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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 506/2014 & CRL.M.A. 13272/2014**

ABHILASHA

.....Petitioner

Through: Mr. Ruchir Batra, Mr.
Deepak Tanwar, Mr.
Uttam Verma & Mr.
Rajdev Kumar, Advs.

versus

DEVENDER KUMAR

.....Respondent

Through: Mr. R. Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

03.04.2025

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1. The present petition is filed challenging the judgment dated 16.05.2014 (hereafter '**impugned judgment**'), passed by the learned Family Court, Dwarka, Delhi, in M No. 249/2008.

2. The brief facts of the case are that the parties got married on 17.02.2002. This was the second marriage of both the parties and they both had a child from their first marriage. Initially the petition for maintenance was filed in the name of both the petitioner and the respondent's daughter, however, the name of the respondent's daughter was deleted after her custody was returned to the respondent by Court.

3. The learned Family Court, by the impugned judgment, dismissed the petition filed by the petitioner under Section 125 of the Code of Criminal Procedure, 1973 ('**CrPC**'). It was found that the petitioner is not entitled to maintenance as she had withdrawn from the company of the respondent without any



reason. It was further observed that the petitioner was unable to show that she had been neglected by the respondent or that she was unable to maintain herself. The learned Family Court took into account the bills for purchase of household amenities (Ex. RW-1/P-3 to P-6) that were exhibited by the respondent as well as the thirty-three school fee receipts for the children [Ex. PW-1/R-7 (collectively)] in this regard and also observed that the proceedings instituted by the petitioner, including, the Civil Suit for restraining the respondent from entering the house, show that she had prevented the respondent from entering the matrimonial home.

4. It was also noted that the bills (Ex. PW-1/R-8 and R9), photographs (Ex. PW-1/R-3 to R-7) and CD (Ex. PW-1/R-10) adduced by the respondent show that the petitioner was working in the shop even in the year 2010 and she had the capacity to work. It was also noted that the petitioner had received ₹3.75 lakhs from her first husband by settlement dated 13.04.2010, however, she had not explained the manner in which the said money was invested and utilised.

5. The learned counsel for the petitioner submits that the impugned judgment is based on surmises and the learned Family Court has failed to appreciate that the respondent gave beatings to the petitioner and harassed her.

6. He submits that it was the respondent who was trying to grab the property. He further submits that it has been ignored by the learned Family Court that the petitioner was not working anywhere at the time of filing of the petition and the respondent is duty bound to maintain the petitioner as he has a sufficient source of income.



7. He submits that the petitioner had only worked as a photographer from the year 2002 till the year 2007, and she has not been employed since then. He further submits that the CD (Ex. PW1/R-10) has been erroneously relied upon by the learned Family Court, even though the same was not proved. He submits that the petitioner had only once extended help to a family friend in the year 2010. He submits that the exhibited receipts also do not bear the year.

8. He submits that maintenance cannot be denied to the petitioner merely because she may be capable of working and it has not been appreciated that the petitioner has no knowledge of the available photographic equipment in the market so as to enable her to work.

9. He further submits that the amount of ₹3.75 lakhs which was received by the petitioner from her first husband was only for her daughter Bhawana and no maintenance has been claimed from the respondent towards her.

10. He submits that the expenses of the petitioner are being borne by her father and it has been wrongly noted that the respondent had discharged all his obligations towards the petitioner.

11. The learned counsel for the respondent submits that the petitioner had refused to live with the respondent and withdrawn from his company. He submits that the respondent had also filed a petition for restitution of conjugal rights to no avail.

12. He submits that the petitioner had initially sought 15 days time on 06.11.2010 to join the company of the respondent, however, she filed false cases against the respondent, including a Civil Suit for injunction to restrict the respondent's entry in the



house. He submits that the petitioner had also refused to live with the respondent on 02.04.2009 without any cause. He submits that the respondent had filed a petition under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights.

13. He further submits that the petitioner admittedly owns a house and the respondent had brought on record credible material to show that she had been working in a shop as a photographer. He submits that the petitioner had also received a sum of ₹3.75 lakhs from her first husband towards settlement, however, she made no mention of the said amount.

14. I have heard the counsel and perused the record.

15. At the outset, it is well settled that the object of granting maintenance is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves. The Hon'ble Apex Court in **Chaturbhuj v. Sita Bai : (2008) 2 SCC 316**, has 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] .



*In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. **Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi [(1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83] it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”***

(emphasis supplied)

16. However, before delving into the capacity of the petitioner to maintain herself, it is relevant to consider that Section 125 of the CrPC elucidates certain 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, refuses 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.

17. The relationship between the parties is not disputed. In the present case, the learned Family Court has decided the issue of the petitioner's entitlement to maintenance in the negative by finding that she had no sufficient cause for refusing to live with the respondent and on account for her experience and qualification as a photographer.



18. It is the case of the petitioner that the respondent used to quarrel with her without any cause and the school fee of the children was paid by the petitioner's father. It is alleged that the respondent did not provide food or take care of the petitioner when she was unwell after their marriage and she was looked after by the neighbours and her parents. It is alleged that on 20.01.2007, when the petitioner was discharged from the hospital, the respondent did not behave properly with her. It is further alleged that the respondent used to taunt the petitioner that he will not bear the expenses for her daughter Bhawna and for transferring the house that was purchased by her with help from her parents in his name. It is alleged that when a request was made by the petitioner and her relatives to the respondent to accompany her to her uncle's wedding, the respondent refused and stated that he would only go if the house was transferred in his name. It is alleged that the respondent did not provide for the day-to-day needs and necessities. It is alleged that the respondent left the company of the petitioner on 27.05.2008 along with his belongings, whereafter, he came on 15.09.2008 with three unknown men and asked the petitioner to allow them to stay for the night, however, the petitioner did not open the door.

19. On the other hand, the respondent deposed that he had tried to provide every kind of financial support to the petitioner, and it was the petitioner who used to quarrel with him. He placed on record school fee receipts to show that he had been paying the fees for both the children and it was only in the month of February, 2009, that the school refused to accept the fees for the petitioner's daughter at the instance of the petitioner and asked the respondent to produce a guardianship certificate. The



respondent deposed that the petitioner had refused the entry of the respondent inside the matrimonial home on 02.10.2008 and attacked him with the help of her brother and father, pursuant to which, the respondent had also made a call to the police officials. He made certain allegations of harassment at hand of the petitioner and her family members as well. He adduced certain copy of accounts (Ex. RW-1/1, Ex. RW-1/2 and Ex. RW-1/3) to show that he had withdrawn certain amount from his personal account and deposited it in the joint bank account of the parties for the construction of the matrimonial house. He further produced some photographs (Ex. PW-1/R7), CD (Ex. PW-1/R-10) and bills (Ex. PW-1/R8 and R-9) to show that the petitioner was working at a Photo Studio. He also produced the bail bond (Ex. PW-1/R-11) furnished by the alleged employer of the petitioner in a complaint. He also adduced a settlement dated 13.04.2010 (Ex. PW-1/R-1) between the first husband of the petitioner and her, whereunder she had received certain amount.

20. The respondent further deposed that the petitioner had taken 15 days time to join the company of the respondent, and instead filed a complaint against him under the Protection of Women from Domestic Violence Act, 2005, the petition under Section 125 of the CrPC and a civil suit for injunction. He deposed that the petitioner had restricted the entry of the respondent in the matrimonial home by way of the suit for permanent injunction.

21. To put it succinctly, as per the petitioner, the respondent did not pay the school fees for the children or contribute towards the day-to-day expenses, he did not take care of the petitioner when she was unwell and he also allegedly pressured her to



transfer the property bought by her in his name.

22. In the present case, it has been found by the learned Family Court that the petitioner was unable to show that the respondent had withdrawn from her company on 26.05.2008. The respondent, however, made a PCR call on 02.08.2009, that is, the day he claimed he was ousted from the matrimonial home. It was further noted that the petitioner filing a petition under the DV Act and a civil suit restraining the respondent from entering the matrimonial home show that she had prevented the respondent from entering the matrimonial house. It is relevant to note that in the rejoinder filed by the petitioner before the learned Family Court, it was contended that she had refused to live with the respondent before the Court on 02.04.2009 as the respondent was not paying any expenses for her or the children. It is also relevant to note that while the petitioner has maintained in her deposition as well as the pleadings that it was the respondent who had left her company, however, in the written submission, a contrary stand is taken and it is pleaded that the petitioner had compelling reasons to not live with the respondent. In such circumstances, considering that the petitioner has failed to establish that the respondent had left her company and shifted her stance, all that remains to be seen is whether the petitioner had any compelling reasons for refusing to live with the respondent.

23. The learned Family Court extensively dealt with all the grounds and allegations made by the petitioner by appreciating the evidence on record. It was noted that the parties resided together in the disputed property, which the petitioner claims to have bought with assistance of her parents and the respondent claims to have mobilised funds for.



24. It was noted that admitted a sum of ₹2.5 lakhs had been transferred by the respondent in the joint account of the parties and the petitioner's father had failed to step in as a witness to corroborate that he had extended financial assistance for purchase of the said plot of land. The petitioner denied any knowledge of the transfer of the said amount or that the same was used towards purchase of the property. Even so, the relevant aspect in determining whether the petitioner had sufficient cause to not live with the respondent is if he pressured the petitioner to transfer the property in his name. No material has been brought forth in this regard and apart from the petitioner, no one has been examined to endorse the said allegation. The averment of coercion or pressure is thus meritless.

25. As far as the school fees and day to day expenses are concerned, the learned Family Court noted that no suggestion was put to the respondent that he had failed to discharge his day to day allegations. It was noted that the petitioner had admitted that the respondent had bought her a scooty and while she stated that the money was taken from her father for the same, however, the same was not suggested to the respondent and the father of the petitioner was not examined to corroborate the same. The learned Family Court was heavily weighed by the school fee receipts adduced by the respondent, which pertained to the period from March, 2007 till the year 2009, to show that he had paid the school fee for both the children. It was further noted that while certain copies of school fees receipts for the petitioner's daughter had been placed on record, as per the respondent, he had paid the fees before February, 2009 itself as the school had restricted him from doing so after that at the instance of the petitioner. The



petitioner has also admitted in cross-examination that the respondent got both the children admitted in the same school. In such circumstances, it cannot be said that the respondent was discriminating between the children or evading his financial responsibility towards the family.

26. Insofar as the allegation of the respondent not taking care of the petitioner when she was unwell is concerned, the respondent denied that the petitioner had ever fallen sick in the year 2003. He further stated that in the year 2007, he had taken her to the hospital and she was never admitted there. He further denied that the expenses were borne by the petitioner's father or that he had taken care of the petitioner when she was unwell. It was noted that nothing was placed on record to refute the testimony of the respondent or show that the bills were paid by the petitioner's father and he had taken care of the petitioner during her hospitalisation. The learned Family Court further noted that the parties had lived together after the incident so the same could not be a serious dispute.

27. At this juncture, it is important to note that while a myriad of allegations have been levelled by the petitioner, however, there is no cogent material to support the bald allegations apart from the deposition of the petitioner. The respondent has placed bills and fees receipts on the other hand to controvert the allegations of neglect which inspire confidence. The petitioner has not been able to controvert or sufficiently explain the bills, receipts and accounts adduced by the respondent. It is not the case of the petitioner that the same are wrong or forged. The respondent also admittedly filed a petition seeking restitution of conjugal rights. From the facts and circumstances of the case, it



does not appear that the respondent abandoned or neglected the petitioner. In the opinion of this Court, there is no perversity in the findings of the learned Family Court in this regard.

28. It is contended in the written submission of the petitioner that there is no bar against grant of maintenance to a wife, even if a decree for restitution of conjugal rights is passed and maintenance ought to be granted to her as she has no source of income.

29. It is no more *res integra* that a wife cannot be denied maintenance from her husband merely due to non-compliance of a decree for restitution of conjugal rights and it will be insufficient to attract the disqualification under Section 125(4) of the CrPC. The same will depend on the facts of the case and it is to be seen whether the wife had a valid and sufficient reason to not live with her husband [Ref. ***Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another*: 2025 INSC 55**].

30. The said proposition does not come to the rescue of the petitioner as it is not a case where the learned Family Court has denied the petitioner's claim to maintenance merely on account of the restitution petition being filed by the respondent. As discussed above, the learned Family Court has extensively discussed the allegations and averments of the petitioner against the evidence of the respondent, before concluding that she had no sufficient ground to live separately from the petitioner.

31. Insofar as the capacity of the petitioner to earn a living is concerned, it is correct that "capable of earning" is significantly different from "actual earning" and merely because a wife is qualified, the same by itself is no ground to deny maintenance



[Ref. *Shailja v. Khobbanna* (2013) 12 SCC 199, *Arun Vats v. Pallavi Sharma* : 2019 SCC OnLine Del 11817, etc].

32. It is admitted that the petitioner was employed between the year 2002 and the year 2007. While it is stated that the petitioner has not been employed thereafter, the respondent brought forth certain photographs and CD which shows her sitting in the shop. Certain bills in the alleged handwriting of the petitioner have also been adduced. Although there is no date on the CD, the petitioner in her cross-examination has admitted that it is possible that the CD pertains to 19.05.2010 and 22.05.2010. The petitioner tried to justify the same by stating that she was working at the shop for 10-15 days as the father of the shop's owner had expired. It is unclear as to what prevented the petitioner from continuing her occupation, especially when she was at least able to work at the shop with the new equipment in the year 2010 for 10-15 days. The petitioner did not seek to examine her employer or bring forth any material to corroborate her explanation.

33. As also noted by the learned Family Court, the petitioner did not account for the amount of ₹3.75 lakhs that had been received by her from her first husband in terms of settlement dated 13.04.2010. While it is stated that the same was only for the maintenance for her daughter Bhawna, however, a perusal of the settlement shows that the amount was received towards the respective claims of *both* the petitioner and her daughter.

34. Even otherwise, it is relevant to note that the learned Family Court has observed that the petitioner had nowhere disclosed about her having worked earlier or her earning capacity. It was due to the conduct of the petitioner that the learned Family Court had concluded that the petitioner was not



entirely truthful in disclosing her income. It is also important to note that the impugned judgment was passed way back in the year 2014, when the Court had no benefit of the bank statements of the parties, due to which, the conduct of the parties became even more important. Considering that the test of proof in matrimonial proceedings is of preponderance of probabilities, the respondent could hardly be asked to adduce more cogent evidence.

35. This Court also cannot lose sight of the fact that the present case is one where maintenance has not been granted to the petitioner primarily on account of her having failed to establish that she had sufficient cause to not live with the respondent.

36. In view of the aforesaid discussion, this Court finds no infirmity in the impugned judgment.

37. The present petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

APRIL 3, 2025