

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

CRM No.M-8471 of 2015

Date of decision:- April 30, 2015

Tejinder Singh

.....Petitioner...

Vs.

Lakhvinder Kaur and another

....Respondents...

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Mohit Jaggi, Advocate,
for the petitioner.

JASPAL SINGH, J.

Mr. Mohit Jaggi, Advocate has put in appearance and
filed power of attorney on behalf of petitioner.

2. Challenge in this petition preferred under Section 482 of
the Code of Criminal Procedure (for short, 'Code') is to the order
dated February 06, 2012 passed by Id. Judicial Magistrate, First
Class, Chandigarh (Annexure P-1) vide which, maintenance under
Section 125 Cr.P.C. was awarded to respondent No.2 from the date
of order in petition No.2 of January 31, 2003 as well as order dated
September 06, 2014 (Annexure P-2) vide which Id. Additional
Sessions Judge, Chandigarh in criminal revision No. 323 of 2012
dismissed the revision petition filed by the petitioner against the order

dated February 06, 2012 passed by the Id. Judicial Magistrate and partly allowed revision petition No. 260 of 2012 filed by the respondents vide order dated September 06, 2014, to the extent that maintenance @ ₹2500/- per month awarded to respondent No.2 has been modified to be paid from the date of application.

3. The sole question which requires determination in this petition is whether respondent No.2 is entitled to maintenance from the date of order or from the date of institution of petition preferred under Section 125 of the Code.

4. The contention of learned counsel for the petitioner is that Id. Magistrate while appreciating the legal proposition has rightly observed that maintenance, so awarded, to respondent No.2, is entitled to maintenance, from the date of award. But the Id. Additional Sessions Judge while superimposing its own discretion over the trial court's order has substituted its own findings and has made the order of maintenance applicable from the date of institution of petition under Section 125 of the Code. In fact, there was no illegality in granting the maintenance from the date of order to the child. Even otherwise, normally the maintenance is granted from the date of order and not from the date of institution. It is the sole discretion of the Magistrate. So, the impugned order directing the petitioner to make the payment to respondent No.2 from the date of institution of petition under Section 125 of the Code is legally and factually unjustified and the same deserve to be set aside by way of

acceptance of instant petition.

5. This Court has given a deep thought to the submission made by learned counsel for the petitioner but find the same to be without any legal substance. In fact, there is no illegality or infirmity in the impugned order dated September 06, 2014 (Annexure P-2) passed by the Id. Additional Sessions Judge, Chandigarh.

6. Here, it would be pertinent to mention that maintenance has been awarded to minor child i.e. respondent No.2 and it is not the case of petitioner that there was any lapse, omission or delay on the part of respondent No.2 in conclusion of proceedings pending before the Id. Magistrate. Moreover, respondent No. 2 being a minor cannot be made to suffer just of granting the maintenance from the date of order. He was also a minor on the date of institution of the petition before the Id. Magistrate. Respondent No.2 has no independent source of income and is totally dependent on his mother. He also cannot be made to suffer simply on the ground that the marital life of their parents is acrimonious. Moreover, no reason has been specified by Id. Magistrate for granting maintenance from the date of order. There is no fault on the part of respondent No.2, a minor. Id. Additional Sessions Judge, Chandigarh while disposing of the revision petition preferred by the petitioners has rightly observed that petitioner No.2 is entitled to maintenance from the date of institution of petition. There is no illegality or infirmity in the impugned order, which is otherwise legally and factually justified.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such the same is dismissed.

(JASPAL SINGH)
JUDGE

April 30, 2015
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