

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

CRM-M-8217 of 2014

Date of decision : 19.05.2015

Gurpreet Singh

..... Petitioner

Versus

Amandeep Kaur and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.D.R.Singla, Advocate
for the petitioner.

Mr. P.S.Dhaliwal, Advocate
for the respondents.

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

DARSHAN SINGH,J

1. The present petition has been filed under Section 482 Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C') for quashing the order dated 19.07.2013 passed by the learned Judicial Magistrate Ist Class, Barnala, whereby the application dated 22.2.2013 moved by respondents for restoration of the application under Section 125 Cr.P.C dismissed in default on 19.12.2011 was allowed and the order dated 10.01.2014 passed by the learned Sessions

Judge, Barnala, whereby the revision filed against that order was also dismissed.

2. The respondents have filed an application under Section 125 Cr.P.C for grant of maintenance against the present petitioner. The said application was dismissed in default on 19.12.2011 due to non appearance of the respondents. Respondents moved an application for restoration of the aforesaid petition, which was allowed by the learned Judicial Magistrate Ist Class, Barnala, vide impugned order dated 19.07.2013. The revision against that order was also dismissed by the learned Sessions Judge, Barnala vide impugned order dated 09.01.2014.

3. Learned counsel for the petitioner contended that the restoration of the petition will virtually amount to reviewing of the order passed by the learned Magistrate, which is not permissible as per law.

4. On the other hand, learned counsel for the respondents contended that the proceedings under Section 125 Cr.P.C are primarily of civil nature. The Magistrate is competent to restore the application under Section 125 Cr.P.C dismissed in default on being satisfied with respect to the sufficient cause for the non appearance of the applicants. To support his contentions he has relied upon cases **Smt. Kamla Devi and ors. Vs. Mehma Singh, 1989**

CriLJ 1866(DB), Dr. S.K.Suri Vs. Smt. Komal and another 2003(1) R.C.R (Criminal) 140, Tejinder Pal Singh vs. State & Ors., 2014(1) R.C.R (Criminal)333 and case Lavinder Pal Singh Vs. Mohinder Kaur and Ors., 2012(6) R.C.R (Criminal) 2318.

5. I have duly considered the aforesaid contentions.

6. Learned counsel for the petitioner has only raised a short question that the Magistrate was not competent to order the restoration of the application filed under Section 125 Cr.P.C, which was dismissed in default as it would amount to reviewing the order passed by the Magistrate, which is not permissible in law. But, this plea raised by learned counsel for the petitioner is devoid of merits, because the proceedings under Section 125 Cr.P.C are not strictly of criminal nature, but are primarily of the civil nature. These are the beneficial provisions for the benefit of the destitute wife, children and parents, who are unable to maintain themselves. Their statutory right of maintenance can not be defeated on technical grounds.

7. In **Smt. Kamla Devi and Others case (Supra)**, the application for execution filed by the wife was dismissed in default for non-appearance. The Division Bench of this Court has laid down as under:-

“As observed by the Supreme Court in Nand Lal

Misra's case (Supra), proceedings under Chapter IX of the Code of Criminal Procedure are not of criminal nature but are Primarily of a civil nature. Although technicalities of procedure as provided in different provisions of the Code of Civil Procedure may not *ipso facto* apply to the proceedings initiated under Section 125 of the Code of Criminal Procedure, whoever, such of the provisions of the Code of Civil Procedure which help in advancing the cause of justice can legitimately be adopted in the proceedings initiated under Section 125 of the Code of Criminal Procedure. The provision of restoration of application dismissed in default is such which enhances the cause of administration of justice and such power is inherent with the Court while deciding an application under Section 125 of the Code of Criminal Procedure in view of the analogy of the decision of the Supreme Court in Savitri's Case (Supra).”

8. In **Dr.S.K.Suri's case (Supra)**, this Court has laid down that the proceedings under Section 125 Cr.P.C are not of criminal nature and application is not to be dismissed in default. The presence of the complainant is not necessary on each and every hearing. Again in **Lavinder Pal Singh's case (Supra)**, the petition for maintenance under Section 125 Cr.P.C was dismissed in default. The contentions was raised before the Magistrate that he has no jurisdiction to

restore the case as it will amount to review his earlier order.

The aforesaid contentions were repelled and this Court held that Magistrate has power to restore the maintenance petition. Thus, the ratio of law laid down in the aforesaid cases is a complete answer to the contentions raised by the learned counsel for the petitioner. So, there is no escape from the conclusion that the learned Judicial Magistrate Ist Class, Barnala was competent to restore the petition filed by respondents for grant of maintenance under Section 125 Cr.P.C. Consequently, the impugned orders passed by the learned Courts below do not suffer from any legal infirmity.

9. Resultantly, the present petition having no merits is hereby dismissed.

19.05.2015

s.khan

**(DARSHAN SINGH)
JUDGE**