

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

**Criminal Misc. No. M-2742 of 2015
Date of decision: 27.01.2015.**

Sushil Kumar

..Petitioner

Versus

Smt. Maya Devi

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

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

Daya Chaudhary, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of order dated 01.12.2010 passed by Additional Chief Judicial Magistrate, Karnal as well as order dated 16.12.2014 passed by Additional Sessions Judge, Karnal, whereby, petition filed under Section 125 Cr.P.C. by the respondent has been accepted and appeal filed by the petitioner has been rejected on the ground of delay and maintainability as well as on merits without going into facts and circumstances of the case.

Briefly, the facts of the case are that the petitioner was being harassed by the respondent, who was already married to one

Daya Ram. Petitioner is already married having two sons and has retired from Bank. The respondent remained together for some time with the petitioner but no marriage was solemnized between them and despite that the respondent filed a petition under Section 125 Cr.P.C. claiming herself to be a legally wedded wife of petitioner eventhough, there is no divorce from her husband Daya Ram.

Respondent Maya Devi and her daughter Preeti had filed a petition for grant of maintenance before Additional Chief Judicial Magistrate, Karnal on the ground that she is legally wedded wife of the present petitioner. She has urged that they were married on 04.08.1999 and remained together as husband and wife but no child was born. It was mentioned in the petition itself that she was earlier married to one Daya Ram and a female child, namely, Preeti was born out of the said wedlock and thereafter they got divorce on 27.01.1994. After that, respondent got married with the present petitioner on 04.08.1999. Written statement was filed. The petition filed by the respondent-wife was allowed on 01.12.2010 and the petitioner-husband was directed to pay an amount of ₹2500/- per month as maintenance from the date of filing of the petition and her daughter Preeti was not found entitled to claim any maintenance.

Aggrieved by order dated 01.12.2010, petitioner-husband filed appeal before the Additional Sessions Judge, Karnal but the same was dismissed being time barred and after hearing on merits as well on 16.12.2014.

The present petition has been filed by the petitioner-husband to challenge both the orders passed by Additional Chief Judicial Magistrate, Karnal as well as Additional Sessions Judge, Karnal.

Learned counsel for the petitioner submits that marriage between the parties was not proved and question of subsequent marriage does not arise as respondent was already married to one Daya Ram and she did not get divorce from her earlier husband. Learned counsel further submits that the petitioner himself is married, having two children and question of second marriage does not arise at all. The amount of maintenance has been granted whereas respondent is not legally wedded wife of the petitioner. Both the Courts below have not considered these facts and only on the basis of oral statement of respondent-wife, maintenance has been granted. Learned counsel for the petitioner also submits that the order passed by Additional Chief Judicial Magistrate, Karnal was exparte as the petitioner was away to Malaysia. It is also the argument of learned counsel for the petitioner that the appeal filed by the petitioner has been dismissed only on the ground of delay and maintainability. Learned counsel for the petitioner also urge that the respondent wife is not entitled for maintenance as the marriage between the parties has not been proved.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents

on the file.

Reply to the petition under Section 125 Cr.P.C. was filed but subsequently, no one has appeared for the present petitioner and he was proceeded exparte. Respondent was granted maintenance @ ₹2500/- per month from the date of filing of petition. No such objection was raised in the written statement filed to the petition under Section 125 Cr.P.C. Simply it was mentioned that respondent-wife is young, able and healthy lady and is also working as peon in NDRI, Karnal. Respondent-wife while appearing in witness box as PW1 claims herself to be legally wedded wife of the petitioner, which has been corroborated by statement of PW2. It was stated by her that marriage was solemnized with the petitioner on 04.08.1999 as per Hindu rites and both of them remained as husband and wife but no issue was born out of the said wedlock. The evidence led by respondent wife remained unchallenged as petitioner was proceeded exparte. Thereafter appeal was filed by the petitioner after delay and the contention to explain delay was not accepted by the Court and appeal filed by the petitioner was dismissed not only on the ground of delay but on merits also. The appeal was also not maintainable as under Cr.P.C., there is no provision of appeal against final order passed by Additional Chief Judicial Magistrate under Section 125 Cr.P.C.

Petitioner contested the petition and even filed reply of the main petition as well as application for interim maintenance. He was proceeded exparte vide order dated 03.03.2010. Thereafter, it was

allowed on 01.12.2010. The appeal was filed after more than 20 months. The delay was not condoned as it was unexplained and contrary to facts. Valid marriage of parties was proved on the basis of statement of respondent and corroborated by father of the respondent. The evidence led by respondent wife remained unchallenged and unrebutted. There was no evidence on record contrary to evidence of the respondent even after considering the written statement.

Hence, learned counsel for the petitioner is not able to convince this Court as to how the appeal was maintainable. Even petitioner did not make any efforts to challenge the exparte proceedings. No such objection was raised in the written statement filed to the petition under Section 125 Cr.P.C.

The objection raised by the petitioner at this stage, which is contrary to the stand taken in the written statement, cannot be accepted.

Dismissed.

However, the petitioner is at liberty to avail appropriate remedy.

27.01.2015
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(DAYA CHAUDHARY)
JUDGE