

HIGH COURT OF DELHI

JUSTICE ANOOP KUMAR MENDIRATTA

Date of Decision: 16th February 2024

CRL.M.C.1283/2024, CRL.M.A.5059/2024, CRL.M.A.5058/2024

SACHIN KUMAR DAKSH ...PETITIONER

versus

MAMTA GOLA AND ANR ...RESPONDENT(S)

Legislation:

Section 125, 340, 482, 483 Cr.P.C.

Section 125 Cr.P.C.

Section 10, 14 of the Family Courts Act, 1984

Indian Evidence Act, 1872

Subject: Challenge to the order permitting the respondent to file a fresh income affidavit in maintenance proceedings, implicating concerns about the amendment of details and the impact on pending application under Section 340 Cr.P.C.

Headnotes:

Challenge Against Fresh Income Affidavit - Petitioner challenges the order permitting respondent to file a fresh income affidavit under Section 125 Cr.P.C., claiming it contains amended details affecting a pending Section 340 Cr.P.C. application. - [Para 1, 5]

Background of Family Disputes - Divorce proceedings initiated by petitioner, and maintenance petition by respondent under Section 125 Cr.P.C. - [Para 3]

Respondent's Request for Amendment - Respondent sought amendment in income affidavit due to discovery of falsehood, initially denied but later allowed by Family Court after High Court's intervention. - [Para 4, 7]

Court's Observation on Maintenance Proceedings - Maintenance as social justice; Family Courts' role emphasized for truth-finding and speedy resolution; technicalities not overriding facts. - [Para 8]

Precedent in Similar Case - Reference to a similar case (CRL.M.C.260/2024) where objections against amended affidavit were dismissed. - [Para 9]

Legal Implications of Fresh Affidavit - Fresh affidavit does not negate earlier one; false affidavit consequences highlighted; does not impact Section 340 Cr.P.C. application. - [Para 10]

Dismissal of Petition - Petition dismissed, affirming the Family Court's decision allowing the fresh/amended affidavit to assess maintenance accurately. - [Para 11]

Referred Cases:

Rajnesh v. Neha and Another, (2021) 2 SCC 324

Representing Advocates:

Ms. Aarushi Desai, Mr. Shivansh B. Pandey, Mr. Amaan Ahmed Khan for petitioner.

Ms. Charu, Mr. Satyaarth Balajee Sinha for respondent No.1 and 2.

CORAM:

**HON'BLE MR.
ORDER**

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A.5059/2024

Exemption allowed, subject to just exceptions.

Application is accordingly disposed of.

CRL.M.C.1283/2024, CRL.M.A.5058/2024

1. A petition under Section 482 read with 483 Cr.P.C. has been preferred on behalf of the petitioner challenging order dated 16.01.2024 passed by learned Family Court, South West, Dwarka, New Delhi whereby respondent No.1 (wife) has been permitted to file fresh income affidavit in accordance with judgment of Hon'ble Supreme Court in ***Rajnesh v. Neha and Another, (2021) 2 SCC 324.***
2. Learned counsel for the petitioner appears on advance notice.
3. In brief, as per the case of the petitioner, the marriage between the petitioner and respondent No.1 was solemnized on 11.12.2019. A petition for divorce was preferred by the petitioner at Family Court at Ahemdabad. On the other hand, a petition under Section 125 Cr.P.C. was preferred on behalf of the respondent wife before Family Court at Aligarh, which has been transferred to Delhi. In the proceedings under Section 125 Cr.P.C., respondent No.1 filed an income asset affidavit, wherein petitioner took a stand regarding furnishing of incorrect information by respondent. Further, the reply to the interrogatories is stated to have not been filed by respondent No.1. An

application under Section 340 Cr.P.C. is also stated to have been filed by the petitioner before the Family Court.

4. It is further the case of the petitioner that respondent No.1 realised that her falsehood and suppression has been discovered and sought to amend the income and expenditure affidavit. The learned Family Court is stated to have allowed respondent No.1 to file the income and expenditure affidavit vide order dated 10.04.2023 which was challenged by the petitioner in CRL.M.C.3572/2023. The High Court vide order dated 23.05.2023 set aside the order dated 10.04.2023 and allowed the petitioner to file objections on amendment application and decide the same before proceeding further. The learned Family Court vide impugned order dated 16.01.2024 allowed respondent No.1 to file fresh income and expenditure affidavit on the ground that income and expenditure affidavit submitted is not as per the format of ***Rajnish v. Neha and Another*** (supra).
5. Learned counsel for the petitioner submits that the earlier affidavit submitted by respondent No.1 in Hindi is also as per the format of ***Rajnish v. Neha and Another*** (supra), and the filing of fresh income asset affidavit incorporates amended details which would frustrate the pending application under Section 340 Cr.P.C., preferred on behalf of the petitioner
6. On the other hand, the order passed by the learned Family Court is supported on behalf of respondents.
7. A bare perusal of the order passed by the learned Family Court reflects that it was pleaded on behalf of respondent No.1 that inadvertently necessary facts could not be added in the previous affidavit and the proposed amendment is not inconsistent with the original application. The proposed amendment was also stated to be necessary since it went to the root of the issue. After taking into consideration the objections/contentions raised by the petitioner, learned Trial Court observed that the earlier affidavit filed by the parties on record cannot be taken off record and while considering the dispute on any facts/figures, the Court can consider the earlier affidavit placed on record. It was further observed that the respondent could not be stopped from filing proper income affidavit as observed in ***Rajnish v. Neha and Another*** (supra) and accordingly allowed the fresh filing of the affidavit.
8. I have given considered thought to the contentions raised.

The maintenance granted to the wife is as a measure of social justice and the proceedings under Section 125 Cr.P.C. is with an objective to protect women and children from vagrancy and destitution. The Family Courts have

been established for adopting and facilitating the conciliation procedure and to deal with family disputes in an expeditious and speedy manner. Section 10(3) of the Family Courts Act, 1984 provides that nothing in sub-section 1 or sub-section 2 of Section 10 of the Family Courts Act, 1984 shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by another party. Thus, the objective remains to reach at the truth of the facts, which is a guiding star for the proceedings under the Family Courts Act. Even in terms of Section 14 of the Family Court Act, the Family Court may receive as evidence any report, statement, information or matter that may in its opinion assists it to deal effectively with the dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. Keeping in perspective the aforesaid objective and provisions, the technicalities cannot be permitted to prevail. The learned Family Court after appreciation of the facts correctly permitted the filing of the fresh affidavit instead of amendment of earlier affidavit to enable the parties to bring out any inconsistencies or discrepancies for consideration. The same does not prejudice the petitioner in any manner, as contended.

9. It has also been brought to the notice of this Court that a similar objection was also taken in CRL.M.C.260/2024 wherein the petitioner challenged orders dated 08.12.2023 and 10.04.2023 passed by the learned MM in proceedings under Protection of Women from Domestic Violence Act, 2005 initiated by respondent No.1. Vide order dated 11.01.2024, the objection taken against filing of amended affidavit was dismissed.
10. It may further be observed that any direction by the Trial Court to file a fresh affidavit does not obliterate the earlier affidavit filed by respondent No.1 on record. Appropriate proceedings can always be considered by the Court in accordance with law in case the Court is of the opinion that a false affidavit had been filed in the proceedings by either of the parties. The same does not in any manner adversely impact the application, if any, preferred by the petitioner under Section 340 Cr.P.C.
11. In the facts and circumstances, order passed by learned Family Court permitting to file a fresh/amended affidavit furnishing necessary details does not require any interference and shall enable the Court to rightly consider the fixing of maintenance amount.

For the foregoing reasons, the petition is dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Family Court for information.

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