

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

+ CM(M) No.489/2009 & CM No.7551 /2009

Date of Decision: January 08, 2010

PRAKASH CHANDPetitioner

Through: Mr. Hari Datt Sharma and
Ms. Reena Singh, Advocates.

versus

SMT. REKHA RANI Respondent

Through: Mr.H.S.Sharma, Advocate.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Impugned in this petition is the order of the Trial Court dated 16th March, 2009, whereby on an application filed by the respondent, the Trial Court awarded Rs.1,700/- as interim maintenance to the respondent from the date of the application adjustable in

maintenance, if any, awarded in proceedings under Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') or any other proceedings.

2. Parties to the petition were married on 9th December, 1986, at Delhi. Out of the wedlock of the parties, one male child, namely, Gaurav was born on 24th January, 1988, who is in the custody of the petitioner since 17th July, 1989, when parties started living separately. This resulted into criminal as well as civil litigation *inter se* the parties including the divorce petition filed by the petitioner. Before petitioner's filing petition seeking divorce under Section 13 of the Hindu Marriage Act (hereinafter referred to as the 'Act'), respondent had filed a petition under Section 9 of the Act for restitution of conjugal rights on 26th November, 1998, i.e. after about nine years of separation. However, the said petition was contested by the petitioner and it was dismissed by the Trial Court vide its impugned judgment and decree dated 17th August, 2005.

3. It seems that earlier also respondent had filed a petition under Section 125 Cr.P.C., but she withdrew the same on 30th August, 1991. She filed another petition under Section 125 Cr.P.C. and her application for interim maintenance was dismissed on 13th August, 1999. The revision petition against the said order was also dismissed on 18th August, 2001. Respondent lost her petition under Section 125 Cr.P.C. on 25th July, 2005. She also lost her revision petition. Proceedings under Sections 498-A/406/34 IPC are also pending against the petitioner and his family members.

4. It is submitted by learned counsel for the petitioner that petitioner is a patient of hypomania, a mental disease and is undergoing treatment. He is unable to earn anything and is living on the mercy of his family members. He is also a diabetic patient, having gangrene disease in his one leg and his left thumb has already been imputated. However, the Trial Court failed to consider that petitioner is suffering from the above said diseases. The court also failed to consider that one

eye of the petitioner's son has been completely damaged and he cannot hear from both the ears and it is petitioner's family members who have to spend money on his treatment; the court failed to consider that respondent, who is a graduate, is working for gain and has her independent income for her survival. It is further submitted that the Trial Court did not properly consider the statement of the petitioner recorded under Order 10 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), while granting maintenance of Rs.1,700/- per month to the respondent.

5. Learned counsel for the respondent has submitted that petitioner is working with his brothers in the joint family business and has substantial income to provide maintenance to the wife as ordered by the court. He has pointed out that petitioner has not placed on record any document to indicate that he is a patient of hypomania. Under these circumstances, counsel for the respondent has prayed that there are no merits in the petition. During the course of arguments, learned

counsel for the petitioner has submitted that petitioner was suffering from hypomania even in the year 1986 when he was married to the respondent. When questioned it was admitted that he was working with his brothers in the family business of manufacturing mixi etc. With all his mental ailment, as is being projected before this Court, petitioner married the respondent, lived with her for three years, co-habited with her and was blessed with a son.

6. Under these circumstances, it becomes unbelievable that petitioner was and is not mentally fit or capable of earning his livelihood. The son born out of the wedlock of the parties is about 21 years of age as on date. Petitioner has not placed on record any document of any hospital or any private doctor to show *prima facie* that since before his marriage he was suffering from hypomania and after sometime of the marriage, the intensity of the disease increased which totally incapacitated him from physical activities and he is unable to earn. Documents placed on record are

photocopies of some prescriptions of the year 2009, which do suggest that petitioner is suffering from some mental ailment, but, in no manner suggest that he is suffering from hypomania. May be that petitioner's mental faculties are not as normal like other persons but, at the same time, there is nothing on record to suggest that he is incapable of earning or has no power of discretion. Possibly Gaurav, son of the parties is suffering from some impaired hearing and loss of sight in one eye, but this factor also is not relevant, when it comes to determination of the earning capacity of the petitioner.

7. Under these circumstances, since *prima facie* petitioner has failed to convince the Court that he is suffering from hypomania and is completely incapable of earning anything and also keeping in mind the fact that since before the time of his marriage with the respondent, petitioner has been working with his brothers in the family business, I find no reason to interfere in the impugned order of the Trial Court. It is not out of place to mention here that petitioner was examined under Order

10 CPC by the court. His statement has been reproduced by the Trial Court in the impugned order. After reading the said statement, it can be said that petitioner understood the questions put to him by the court indicating that his mental faculties were normal. The Trial Court rightly observed that since petitioner was living in the joint family and was working with his brothers in the joint business, his income could be safely assessed as Rs.5,000/- per month, which to my mind is on the lower side.

8. Hence, petition as well as the application, being without any merits, are hereby dismissed.

**(ARUNA SURESH)
JUDGE**

**JANUARY 08, 2010
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