

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

**CRM-M No.33039 of 2014.**

**Date of Decision: July 23, 2015.**

Navreet Kaur and another .....Petitioners.

**VERSUS**

State of Punjab and another .....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. J.S. Thind, Advocate for the petitioner.

Mr. A.S. Klar, Assistant Advocate General, Punjab.

Mr. P.S. Hundal, Senior Advocate with  
Mr. Jashandeep Singh, Advocate for respondent No.2.

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**SNEH PRASHAR, J.**

A petition under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") was filed by the petitioners for quashing of orders dated 15.05.2014 and 22.08.2014 passed by learned Chief Judicial Magistrate/Additional Civil Judge (Sr. Divn.), Amritsar.

Petitioner Navreet Kaur alongwith her minor daughter filed a petition under Section 125 Cr.P.C. claiming maintenance allowance from

her husband-respondent No.2 Jugraj Singh. On notice of the petition, respondent appeared before learned Chief Judicial Magistrate and the matter was referred to Mediation and Conciliation Centre for settlement between the parties. When no fruitful result came out, the matter was referred back to learned Chief Judicial Magistrate. The case on 15.05.2014 was fixed for consideration on interim maintenance but the petition was dismissed for want of prosecution as none of the parties appeared before the court.

Heard the submissions made by Mr. J.S. Thind, learned counsel representing the petitioners, Mr. A.S. Klar, learned Assistant Advocate General, representing the State of Punjab and Mr. P.S. Hundal, learned senior counsel for respondent No.2.

Learned counsel for the petitioner submitted that the counsel representing the petitioners before learned Chief Judicial Magistrate could not appear in the court on 15.05.2014 as he had wrongly noted the date as 15.07.2014. On the date noted by him i.e. 15.07.2014 when he appeared before the court and could not find the case listed, he searched the record and came to know about dismissal of the petition on 15.05.2014 on account of his non appearance. An application for restoration of the petition was filed by the petitioners but that too was dismissed on 22.08.2014 on the ground that restoration would tantamount to review of the order passed. Learned counsel asserted that since the petition had been dismissed for want of prosecution and counsel for the petitioners had explained the reason of his absence which apparently was beyond his control because he had

wrongly noted the date, the petition should have been restored by learned Chief Judicial Magistrate at its original number.

Learned counsel for the respondent controverting the arguments of learned counsel for the petitioners submitted that even if the order of a Magistrate is erroneous yet the Criminal Procedure Code does not contemplate review of an order. To support his argument, learned counsel relied upon *Adalat Prasad vs. Rooplal Jindal, 2004(4)R.C.R. (Criminal) 1*.

Having considered the submissions made by both the parties, I find that order dated 15.05.2014 passed by learned Chief Judicial Magistrate being illegal and perverse and cannot be left to sustain. It is apparent from the order that not only counsel for the petitioner did not appear in the court on that day, even counsel for the respondent did not appear in the case either in the forenoon or in the after lunch session. Absence of counsel for the respondent substantiates the contention of counsel for the petitioners that the counsel representing the petitioners had inadvertently noted a wrong date of hearing which resulted in default in appearance.

It is settled proposition of law that no party should be left to suffer for the fault of his counsel when no malafide intention can be attributed to him. Although the matter in hand is on a different footing than the facts of *Adalat Prasad's* case (supra) wherein Sections 200, 202, 203 and 204 Cr.P.C. were interpreted whereas the instant petition was under Section 125 Cr.P.C. for grant of maintenance allowance, which is quasi civil, yet the proposition of law laid down by the Apex Court in the said

case is that in case an order passed by a Magistrate under Sections 200 and 202 Cr.P.C. is erroneous, the relief that an aggrieved person can obtain, is not by invoking section 203 Cr.P.C. but the remedy lies in invoking section 482 Cr.P.C.

In the aforesaid premises, the order dated 15.05.2014 as well as dated 22.08.2014 passed by learned trial court being an abuse of process of court is set aside. The petition under Section 125 Cr.P.C. filed by the petitioner and her daughter is restored at its original number. Parties through their counsel are directed to appear before learned Chief Judicial Magistrate, Amritsar on 20.08.2015. Learned trial court will further proceed with the case in due process of law.

**(SNEH PRASHAR)**  
**JUDGE**

**July 23, 2015**  
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