a lady and two children. It is pertinent to observe that the Complaint Case under Section 200 Cr.P.C for offences under Section 494/506/34 IPC that was filed by the petitioner, has been dismissed by the learned M.M., vide Order dated 01.09.2017. The respondent and the family members have been acquitted in the FIR registered against them under Section 498A/406 IPC vide Order dated 17.08.2016. Her D.V. Act petition has also been dismissed vide Order dated 13.05.2015 and admittedly none of these Orders have been challenged in appeal.

21. Pertinently, there is no challenge to the monthly income of the respondent which was ascertained as Rs.3,000/- per month. The Petitioner has not been able to point out any infirmity in the impugned Order. Rather, there are various subsequent circumstances in so much as Rs. 2 lakhs have been given to the Petitioner in a Settlement towards her permanent alimony. She also admittedly has a flat. In case there are any changes in the circumstances subsequent to the impugned Order, she is at liberty to seek



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enhancement or claim maintenance in accordance with law.

22. There is no infirmity in the impugned Order dated 19.12.2009 of learned Principal Judge, Delhi and the present petition is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 30, 2024

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Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 04.09.2024
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