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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 20th September, 2024*+ **CRL.REV.P. 251/2013 & CRL.M.A. 7600/2023**

SMT SHOBHA & ANRPetitioners

Through: Mr. Ankit Rai along with
Mr. Abhishek Sharma,
Advs.

versus

SHRI JAI SACHDEVA @ JAI DAYAL

.....Respondent

Through: Ms. K.B. Hina & Ms.
Ania, Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed against the judgment dated 07.08.2012 (hereafter '**impugned order**'), passed by the learned Additional Principal Judge, Family Court, Rohini, Delhi in Case No. 154/2010.

2. By impugned order, the learned Family Court in a petition filed by the petitioners under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**') assessed the monthly income of the respondent to be ₹20,000/- per month, and awarded maintenance for a sum of ₹5,000/- per month to Petitioner No. 2. The learned Family Court noted that Petitioner No. 1 failed to prove the allegations that respondent had married any other woman, or establish on record that the respondent has

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a son from any other woman as alleged.

3. It was noted that Petitioner No. 1 had failed to prove any of the allegations that she suffered any harassment, torture or was compelled to leave her matrimonial home. It was also noted that Petitioner No. 1 failed to appear in the witness box and examine herself.

4. In that light, the learned Family Court noted that Petitioner No. 1 was not entitled to any maintenance from the respondent. The learned Family Court, however, considering the expenses of Petitioner No. 2, who was minor at the time of awarding of the maintenance, awarded a sum of ₹5,000/- per month to Petitioner No. 2. Since the application under Section 125 of the CrPC was filed on 15.05.2004, different amounts were awarded as maintenance for different period.

5. By the present petition, the petitioners seek setting aside of the impugned order, and enhancement of maintenance. The petitioners additionally seek remanding back the matter to the learned Family Court, and to allow the evidence of Petitioner No. 1 to be recorded. It is the petitioner's case that the learned Family Court has not awarded any maintenance to her on a flimsy ground, and has directed the respondent to pay ₹5,000/- per month towards the maintenance of Petitioner No. 2.

6. Section 125 of the Code of Criminal Procedure, 1973 (CrPC) is a provision designed to provide a quick remedy to those who are unable to maintain themselves. The primary objective of this section is to prevent vagrancy and destitution by ensuring that those who are dependent on another for their



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subsistence, such as a wife, children, or parents, receive financial support when they are unable to maintain themselves. The Supreme Court in ***Chaturbhuj v. Sita Bai : (2008) 2 SCC 316*** emphasized that the object of maintenance proceedings is not to punish a person for past neglect but to ensure that those entitled to support are not left in distress. This provision embodies the social responsibility and moral duty to maintain one's dependents. The Hon'ble Apex Court in ***Chaturbhuj v. Sita Bai (supra)*** 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].”*

(emphasis supplied)

7. While the entitlement of the wife to grant of maintenance,

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unless disqualified, is absolute, Section 125(4) of the CrPC specifies the instances wherein the wife would be disentitled to receive maintenance. Section 125(4) of the CrPC reads as under:

“(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

8. Accordingly, Section 125 of the CrPC elucidates conditions under which a wife may be deemed ineligible for maintenance. These conditions include instances where the wife is engaged in adulterous activities, where she, without any justifiable cause, refuse to cohabit with her husband, or where both parties have agreed to live apart through mutual consent. These provisions delineate clear legal parameters that govern the entitlement or disentitlement of maintenance to ensure that the support is granted only under circumstances that warrant such financial assistance.

9. In the present case, the learned Family Court noted that the petitioners were not residing with the respondent. It was noted that Petitioner No. 1 had to prove that the respondent had deliberately made her to leave the matrimonial home, and thereafter never let Petitioner No. 1 join his company without any sufficient cause. It was noted that Petitioner No. 1 had tried to build a case that the respondent and his family members raised demands for dowry, ill-treated Petitioner No. 1 and also made her leave the matrimonial home. Certain allegations with regard



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to the respondent entering into a second marriage during the subsistence of his first marriage with Petitioner No. 1, and a child being born out of the second marriage, were also made.

10. The learned Family Court, however, noted that Petitioner No. 1 failed to appear in the witness box and examine herself. It was noted that no explanation as to why Petitioner No. 1 chose to not examine herself was also not given. In regard to the allegation that the respondent had re-married to one Ms. Preeti and was having a son from the said wedlock, Petitioner No. 1 examined Sh. Jagdish Kumar, stated to be the Incharge of Medical Record Department, to prove that one Ms. Preeti stated to be the wife of one Sh. Ajay had delivered a boy. Upon cross-examination by the learned counsel for the respondent, the witness admitted that the words “Preeti, W/o Sh. Ajay Kumar” was written by him on the photocopy of the original discharge record. The said witness admitted that the document did not pertain to the person named, Jai Sachdeva, that is, the respondent.

11. Petitioner No. 1 also examined one Sh. Avineet Rai of Ojas Public School, to prove the school records of one boy named Sahil Sachdeva, stated to be the son of Sh. Ajay Sachdeva. The contention of Petitioner No. 1 was that the said child, Sahil Sachdeva, studying in Ojas Public School, is the son of the respondent from the alleged second wife. Upon cross examination by the learned counsel for the respondent, the said witness admitted that the name of the respondent is not mentioned anywhere in the school record of Sahil Sachdeva.



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12. Petitioner No. 1 further examined one Sh. Ashwani Kumar, File Clerk, Sanatan Dharam Sabha to establish that the respondent had married again. It was noted that the said witness, in his cross-examination, himself testified that the relevant record did not show the name of the respondent. It was noted that Petitioner No. 1 had failed to prove any allegations against the respondent, or establish that the respondent married any other woman during the subsistence of the marriage of Petitioner No. 1 with the respondent. It was noted that Petitioner No. 1 also failed to prove any of her allegations of harassment or torture.

13. The learned Family Court noted that since Petitioner No. 1 failed to prove that the respondent neglected her in any manner, and she left the company of the respondent, she was not entitled to any maintenance. In terms of Section 125(4) of the CrPC, if the woman leaves the company of the husband and refuses to live with her husband without any sufficient reason, the same is a ground to disentitle her from grant of maintenance. It has been emphasised in a catena of judgments that the purpose of Section 125 of the CrPC is a measure of social justice, and is aimed to prevent vagrancy and destitution of a deserted wife who is forced to fend for herself. For this reason, where a wife, without any sufficient reason, herself refuses to reside with her husband, the same is a ground to disentitle her from a grant of maintenance. In the present case, as noted by the learned Family Court, Petitioner No. 1 failed to prove the allegations levelled against the respondent in regard to any harassment or torture meted out to her at the hands of the respondent, or establish that the



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respondent had entered into a second marriage during the subsistence of his first marriage. In the absence of any material on record to show that Petitioner No. 1 was forced to leave her matrimonial home, or that she was neglected in any manner by the respondent that forced her to leave her matrimonial home, the same is a ground to disentitle her from receiving maintenance in terms of Section 125(4) of the CrPC.

14. In view of the above, this Court finds no infirmity in the impugned order *qua* Petitioner No.1.

15. Insofar as Petitioner No. 2 is concerned, it is seen that the petition was filed way back in the year 2004. For this reason, different amounts were awarded as maintenance for different periods.

16. During the pendency of the petition, the respondent filed an application under Section 482 of the CrPC for stay of operation of the impugned order, and the execution proceedings filed by Petitioner No.2 against the respondent.

17. It is pointed out that the parties have filed counter-applications under Section 127 of the CrPC seeking modification of maintenance as a result of the change of circumstances. It is pointed out that Petitioner No. 2 is now a major, and has also completed her studies. It is further pointed out that the applications are pending disposal before the learned Family Court.

18. The learned counsel for the petitioners submits that the respondent has failed to clear the arrears of maintenance as awarded by the learned Family Court.



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19. *Per contra*, the learned counsel for the respondent submits that the respondent duly paid maintenance to Petitioner No. 2 as awarded by the learned Family Court, and stopped paying maintenance only after Petitioner No. 2 attained majority. She submits that for the same reason, an application under Section 127 of the CrPC was also filed before the learned Family Court.

20. Concededly, the parties have filed counter applications under Section 127 of the CrPC. The learned Family Court, while deciding the applications under Section 127 of the CrPC, would take into consideration the submissions of the parties, and the change in circumstances while determining whether any modification/ cancellation in the sum of maintenance awarded is required.

21. The parties are however at liberty to approach this Court in case any grievance remains.

22. The present petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024