

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.368 of 2009(O&M)
Date of decision : 04.11.2015

Aradhana and others

..... Petitioners

versus

Joginder Kumar

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Bhavyadeep Walia , Advocate for the petitioners.

Mr.R.S.Bains, Advocate

for Mr. vijay Sharma, Advocate for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This is petition challenging the order of the Appellate Court setting aside the order of the Judicial Magistrate 1st Class granting maintenance under Section 125 Cr.P.C.

The petitioner had moved an application under Section 125 Cr.P.C. with the averments that she was married to respondent on 10.12.1994 and out of this wedlock two children were born. For some time she was kept nicely by the respondent but thereafter he and his family members started taunting her that she was not a good match for him as there was a difference in the status of both the families. They were also not satisfied with the dowry given to the petitioner in marriage. The respondent started spending his earnings on bad habits. They both then started residing separately but the behaviour of respondent did not change. He started even

beating the petitioner and was turned out of the matrimonial home on 23.05.2004. He also used to demand Rs.1,00,000/- from the father of the petitioner. The respondent was employed as Manager in State Bank of Patiala and was getting Rs. 16,000/- per month as salary.

The respondent denied all the allegations of the petitioner as also his liability to pay any maintenance.

The trial Court, after hearing both the parties, allowed maintenance of Rs. 2500/- per month to petitioner No.1-wife and Rs. 1000/- each to petitioners No.2 and 3. The respondent filed an appeal which was treated as a revision petition in which the Appellate Court held that the Courts at Rohtak had no jurisdiction as the parties were residing at Patiala. Against that order the petitioners approached this Court and on 22.09.2009 this Court observed as follows:-

“ The petitioner has challenged the aforesaid order on the ground that the petitioner was in fact residing at Rohtak which fact was himself pleaded by the respondent when the petitioner filed an application for setting aside the proceedings of ex parte divorce obtained by the respondent from the Courts at Patiala. In these proceedings when the question of service of the petitioner cropped up respondent pleaded the fact which finds mention in para no.9 of the affidavit filed by the present respondent which is extracted below:-

“The summons sent through registered post was not received back at that time and the summons by ordinary manner sent to the respondent was refused by the respondent and the statement of the Process Server of the Court of Civil Judge, Senior Division, Rohtak shows that the respondent refused to accept the summons and the same report is duly sworn by the Process Server of the said Court which is attested by one witness Om Parkash of Rohtak and the same is dated 9.7.2004. After that the summons were pasted on the house of the respondent at Rohtak.

Interestingly in the impugned order the respondent took up the plea that the Courts at Rohtak had no jurisdiction as the parties were residing at Patiala.”

Apart therefrom learned counsel has relied upon Section 462 Cr.P.C. as per which a decision given in the wrong local area cannot be set aside unless that error has in fact occasioned failure of justice. As per learned counsel the respondent has not been able to show what was the failure of justice which was occasioned by the court at Rohtak having passed the order. Learned counsel for the respondent is not in a position to dispute these facts.

In the circumstances the petition is allowed and the impugned order is set aside.

Since the main case has been decided, the Criminal Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 04, 2015
sunita