

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-M-22234-2015
Date of decision:21.8.2015**

Ullas Kapoor

...Petitioner

Versus

Shruti Kapoor and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Subhash Kumar, Advocate for the petitioner.

Ms.Shruti Kapoor, respondent in person.

RAMESHWAR SINGH MALIK, J. (Oral)

This is yet another glaring example of avoidable litigation, wherein husband has been trying to take undue benefit of his own wrong, altogether ignoring not only his wife but his minor son as well, leaving his wife and son at the mercy of his in-laws.

Instant petition under Section 482 of the Code of Criminal Procedure, at the hands of the husband, is directed against the judgment dated 7.2.2015 passed by the learned Additional Sessions Judge, SAS Nagar (Mohali), whereby the impugned order dated 15.9.2014 passed by the learned Judicial Magistrate 1st Class ('JMJC' for short), Mohali, granting interim maintenance of Rs.10,000/- per month to the respondent-wife as well as her minor son, was upheld, dismissing the revision petition filed by the petitioner.

The marriage between the parties was solemnized on 15.4.2012. A male child was born on 23.7.2013. The respondent-wife

along with her son has claimed to be living with her parents since 23.7.2013, when she was turned out of matrimonial home. When the petitioner-husband neglected and refused to maintain the respondent-wife as well as the son, she was left with no other option, except to file a petition under Section 125 Cr.P.C. for grant of maintenance. The respondent-wife took the specific averment that the husband was working as Branch Operation Manager in HDFC Bank at Amritsar and was drawing a salary of Rs.45,000/- per month. He was also having rental income of Rs.20,000/- per month from a flat in Delhi and Rs.8,000/- from a portion of his house at Ambala. Besides the above, it was further alleged by the respondent-wife that husband was earning income of Rs.15,000/- per month from shares and insurance business, thus, he was earning an amount of Rs.88,000/- per month. She further averred that though she was M.Sc., M.A./B.Ed. and had been working as Assistant Professor at DIPS College, Dhillwan, District Kapurthala but after she gave birth to the son, she was no more working. She prayed for granting maintenance of Rs.25,000/- per month along with litigation expenses of Rs.1 lac.

Having been served in the petition filed by the respondent-wife under Section 125 Cr.P.C., petitioner husband appeared and filed his reply to the effect that since the respondent-wife was a qualified person, she was earning Rs.50,000/- from tuitions. He further alleged that respondent-wife lodged FIR No.36 dated 21.2.2014 under Sections, 406 and 498-A IPC against him, because of which he had to resign from his job. He also denied the averments regarding any income from other immovable properties or insurance business etc.

After hearing the learned counsel for the parties and going

through the record of the case, the learned JMIC, Mohali, vide impugned order dated 15.9.2014 (Annexure P-1) granting an amount of Rs.10,000/- per month from the date of filing of the petition, while allowing the application of the wife under Section 125 Cr.P.C. for interim maintenance. Feeling aggrieved, petitioner-husband filed his revision petition, which also came to be dismissed by the learned Additional Sessions Judge, Mohali, vide impugned order dated 7.2.2015 (Annexure P-2). Hence this petition, at the hands of the petitioner-husband.

When this matter came up for motion hearing on 19.8.2015, husband-petitioner as well as wife-respondent were present in the Court. Having been persuaded by the Court, both of them agreed for an amicable settlement and expressed their willingness to start living together again, so as to save their marriage as well as for the future of their child. Respondent-wife expressed her willingness to go with her husband-petitioner, without putting any pre condition. The offer put forth by the respondent-wife was found to be a genuine one and was also accepted by the petitioner. However, they jointly prayed for a short adjournment, which was granted to them, while adjourning the case for today.

When the case was taken up for hearing today, petitioner started putting ifs and buts. Learned counsel for the petitioner, on instructions from the petitioner who is present in the Court, submits that petitioner would live with the respondent-wife only when she would give a guarantee that she will behave properly. However, despite giving repeated assurances by the respondent-wife that she would not only behave properly with the petitioner but would also like to stay with her parents-in-law as well, paying due respect to all the family members, petitioner-husband for

the reasons best known to him, backed out from his stand taken before this Court just day before, i.e. 19.8.2015. Neither the petitioner nor learned counsel for the petitioner could give any justification for this abrupt change in the behavior of the petitioner. However, learned counsel for the petitioner sought permission of the Court to argue the case on merits, which was granted to him, because this Court was left with no other option, except to proceed and decide the case on merits.

Learned counsel for the petitioner submits that amount of maintenance granted by the learned courts below was on higher side. Since the learned courts failed to take into consideration the relevant factors for granting maintenance under Section 125 Cr.P.C., the impugned orders were not sustainable in law. He further submits that petitioner was ready and willing to maintain the respondent-wife as well as the child but she was adamant not to stay in the matrimonial home. Learned counsel for the petitioner further submits that in such a situation, the respondent-wife was not entitled for any maintenance particularly when she herself was a qualified person and was earning handsome income from the tuition. He prays for setting aside the impugned orders, by allowing the present petition.

On the other hand, Miss Shruti Kapoor-respondent No.1 (wife), who is present in person in compliance of the order dated 19.8.2015 passed by this Court, submits that she is still ready and willing to go with her husband-petitioner from this Court itself, without putting any pre condition, as per her stand took before this Court on 19.8.2015. She further submits that she has come prepared with the consent of her parents to go with the petitioner, as undertaken by her on 19.8.2015. She also submits that there is

nothing serious between the parties and there was no compelling reason for them for not staying together. She had always been humbly requesting the petitioner-husband to allow her as well to stay in the matrimonial home, either with her parents-in-law or separately, as he desires. It is only the petitioner, for undisclosed reasons best known to him, has been changing his stand from time to time, as per his own suitability. She concluded by submitting that she, on her part, assures the petitioner as well as this Court that she would be anxious for an amicable settlement, on any reasonable terms and conditions at any point of time, in future as well.

Having heard the learned counsel for the petitioner as well as respondent, who is present in person, at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the totality of facts and circumstances of the case noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinabove.

A bare reading of both the impugned orders passed by the learned courts below leaves no manner of doubt that each and every relevant aspect of the matter has been discussed in detail by both the learned courts below, before arriving at their respective judicious conclusions. All the relevant factors have been rightly considered and appreciated by the learned courts for the purpose of granting interim maintenance in favour of the respondent-wife and child under Section 125 Cr.P.C. None of the impugned orders has been found to be suffering from any patent illegality. Having said that, this Court feels no hesitation to conclude that petitioner has no

case either on facts or in law and the impugned orders deserve to be upheld.

When a pointed question was put to the learned counsel for the petitioner as to how an amount of Rs.10,000/-per month was on higher side when it had been granted for two persons, he had no answer and rightly so, it being a hard fact, in these days of sky rocketing prices. An amount of Rs.10,000/- per month would hardly meet the requirements of day to day life of respondent-wife and her child, thus, this amount is just bare minimum, which cannot be said to be on higher side, under any circumstances. In this view of the matter, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned orders, so as to convince this Court to take a different view than the one taken by the learned courts below. It is the bounden duty of the petitioner to maintain his wife and the child. The learned courts below have rightly directed the petitioner-husband to pay an amount of Rs.10,000/- per month to the respondent-wife so as to meet their bare minimum needs for their sustenance. Even if it is presumed that respondent-wife might be earning some amount, she being a qualified person, although there is nothing on record to support this contention of the petitioner, yet this itself cannot be a ground to deny grant of maintenance to the wife and child, particularly when husband-petitioner has failed to bring on record any supporting documents in this regard that the respondent-wife was earning, which might be sufficient for maintenance of herself as well as her child.

The wife and child cannot be left at the mercy of her parents. Under these circumstances, it is unhesitatingly held that the maintenance amount granted in favour of the respondent-wife and child by the both the learned courts below is just and proper, thus, impugned orders deserve to be upheld.

Another equally important aspect of the matter is that learned counsel for the petitioner could not deny the source of income of the petitioner, from his rental income which is Rs.28,000/- per month plus Rs.15,000/- from shares and insurance business, besides his salary of Rs.45,000/- per month. Even if the petitioner is treated not to be working presently, still he is having sufficient income from two other sources, referred to hereinabove, to the tune of more than Rs.40,000/- because of which, granting of maintenance @Rs.10,000/- per month in favour of the respondents is well justified.

Further, the learned courts below have rightly granted the maintenance from the date of filing of the petition under Section 125 Cr.P.C. and not from passing of the order. In this regard, the learned Magistrate took only about six months' time in passing the impugned order, thus, it cannot be said to be a delayed order in the circumstances of the case. The learned Magistrate has not been found to have exceeded his jurisdiction, while granting the maintenance from the date of filing of the petition. Even before this Court, the learned counsel for the petitioner could not make out an exceptional case in favour of the petitioner in this regard. In fact, both the learned courts below have been found to have exercised their discretion judiciously, while granting the maintenance from the date of filing of the petition. Learned counsel for the petitioner did not lay much stress on this issue. Therefore, the impugned orders deserve to be sustained

on this aspect as well.

The above-said view taken by this Court also finds support from the various judgments of the Hon'ble Supreme Court, including in **Smt. Jasbir Kaur Sehgal v. The District Judge, Dehradun, 1997 (7) SCC 484**, **Badshah v. Sou. Urmila Badshah Godse & Anr., 2014 (1) SCC 188**, **Sunita Kachwaha and others v. Anil Kachwaha, 2015 AIR (SC) 554** and **Bhuwan Mohan Singh v. Meena & Ors, 2015 (6) SCC 353**. Laying stress on the object sought to be achieved by providing Section 125 Cr.P.C. on the statute book and referring to the law laid down by the Hon'ble Supreme Court in many of its relevant judgments on the subject, the Hon'ble Supreme Court in paras 8 to 13 of its recent judgment in **Bhuwan Mohan Singh's case (supra)** observed as under:-

*“At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In **Smt. Dukhtar Jahan v. Mohammed Farooq, 1987(1) R.C.R.(Criminal) 375 : (1987) 1 SCC 624**, the Court opined that proceedings under Section 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.*

*A three-Judge Bench in **Vimla (K.) v. Veeraswamy (K.), 1991(3) R.C.R.(Criminal) 639 : (1991) 2 SCC 375**, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.*

*A two-Judge Bench in **Kirtikant D. Vadodaria v. State of***

Gujarat and another, 1996(3) R.C.R.(Criminal) 147 : (1996) 4 SCC 479, while adverting to the dominant purpose behind Section 125 of the Code, ruled that:

"While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

In Chaturbhuj v. Sita Bai, 2008(1) R.C.R.(Criminal) 163 : 2008(1) R.C.R.(Civil) 136 : 2007(6) (R.A.J.) 416 : (2008) 2 SCC 316, reiterating the legal position the Court held: -

*"Section 125 Cr PC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in **Captain Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70** falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in*

Savitaben Somabhai Bhatiya v. State of Gujarat, 2005 (2) R.C.R.(Criminal) 190 : 2005(2) R.C.R.(Civil) 151 : 2005(1) Apex Criminal 596 : (2005) 3 SCC 636."

Recently in Nagendrappa Natikar v. Neelamma, 2013 (2) R.C.R.(Criminal) 424 : 2013(2) R.C.R.(Civil) 469 : 2013 (2)(R.A.J.) 390 : 2013 (3) SCALE 561, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida, 2003(3) R.C.R.(Civil) 645 : (2003) 4 SCC 166, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus: -

"The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith."

Similar observations have been made by the Hon'ble Supreme Court in **Badshah's** case (supra).

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases, referred to hereinabove, it is held that maintenance of Rs.10,000/-, awarded to respondent-wife and her child by the learned courts below, while passing their respective impugned orders, has been found just and not on higher side, in the given fact situation of the present case. In this view of the matter, instant one has not been found to be a case which warrants interference, at the hands of this Court, while exercising its powers under

Section 482 Cr.P.C. It is pertinent to note here that although powers of this

Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the discretionary powers are to be exercised sparingly and with circumspection.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

21.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE