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

+ **CRL.REV.P. 1011/2019**

DINESH KUMAR

.....Petitioner

Through: Mr. Jai Bansal, Advocate.

versus

STATE & ORS.

.....Respondents

Through: Mr. Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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10.01.2025

1. The present petition under Section 397 of Code of Criminal Procedure, 1973¹ assails the order dated 22nd April, 2019, passed by the Principal Judge, Family Court, Tis Hazari in case titled ***Suman Rani & Ors. v. Dinesh Kumar***, whereby the court while exercising jurisdiction under Section 125 of Cr.P.C. passed the following order:

- “1. This is a petition under section 125 Cr. PC filed by the petitioners for claim of maintenance from respondent (husband/father).
2. Petitioner no.1 case is that she as married to respondent according to Hindu rites and customs on 08.02.1993 at Ambala and out of the wedlock, they have two children i.e petitioner no. 2 (born in 1996) and petitioner no. 3 (born in 1998) who have now attained majority. Respondent and his family had treated petitioner with cruelty and had demanded dowry. Petitioner was giving beatings without any rhyme and reason. In 1996, petitioner no. 1 filed a complaint against her mother-in-law for her cruel acts and behavior but the said matter was settled after respondent's mother had given an undertaking to neither harass nor torture the petitioner no. 1 in future. However, nothing changed and respondent and his family members continued to harass,

¹ “Cr.P.C.”



beat and torture petitioner no. 1 . petitioner no. 1 was left with no option but to file complaint CAW Cell in 1997 which was again settled after the respondent and his family members gave undertakings before the CAW Cell. Petitioners were however, compelled to shift to a rental accommodation in the year 2010 with the respondent. However respondent did not properly care for the petitioners and started using filthy language and demanded dowry from petitioner no.1. in July 2014. Respondent withdraw from the company of the petitioners and abandoned the petitioners and stopped maintaining or caring for them in any manner. Petitioner no 1 was left with no option but to again approach the respondent's family and request her to allow live in the matrimonial home on 22.10.2014. however, respondent and his family members refused and did not allow her to enter into the house. Petitioners had made a call on 100 and respondent's father gave statement to the police that he would not allow the petitioners to live in the said house. It is stated that since then, petitioners had no options but to fend for themselves while respondent despite having means had failed to provide any maintenance to them it is stated that respondent was running a General Store from H.No D- 60, Gali no. 9, Shiv Vihar, Nangloi, Delhi and earning more than Rs. 45,000/- per month. It is also stated that petitioner No. 1 is house wife having no property in her name while both children are students of XI and B.A 1st year respectively and have claimed maintenance of Rs 20,000/- per month and Rs 50,000/- for food , clothing etc. Respondent did not file written statement and his opportunity to file written statement was closed vide order dated 15.10.2018.

On behalf of respondent it was claimed that respondent is suffering from some mental/psychological ailment and is unable to earn. Report was received from IHBAS, where it is mentioned that respondent was diagnosed with paranoid schizophrenia with prominent negative symptoms and it is mentioned that respondent was having impaired earning capacity due to said psychological disability.

Petitioner no. 1 examined herself as her sole witness and reiterated the contents of her petition. In regard to respondent's income, there is no document filed on record. However, petitioner has produced one (1) claiming that respondent was running a General Store and Earning about Rs. 46,000 per month. From the Said clip, respondent is clearly visible and in seen selling articles in a grocery shop. In view of this even though as per the psychological assessment , respondent was having impaired earning capacity but the nature of work required in a grocery shop would not be hindered his working or earning capacity affected in a complete manner. However there is nothing on record to arrive at the actual earning capability of the respondent. Accordingly some assumption and presumption are required for arriving at some just income amount. Accordingly,



respondent income is presumed as Rs 15,000/- per month as on date (minimum wages of skilled workers were Rs, 15,000/- and Rs 16,000/- per month in 2014 & 2017 respectively.

Giving 02 units to each adult member and one unit to the minor children till the age of their majority and one extra unit to the respondent as he is maintaining a separate house hold, petitioners No. 1 & 3 would be entitled for maintenance of Rs 10,715/(Rs 15,000/- X 5/7 = Rs 10,714.28 or Rs 10,715/-) per month w.e.f date of filing the petition i.e 07.11.2014 til 31st December 2016 (when petitioner No 3 become major) and thereafter petitioner no. 1 being wife and petitioner no 2 being unmarried daughter would be entitled to Maintenance @ Rs 10,000/- (i.e Rs 5,000/- each)(Rs 15,000/- X 4/6=Rs 10,000/-) Per month till their legal entitlement as per law. The current amount w.e.f may 2019 be paid directly in the bank account of petitioner No. 1 on or before 10th day of each English calendar month and arrear w.e.f 07.11.2014 to 30th April 2019 be cleared within 09 months from today. Petition is accordingly disposed off.

File be consigned to Record Room

Announced in open court on 22nd April , 2019”

2. On 23rd September, 2019 while issuing notice, this Court stayed the operation of the impugned order. However, as noted in the order dated 23rd August, 2023, notice could not be served on Respondents No. 2 to 4 since the as the report indicated that said Respondents' whereabouts and address was not found. Accordingly, counsel for the Petitioner sought time to trace the fresh addresses of the Respondents. Thereafter, on 12th December, 2023, counsel for the petitioner sought further time to place on record the fresh address of Respondent No. 2 – wife.

3. In this background, counsel for Petitioner informs that Petitioner has unfortunately deceased on 16th November, 2024. He states that he has a copy of the death certificate, which shall be placed on record within the course of the day.

4. In light of the foregoing, since the Petitioner has deceased, the present proceedings under Section 125 of the Cr.P.C stand abated. Therefore, the



present petition is infructuous and the same is disposed of.

5. File be consigned to record room.

SANJEEV NARULA, J

JANUARY 10, 2025/d.negi