

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-21727 of 2015
Date of decision: 16.10.2015**

Mohammad Nadim

..Petitioner

Versus

Yasmeen

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Mohd. Yousaf, Advocate
for the petitioner.

Daya Chaudhary, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of order dated 20.03.2015 passed by Judicial Magistrate Ist Class, Moga, whereby, the defence of the petitioner has been struck off and he has been directed to pay interim maintenance @ ₹5000/- per month to the respondent.

Briefly, the facts of the case are that respondent-Yasmeen was earlier married to one Jagsir Singh. They approached this Court by way of filing Criminal Misc. No.13124-M of 2008 for protection of their life and liberty. Without disclosing the factum of earlier marriage, the respondent got married with the present petitioner without getting divorce from her earlier husband. The dispute arose between the

petitioner and the respondent. She left her matrimonial home and started to live with her parents. Respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') for grant of relief under Sections 18, 19, 20, 22 of the Act. The petitioner appeared before the trial Court. Thereafter, the case of the petitioner was transferred from Moga to Kot Ise Khan and then again to Moga. Respondent filed two applications before the lower Court, one for grant of interim maintenance on 08.07.2014 and other for striking off the defence of the petitioner. The petitioner filed reply to the aforesaid applications but without considering the reply to the applications filed by the petitioner, his defence was struck off and an amount of ₹5000/- has been allowed as interim maintenance to the respondent vide order dated 20.03.2015, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner has challenged the impugned order on the ground that the respondent is not legally wedded wife of the petitioner as earlier she was married to one Jagsir Singh and without getting divorce from him and by cheating the petitioner, she performed marriage with the petitioner, which cannot be considered as marriage in the eyes of law. Learned counsel further submits that it has been admitted by the respondent before the trial Court that earlier she was working as teacher and as such, she was not entitled for interim maintenance. Learned counsel also submits

that neither the stand taken by the petitioner in the reply has been considered nor any opportunity was given. No delay was there on the part of the petitioner as earlier the case was adjourned on various dates on joint request because of some settlement between the parties and the petitioner cannot be punished for the same. The impugned order has been passed to cause prejudice to the interest of the petitioner. The case has been transferred from one Court to other and this fact has not been considered while passing the impugned order. The amount of interim maintenance @ ₹5000/- per month is not only on excessive side but is liable to be set-aside as the same has been awarded without giving any opportunity of hearing and without considering the stand of the petitioner.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as *zimni* orders available on the file.

Undisputedly, the case has been adjourned on various dates either on request of the petitioner or on joint request and it cannot be said that only the petitioner is responsible for delaying the same. As per impugned order, the petitioner filed reply to the application and ample opportunities were given to him. The respondent filed application under Section 12 of the Act for claiming maintenance from husband on the ground that she was subjected to domestic violence at the instance of her husband. Certain judgments have been relied upon in the impugned order to the effect that in case,

the factum of earlier marriage has not been disclosed even then also, the respondent-wife is entitled for grant of interim maintenance. The stand of the petitioner is that earlier the respondent was married to some other person and the factum of earlier marriage was not disclosed to him, as such, the subsequent marriage is void and the respondent is not entitled for maintenance.

No notice is required to be issued to the respondent in the case as the matter will not only be delayed but the respondent would be burdened with unnecessary expenses if the notice in the case is issued.

On perusal of *zimni* orders as well as impugned order, it is apparent that the stand of the petitioner has not been considered and his defence has been struck off only on the ground that the case was called many times and the petitioner was not present. Nothing has been mentioned with regard to amount of maintenance. Atleast the stand of the petitioner taken in the reply could have been considered while passing the order granting interim maintenance. Two applications were moved by the respondent; i.e., one was for grant of interim maintenance and the other was for striking off the defence of the petitioner. In the second application, no reply was filed by the petitioner and the impugned order has been passed without recording any finding as to whether the factum of earlier marriage has been considered or not and the respondent was working at that time or not.

In view of the facts as mentioned above, the present

petition deserves to be allowed and the impugned order is set-aside. However, the case is remanded back to Judicial Magistrate Ist Class, Moga to decide it afresh after considering the facts as mentioned above and after giving opportunity of hearing to the petitioner. It is also clarified that only one effective opportunity be granted to the petitioner to put his defence subject to payment of costs of ₹15,000/- with the trial Court. In case, the petitioner fails to put his defence on one date, then he is not entitled to any further opportunity.

16.10.2015
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(DAYA CHAUDHARY)
JUDGE