

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-8379-2014

Date of decision : 19.02.2015

Sanjay Kumar Sharma

... Petitioner

Versus

Kiran Sharma and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Shrey Goel, Advocate
for the petitioner.

Mr. Gaurav Singla, Advocate
for the respondents.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') has been directed against the orders dated 29.08.2013 and 28.01.2014 passed by the Additional Chief Judicial Magistrate and Additional Sessions Judge, Panchkula respectively whereby respondent No.1 has been allowed interim maintenance @ Rs.4000/- per month by the trial Magistrate and the order passed by the trial Court has been affirmed in revision.

Counsel for the petitioner contends that prior to his marriage with respondent Kiran Sharma, the petitioner was married with Poonam Sharma @ Lovely on 12.12.1994. A decree of divorce was passed in his favour and against Poonam Sharma on 19.08.2008. Poonam Sharma preferred an appeal before this Court and dispute between the petitioner and

Poonam Sharma was settled with intervention of the Mediator appointed in

those proceedings. During pendency of the appeal, the petitioner performed marriage with respondent No.1 on 27.04.2009 according to Hindu Rites.

The sole submission made by counsel for the petitioner is that as decree of divorce dissolving marriage of the petitioner with Poonam Sharma has been set aside in appeal, the respondent is not his legally wedded wife and therefore, she is not entitled to get maintenance under Section 125 Cr.P.C. It is further submitted that maintenance assessed by the trial Court is on higher side as the petitioner has an obligation to maintain his wife Poonam Sharma and the children born out of their wedlock. Counsel has also made a vain attempt to argue that Kiran Sharma is working as a teacher in a private school and earning Rs.25,000/- per month, therefore, she is not entitled to get any maintenance.

Counsel for the respondent has submitted that the petitioner has not paid any maintenance in compliance with interim order passed by the Judicial Magistrate and for this reason, the revision petition was dismissed by the Additional Sessions Judge, Panchkula. It is further submitted that no such plea has been raised by the petitioner in the pending proceedings that the respondent ceased to enjoy status of a wife under the circumstances sought to be put forth in the present proceedings. The respondent cannot be deprived of her right to get maintenance from her husband as her marriage with the petitioner was performed after the petitioner obtained a decree of divorce from the competent court and there was no stay by the Court against the said decree.

I have heard counsel for the parties and perused the records.

Concededly, the petitioner performed marriage with respondent

Kiran Sharma on 27.04.2009. It is not clear on record if in the appeal preferred by Poonam Sharma, there was any stay granted by this Court to render the divorce decree in abeyance. No such plea has been raised by the petitioner before the trial Magistrate that the respondent is not entitled to get maintenance as decree of divorce passed in his favour against his earlier wife has been set aside by the Court. Conversely, it appears that appeal preferred by Poonam Sharma against the decree of divorce (FAO No.M-333-2008) was allowed to be withdrawn as the matter in dispute was stated to be settled before the Mediation and Conciliation Centre of this Court.

The petitioner has not paid any maintenance to the respondent despite that a period of about 1 ½ years has elapsed since the order of interim maintenance was passed by the trial Magistrate. The revisional Court allowed repeated opportunities to the petitioner to tender the arrears of maintenance but he failed to comply. Counsel for the petitioner has fairly conceded that till date, the petitioner has not paid any maintenance to the respondent.

Keeping in view the fact that the petitioner failed to comply with the order of the Court without any stay, he disentitles himself to indulgence of this Court in exercise of jurisdiction under Section 182 Cr.P.C. This apart, as the petitioner has not raised any such plea before the trial Court that the respondent is not his legally wedded wife, he cannot be permitted to raise such a plea before this Court, a disputed question of fact to be decided on the basis of evidence to be led by the parties. The plea of the petitioner that the respondent wife is gainfully employed in a school has been rightly discarded by the trial Court by holding that such a vague plea

cannot be accepted to exonerate the petitioner of his liability to pay maintenance to his wife.

For the reasons aforesaid, finding no merit, the petition is dismissed. However, nothing stated in this order shall prejudice the final adjudication of the case by the trial Court.

(REKHA MITTAL)
JUDGE

February 19, 2015.

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