



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

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Pronounced on: 30th April, 2025

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CRL.REV.P. 704/2012

NEHA ARORA

.....Petitioner

W/o Vishal Arora

D/o Sh. Satindar Pal Singh Sandhu,

R/o WZ-121,Gali No.1

Srinagar, Near Rani Bagh,

New Delhi -110034

Through: Mr. Harish Chand Sharma, Advocate
along with Petitioner in person.

versus

VISHAL ARORA

.....Respondent

S/o Brij Lal Arora

R/o A-1/68C, Janta Flat,

Paschim Vihar, New Delhi

Through: Mr. Prateek Goswami, Mr. Shashank
Goswami and Mr. Varun Vats,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Revision Petition has been filed under Section 397 Code of Criminal Procedure, 1973 (*hereinafter "Cr.P.C"*) read with Section 482 Cr.P.C against the Judgment dated 25.10.2012 whereby Ld. Family Court has declined to grant maintenance to the Petitioner, under Section 125 Cr.P.C.



2. ***Briefly stated***, the Petitioner got married to the Respondent on 27.07.2008 as per Hindu rites and rituals. She stayed with the Respondent at her Matrimonial home bearing No. A-1/68C, Janta Flats, Paschim Vihar, Delhi till 26.03.2009. They had a girl child, namely Parima, from their wedlock.
3. It is claimed by the Petitioner that the Respondent and his family members were not happy with the dowry. They started raising demands and harassing her when the demands could not be met. She was also subjected to grave physical and mental torture after marriage. The parents of Respondent used to taunt her and call her names. She was deprived of financial resources and dispossessed of her '*Stridhan*' as well.
4. She was beaten mercilessly by the Respondent and his family members on 26.03.2009 and was thrown out of her matrimonial home. She delivered a baby girl on 06.05.2009.
5. The Respondent failed to provide anything for her and the baby; instead he filed for Divorce but they arrived at a compromise and he agreed to shift her and the baby to a rented accommodation, but did not keep this promise. She filed a Complaint with ACP, CAW against the Respondent and his family members, and an FIR under Section 498A/406/34 of IPC, was registered.
6. Having no source of Income, being unemployed and not being able to get a job, she filed a Petition under Section 125 Cr.P.C, seeking maintenance for herself and the baby. She claimed that the Respondent is earning Rs. 1,18,000/- (approx.) per month from various sources and has no liabilities. Therefore she sought maintenance of Rs. 20,000/- per month for



herself and Rs. 20,000/- for the baby, aside from Rs. 50,000/- as litigation expenses.

7. *The Petition was contested by the Respondent* who denied the allegations of the Petitioner regarding mental and physical abuse. He stated that on 26.03.2009, when he returned home for lunch, he found the Petitioner continuously talking to someone and she ignored him entirely. She was also misbehaving with his mother. She was provided for with all medical assistance during her pregnancy. However, she herself did not go for the medical check-up and took away all the reports with her under a well planned conspiracy in connivance with her brother and father. She was never subjected to any harassment and the criminal proceedings initiated by her, is nothing but an abuse of process of law.

8. He has denied running any Photo-Studio or being engaged in the sale/purchase of mobile phones etc., or having any rental income or that he was having income of Rs. 1,18,000/- per month (approx.). He explained that the shop is being run jointly by his father and brother and he has nothing to do with the same. He is working with *Gauri Colour Lab and Studio* as Computer Operator and Payment Collector and is drawing a salary of Rs.11,000/- per month.

9. In terms of the settlement agreement dated 07.01.2011 in the divorce Petition filed against him by the Petitioner, he had taken a rented premises in Rohini but she refused to reside there and thus, violated the terms of the settlement. He is still residing at the rented accommodation at a rent of Rs. 4,000/- per month. The conduct of Petitioner disentitles her from claiming any relief.



10. The Ld. Family Court declined to grant her any maintenance. Aggrieved by the Order, the present Petition has been preferred.

11. ***Essentially the grounds on which the judgment is challenged are that*** the Ld. Family Judge has wrongly assessed the income of Respondent as only Rs. 11,000/- per month. In fact, the Respondent has a collective income of about Rs. 1,18,000/- per month from all the sources including his Photo Studio and rent from the properties. The Ld. Judge has erred in ignoring that he does not have any Salary Slip or any I-card as a proof of allegedly working at *Gauri Color Lab and Studio*. The Ld. Judge has further erred in ignoring that in an Application under Section 24 of HMA filed in the Petition u/s 13(1)(ia) HMA, maintenance of Rs.11,000/-p.m. by assessing the the income of Respondent as Rs. 22,000/- per month, has already been granted to the Petitioner, *vide* Order dated 13/08/2010.

12. ***The Petition is contested by the Respondent who in his Reply,*** has stated that the Order of the Ld. Judge is well-reasoned. It is the Petitioner who had treated the Respondent and his family members with cruelty. The Petitioner herself has chosen to withdraw from his company as has been noted by the Ld. Judge, even though as per the settlement agreement dated 02.07.2011, she had agreed to reside with him.

13. Furthermore, he is working at *Gauri Color Lab and Studio* only and is drawing a salary of Rs. 11,000/- per month, to which effect a Certificate has been issued by his employer.

14. Therefore, the Ld. Judge has rightly appreciated the facts and assessed his income as Rs. 11,000/- per month and awarded maintenance of Rs. 3,500/- per month to the daughter of the parties.



15. *On merits*, all the averments in the petition are denied. It is contended that learned Family Court has passed a well reasoned Order which merits no interference.

16. *In her Rejoinder affidavit, the Petitioner No.1 has reaffirmed* the assertions made in the Petition.

17. **Submissions heard and record perused.**

18. It is an admitted case that the parties got married on 27.07.2008 and one daughter was born from this wedlock on 06.05.2009. It is not in dispute that the parties separated on 23.03.2009 i.e. prior to the birth of the child. According to Petitioner, she was beaten mercilessly and thrown out of her matrimonial home since when she has been living at her parental house.

19. The present Petition under Section under Section 125 Cr.P.C has been filed on 15.02.2011, i.e. about 2 years after their separation. The Ld. Court has observed that it does not appear from the statements of the Petitioners that she was not restricted from any communication as she has admittedly been given a mobile phone by her brother-in-law. Furthermore, the Court had observed that there is no explanation given by the Petitioner as to why she had not lodged any Complaint about the incident of 26.03.2009, as she was at her parental home and it cannot be believed that she was scared of anyone. In fact, she has only lodged the Complaint before CAW Cell on 01.07.2009 after the Respondent filed for Divorce Petition on 13.05.2009 against her.

20. Further, the learned Judge, Family Court, had observed that the parties had arrived at a Settlement dated 02.07.2011, wherein the parties had agreed to stay separately in a rented accommodation which was duly



identified and approved by the counsel for the Petitioner despite which she refused to reside with him and withdrew from his company. This testified that she did not want to live with her husband. Not only this she had stated on 29.03.2011 that she did not want to live with her husband and that she only wanted maintenance and would reside with her parents.

21. The learned Judge, Family Court has, therefore, rightly concluded that it is the Petitioner who had withdrawn from the company of the Respondent without any valid reason and thus, rightly declined to give any maintenance to the Petitioner. There is no infirmity in the Order denying grant of interim maintenance to the Petitioner. Furthermore, the learned Judge, Family Court has considered the income of the Respondent as Rs.11,000/- and granted Rs.3,500/- per month to the daughter. There is no interference required in the impugned Order and the Revision Petition is hereby dismissed with the pending Application(s), if any.

22. The Court had taken note of the conduct of the Petitioner in choosing to withdraw from the society of her husband/Respondent, even after admitting that her counsel has seen and confirmed the rented accommodation. She backed out of the Settlement Agreement. Again on 29.03.2011, she stated that she does not want to live with her husband. She testified that she only wanted maintenance from her husband and would reside with her parents.

23. The ground of challenge to the refusal of maintenance to the Petitioner is that the Petitioner has no valid reason to withdraw from the society of her husband. However, the court granted maintenance to the minor daughter.



24. To fully appreciate the facts of the case, the law in this regard needs to be appreciated. The relevant provision is produced as under:

“Section 125: Order for maintenance of wives, children and parents.

1. If any person having sufficient means neglects or refuses to maintain –

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

...

...

*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,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] 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.*

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...”

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25. The Apex Court had recently deliberated on the issue of similar nature “*Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4) of the Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home?*” in the case of Rina Kumari @ Rina Devi @ Reena vs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another, 2025 INSC 55. The Court decided the issue on the facts of the case, wherein the Court said that, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as the wife did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not settle the issue and the High Court ought not to have given such undue regard to the said judgment and the findings therein.

26. However, while deliberating the said issue, the Apex Court took note of various judgements of various High Courts as well as Apex Court itself. In Girishbhai Babubhai Raja vs. Smt. Hansaben Girishchandra and another, (1986) GLH 778, the Gujarat High Court held that once a Civil Court found in a contested proceeding that the wife had no just or reasonable cause to withdraw her society from the husband, she cannot claim maintenance under Section 125 Cr.P.C. It was observed, on facts, that the wife had not pleaded any subsequent event or circumstance which justified her staying away from her husband in spite of the decree for restitution of conjugal rights passed against her.



27. In the facts at hand, the Petitioner had originally agreed to reside with the Respondent once he managed a place on rent, which she refused, without any cogent reason, once the same was secured by the Respondent.

28. Further, the Apex Court in Kirtikant D. Vadodaria vs. State of Gujarat and another, (1996) 4 SCC 479 has held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a decree for restitution of conjugal rights against the wife would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was further observed that the mere 'failure' of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance from him, especially as the crucial word carefully chosen in the relevant provision is 'refusal'.

29. The present is a case of 'refusal' rather than 'failure', as has been made out from the statement of the Petitioner as recorded by the Ld. Family Court.

30. Thus, the Ld. Family Court has rightly appreciated the facts of the case and validly rejected the claim for maintenance of the Petitioner.

31. *Another ground of challenge* to the maintenance is that Respondent is earning about Rs.1,18,000/- per month from his various sources of income, and has movable as well as immovable properties and is also earning rental income, despite which his income has been assessed as Rs. 11,000/- per month.

32. The learned Family Court has rightly observed that aside from assertion that Respondent was earning Rs.1,18,000/- per month, there is not a single document which has been produced by the Petitioner either in



respect of salary to establish that he had been earning as much money as she has claimed or having income from rental Properties or additional source of income.

33. It has also been vehemently contended on behalf of the Petitioner that Respondent owns a Photo Studio and is also selling mobile phones, DVDs/VCDs, etc. and also has rental properties from where he is having substantial income. However, the Respondent has placed on record a certificate issued to him by his employer *Gauri Color Lab and Studio* and claimed that he is drawing a salary of Rs.11,000/- per month.

34. There-being no cogent evidence whatsoever, except empty assertions without even disclosing any details or producing any documentary proof, the learned Family Court has rightly assessed the income of the Respondent as *Rs.11,000/- per month and* from the same has already granted maintenance to the minor baby in the sum of Rs.3,500 per month.

35. The maintenance has been refused to the Petitioner as she has chosen to withdraw from the society of the Respondent/husband without any cogent reason. Thus, considering the evidence brought on record, the maintenance amount has been rightly refused to the Petitioner.

36. ***There is no merit in the present Petition and it is accordingly dismissed and the pending Application(s) are disposed of accordingly.***

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2025

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