

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Date of Decision: 06.03.2012

CRL.M.C. 841/2012 with CrI. M.A.2942-2943/2012

DINESH KUMAR RATHORE

..... Petitioner

Through: Ms. Monica Kapoor, Advocate.

Versus

BABITA & ORS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition assails order dated 26th February, 2012 passed by Judge, Family Court, Rohini Courts, Delhi in CC No. 68/2010 titled as "Smt. Babita Rathore Vs. Dinesh Kumar Rathore".
2. After going through the prayers of the petition, it is found that there is not much substance in the petition. I have heard learned counsel for the petitioner finally and propose to dispose of the same even without notice to the respondents.
3. The petitioner is husband of respondent No. 1 Smt. Babita Rathore. The couple has two children namely Rashmee Rathore @ Reshma Rathore and Mater Abhishek Rathore. They are stated to be aged about 21 years and 17 years respectively. Both the children are unmarried and staying with their mother Babita.
4. A petition was filed by Babita along with her two children against the petitioner under section 125 Cr. P.C. claiming maintenance @ Rs.4,500/- per month. Vide the impugned judgment the learned Judge, Family Court, has awarded maintenance @ Rs. 1,000/- per month to respondent No. 1 Babita

and Rs.1,500/- per month to each of the two children. It was ordered that Babita would be entitled to maintenance till her lifetime or till her re-marriage, whereas the children would be entitled to the maintenance till their marriage. The said order was passed after assessing the income of the petitioner to be Rs.9,000/- per month from his tea vending shop and electrical repair work.

5. The said order has been assailed by the petitioner herein on the ground that the petitioner was an unemployed poor person having no income and thus unable to give any maintenance to his wife and children. It was submitted that the learned Trial Judge has assessed his income to be Rs. 3,000/- per month from his electrical work and Rs. 6,000/- per month from his tea vending shop based on conjectures and surmises. He submitted that his wife Babita had regular income from her employment and was capable of maintaining herself and the children. It was also submitted that the Trial Judge also erred in recording that both the children are unmarried daughters, whereas one of them i.e. Master Abhishek Rathore was their son and was about the age of majority and capable of maintaining himself.

6. With regard to the plea that both the children were not daughters, but 'Abhishek' was their son and was aged about 17 years, the same is not in dispute. It appears, it has been inadvertently recorded by the Trial Judge about both the children to be daughters.

7. So far as daughter 'Rashmee' is concerned, there is no dispute that, though, she has attained the age of majority, she was entitled to maintenance till her marriage. So far as son 'Abhishek' is concerned, it is settled law that as per Clause (C) of Section 125(1) Cr.P.C. a minor son is entitled to maintenance till the time he gets majority unless his case was to be that of physical or mental abnormality or of injury making him unable to maintain himself. The case of Abhishek does not fall in clause 'C' and so, he would be entitled for maintenance from the petitioner only till the time he attains majority at the age of 18 years.

8. With regard to the entitlement of maintenance of Babita, the Family Judge has awarded maintenance of Rs. 1,000/- per month only till her life time or till she re-marries. As per the averments set out in the petition for maintenance, the income of the petitioner was alleged to be Rs.45,000/- per month. The same having not been proved and there being no documentary evidence on record as regards the income of the petitioner, the family Judge

depended upon the oral testimony of the parties to assessee the income of the petitioner. From the oral evidence, that was led, it was recorded as a finding of fact that the petitioner was doing repair work of electrical appliances and that in the year 1998 he was earning about Rs.50/- to Rs.60/-per day from this business. It was also the admitted case of the petitioner that he alone was doing work at his tea vending shop. From his testimony, it was established that he was the owner of the tea shop. Though he did not disclose his income from the tea shop and had tried to set up a case of less income from this trade, the learned Family Judge from the evidence that was led, recorded that the petitioner might be selling about 125 to 150 cups of tea per day and therefore by this way he might be earning an income of Rs.250/- to Rs. 450/- per day. In the absence of there being any specific evidence regarding the income of the petitioner, the same was to be estimated based on experience and some guess work and that was done by the Family Judge. I do not find any illegality or infirmity in making assessment of the income of the petitioner in such circumstances. Though, Babita was found to have her own separate income, but, in the given facts and circumstances she cannot bear out the responsibility of maintaining herself and her children and the education of the children etc. Nominal maintenance of Rs.1,000/- per month awarded to her by the trial Judge could not be said to be unreasonable or unjust. I do not find any illegality or impropriety in this part of the order of the Family Judge.

9. In view of the above, the impugned judgment is modified to the extent that the Respondent No. 1 Babita would be entitled to the maintenance of Rs.1,000/- per month till her life time or till her re-marriage. Respondent No. 2 Rashmee would be entitled to the maintenance of Rs.1500/- per month till her marriage and Master Abhishek, respondent No. 3, would be entitled to the maintenance of Rs.1500/- per month till he attains the age of majority. With these modifications, the impugned order is maintained.

10. The petition is disposed of accordingly at the stage of admission itself.

Sd/-
M.L. MEHTA, J