

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
109

CRR(F)-917-2024 (O&M)
Date of Decision: 19.07.2024

Kuldip Kaur Petitioner

Versus

Hans Raj and another Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: -Mr. M.S.Dhami, Advocate for the petitioner(s)

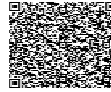
NIDHI GUPTA, J. (ORAL)

Challenge in the present petition filed by the wife is to the order dated 16.04.2024 whereby a petition filed under Section 125 Cr.P.C. by the petitioner has been dismissed by the learned Principal Judge, Family Court, S.A.S. Nagar, Mohali.

Learned counsel for the petitioner *inter alia* submits that the impugned order has been passed on a wholly incorrect premise. It is submitted that on the date of passing of the impugned order, the petitioner was not in job as her services had been terminated. It is stated that in view of the admitted relationship between the petitioner and respondent No.1, it is the duty of respondent No.1 to maintain her. The petitioner has no means to maintain herself. It is accordingly prayed that the impugned order be set aside.

No other argument has been raised on behalf of the petitioner.

I have heard learned counsel for the petitioner as also perused the case file in great detail.



Perusal of the record of the case shows that the petitioner was married to the respondent on 18.06.1994. Two sons and two daughters were born out of their wedlock. One son died in an accident.

Due to marital discord on 19.03.2016, the respondent filed a petition under Section 13 of the Hindu Marriage Act, 1955 seeking divorce from the petitioner on grounds of cruelty. The said petition was dismissed vide judgment and decree dated 20.04.2018 which is stated to have attained finality.

In the meantime, on 13.12.2016 the present petition under Section 125 Cr.P.C. was filed by the petitioner and one of the daughters/proforma respondent herein. Perusal of the petition under Section 125 Cr.P.C. (Annexure P-1) reveals that the petitioner had claimed maintenance for an amount of Rs.15,000/- p.m. for each of the applicants *inter alia* on the ground that the respondent is a government employee and earning about Rs.60,000/- p.m. Vide order dated 25.01.2018, interim maintenance of Rs.3,000/- p.m was granted to each applicant. Now vide impugned order dated 16.04.2024, petition under Section 125 Cr.P.C. has been dismissed.

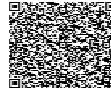
The undisputed facts on record are that the respondent-husband is a government employee working as a Gardener in PSIEC, Sector-17, Chandigarh. As per his salary slip of the year 2017 (Ex.A-1), he was drawing salary of Rs.31,930/- per month. However, upon leading of evidence, it has also come on record that upto May 2019, the petitioner was working as a helper at the SGHS Charitable Hospital, Sohana on a monthly salary of Rs.9,296/- as evident from her salary slip (Ex. RW3/A) duly proved by RW2, Senior Accountant of SGHS Charitable Hospital, Sohana. What has weighed



with the learned Family Court in passing the impugned order of dismissal is that in her petition under Section 125 Cr.P.C. (Annexure P-1), the petitioner had failed to disclose two important factors: a) the factum of her employment with SGHS Charitable Hospital, Sohana; b) and the fact that the daughter-proforma respondent herein, has been in the care and custody of respondent No.1/husband. Admittedly, the petitioner remained in job from 07.10.2014 to 31.05.2019. As such on the date of filing petition under Section 125 Cr.P.C. on 13.12.2016, she was in job and was earning hand. However, this fact was not disclosed to the learned Family Court in the first instance. It is also pertinent that RW3/ the mother of the petitioner has supported the case of the respondent before the learned Family Court and has revealed that she is also residing with the respondent. Even the second daughter of the petitioner, namely, Jagjot Kaur RW4 deposed that she did not know about whereabouts of the petitioner/her mother and that the petitioner did not even attend her marriage.

From the above facts it was found that the respondent No.1 is maintaining not just his two daughters and a son but also his mother-in-law.

The provision of Section 125 Cr.P.C. is a social justice measure enacted to protect the abandoned wife, children and aged parents from vagrancy and destitution. A bare reading of the provision itself reveals that the maintenance is admissible only to a wife who is “*unable to maintain herself*”. In the present case, it has now been admitted by the petitioner that she was previously employed. On a Court query as to why she is no longer working, it has been stated that the services of the petitioner were terminated. However, no order of termination has been placed on record by the petitioner.



In any event, it is clear that the petitioner is capable of maintaining herself. No reason has been given by the petitioner as to why she is no longer working.

At this stage, reference may be made to judgment of the Hon'ble Supreme Court in case of "**Bhushan Kumar Meen v. Mansi Meen Alias Harpreet Kaur (SC)**": **Law Finder Doc Id # 547724**. In the said case too, the wife albeit qualified/previously employed, was not working. Accordingly, the Hon'ble Supreme Court had held that "*However, having regard to qualifications that Wife possesses, there is no reason why she ought not to be in a position to also maintain herself in future...*", and had accordingly reduced the amount of interim maintenance granted to the respondent wife.

Reference may also be made to judgment of the Karnataka High Court in "**Smt. Shilpashree J. M. & Others Vs. Gurumanjunatha A.S. & Others**", **2023 SCC OnLine Kar 36, Law Finder Doc ID # 2260157**, wherein it has been held as under:-

"8. The records also disclosed that before marriage petitioner No.1 was working as is evident from her cross examination. Her cross examination also reveals that she was residing along with her mother. It is also evident from her admission that, even after her desertion she continued to stay in the rented house along with her mother itself and the allegation does establish that she was not interested to stay with respondent Nos. 2 to 4. It is an admitted fact that at the instance of the present petitioner No. 1, a separate house was taken on rent and now the petitioners i.e., wife and child are residing therein along with her mother, but she was reluctant to stay with her mother-in-law and unmarried sister-in-law. It is an admitted fact that respondent No. 1- husband is running provision stores. Further, he is having responsibility of taking care of his mother and unmarried sister. Admittedly, the petitioner No. 1 was working prior to her marriage and it is asserted that after marriage she resigned the said job. But, there is no explanation as to why she is incapable of working now. She is not supposed to sit idle and seek entire maintenance from her husband and she is also legally bound to make some efforts to meet her livelihood and she can seek only supportive maintenance from her husband".



(Emphasis supplied)

Most importantly, the petitioner has admittedly concealed material and relevant facts from the learned Family Court. The Hon'ble Supreme Court in **Ram Dhan v. State of U.P. (SC): Law Finder Doc Id# 352176** has held that it is the litigant's duty to make full disclosure of all the facts. The relevant findings of the learned Family Court contained in para 38 of the impugned order are as under:-

“As petitioner No.1 has come up for the purpose of maintenance and in order to establish the fact that she has been neglected by her husband i.e. present respondent, she has to lead cogent and convincing evidence but she has failed to do so, rather, at the time of filing of petition, there is concealment of fact on the part of petitioner No.1 with regard to the fact that petitioner No.2 Amarjot Kaur is residing with her father and not with her mother i.e. petitioner No.1 and from 07.10.2014 to 31.05.2019, she was working in Sri Guru Harkrishan Sahib, Eye Hospital Trust, Sohana, from where she was having monthly income of Rs.9296/- per month. That even no reason has been assigned by her for leaving the job at Sohana Hospital.”

Learned counsel for the petitioner is unable to controvert the above said findings, and the legal position as discussed above.

As such, I find no ground is made out to interfere in the impugned order. The present petition is hereby **dismissed**.

Pending applications, if any, stand disposed of.

19.07.2024

Divyanshi

**(NIDHI GUPTA)
JUDGE****Whether speaking/reasoned Yes/No
Whether Reportable Yes/No**