

Delhi High Court

Omar Abdullah vs Payal Abdullah And Ors. on 1 December, 2017

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 4717/2017, Crl. M. A. 18788/2017 (Stay)

Order Reserved on: 29th November, 2017

Order Pronounced on: 1st December, 2017

OMAR ABDULLAH

..... Petitioner

Through: Ms. Malvika Rajkotia, with Mr. Ramakant  
Sharma, Advocates.

versus

PAYAL ABDULLAH & ORS.

..... Respondents

Through: Mr. Jayant Sud, Senior Advocate with Mr. Honey Khanna, Advocate.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present petition has been filed by the petitioner under Article 227 of Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) challenging the order dated 09.09.2016 passed by the Principal Judge, Family Court, Patiala House Court, New Delhi in M- Petition No.111 of 2016 and seeks quashing of the proceedings under Section 125 Cr.P.C. against the petitioner.

2. Long and heated arguments were heard.

3. Ms. Malvika Rajkotia, learned Counsel appearing on behalf of the petitioner contended that the petition under Section 125 Cr.P.C. and all the proceedings emanating therefrom against the petitioner are not maintainable at the very outset for being specifically barred by the statutory provisions of Section 125 Cr.P.C.; that the most important pre-requisite as laid down in the said provision that, the "claimant" should be unable to maintain herself, is not established in the present case; that the petitioner filed a divorce petition in the year 2013 and since then respondent No.1 did not seek any maintenance as she is an empowered woman and is a Director in three companies and has sufficient means to sustain herself; that the respondent No. 2/Zahir Abdullah and respondent No. 3/Zamir Abdullah are not entitled to any maintenance as respondent No.2/Zahir Abdullah had already attained majority and respondent No. 3/Zamir Abdullah has attained majority on 18.01.2017 and hence the proceedings under section 125 Cr.P.C. are not maintainable .

4. During the course of arguments, my attention has been drawn to the order dated 31.01.2017 which reads as under :-

"xxxx Arguments heard on application filed by respondent that the petitioner is not maintainable as well as on the interim application for maintenance, however, during the course of arguments, Ld. Counsel for respondent submits that she does not want to press the application of the maintainability as she already raised this issue in the

written statement filed by the respondent.

In view of the same, the application for maintainability of the present petition stands dismissed as not pressed for xxxx Put up for arguments on the maintainability of the petition as well as on the application for interim maintenance on 27.01.2017 at 12:30 p.m."

5. It is further argued by the learned Counsel for the petitioner that for the past nearly one year, the maintainability of the petition is yet to be decided though the matter has been fixed nine times for hearing after 31.01.2017.

6. On the other hand, Mr. Jayant Sud, learned Senior Counsel for the respondent argued that petitioner has given up his right to argue on the maintainability of the petitioner as recorded in the order dated 31.01.2017.

7. My attention was further drawn to the order dated 09.11.2017, which reads as under :-

"Ld. Senior Adv. has addressed and completed his arguments upon the interim application. On request, put up for arguments on behalf of Ld. Counsel for the respondent and also arguments by the Ld. Senior Advocate in rebuttal, if any on 12.12.2017 at 2:00 P.M."

8. Perusal of the record transpires that as per order dated 31.01.2017, though the application for maintainability of the petitioner stood withdrawn as not pressed for, the Principal Judge, Family Court, Patiala House Court ordered that the matter may be listed for 27.02.2017 at 12:30 p.m. for arguments on maintainability of the petition as well as on the application for interim maintenance.

9. Maintainability of the petition under Section 125 Cr.P.C and question of award of interim maintenance are inseparable. In order to award interim maintenance, the Court concerned shall first arrive at a finding that whether the husband/petitioner neglected or refused to give maintenance to his wife/respondent No.1 and that whether the wife/respondent was unable to maintain herself. The Court will also necessarily have to determine before awarding the interim maintenance whether respondents No. 2 and 3 are entitled for the same as both the respondents have attained majority. Therefore the question of grant of interim maintenance can be determined only after the determination of the maintainability of the petition under Section 125 Cr.P.C.

10. The only grievance of the petitioner is that the maintainability of the petition filed by respondent no.1 under Section 125 Cr.P.C. has not yet been decided and has taken a considerable time.

11. Perusal of order dated 09.11.2017 of the trial Court reveals that as the arguments have already been addressed and completed by the learned Senior counsel for the respondents, the matter has been fixed for arguments on behalf of the petitioner and rebuttal if any on behalf of the respondents, for 12.12.2017 at 02:00 p.m. It is agreed between the parties that they would not seek any adjournment and without causing delay address arguments in terms of order dated 31.01.2017 on

the next date of hearing i.e. 12.12.2017 before the concerned Court.

12. It is hoped and expected that the learned Principal Judge, Family Court, Patiala House Court, New Delhi will hear the arguments on behalf of the parties expeditiously and make every endeavour to dispose of the petition by end of January, 2018.

13. With above directions, the present petition along with pending application is disposed of.

14. Copy of this Order be given dasti under the signatures of the Court Master.

SANGITA DHINGRA SEHGAL, J DECEMBER 1, 2017//gr