

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

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**CRR-4016-2014(O&M)
Date of Decision: December 8, 2015.**

SURENDER SINGH	VERSUS	PETITIONER
KANTA DEVI		RESPONDENT

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr.Nitin Jian,Advocate
for the petitioner

Mr.Navneet Singh,Advocate
for respondent

M.M.S.BEDI, J.(Oral)

This is a petition filed by husband against the order dated 11.09.2014 passed by Additional Sessions judge, Rewari in exercise of revisional jurisdiction and setting aside the order dated 05.08.2013 by virtue of which the maintenance had been denied to respondent No.1, wife of the petitioner.

The application under Section 125 filed by respondent Kanta Devi was dismissed by Chief Judicial Magistrate, Rewari on 05.08.2013 on the ground that the respondent had withdrawn from the society of petitioner husband without any reasonable excuse as such she would not be entitled to receive the monthly maintenance.

The Additional Sessions Judge has set aside the aforesaid order in revision petition filed by the respondent.

Counsel for the petitioner has vehemently contended that in view of provisions of Section 125(4) Code of Criminal Procedure the respondent wife would not be entitled to receive any maintenance on account of the fact that she without sufficient reasons has refused to live

with the petitioner who is at presently suffering from Cancer in Urine Bladder. She has also not honoured the decree passed under Section 9 of Hindu Marriage Act in favour of the petitioner and even a complainant filed by her under Section 494 IPC stands dismissed.

I have heard learned counsel for the petitioner and carefully considered his contentions.

It is a fact that the relationship of the petitioner with respondent as husband and wife still exists. The petitioner has got an obligation to provide maintenance to the respondent as she has been able to establish that she has no source of income whereas the petitioner is in the capacity to earn to the extent of Rs.8,000/- per month.

I have also considered the circumstance of application under Section 9 of Hindu Marriage Act filed by the petitioner having been allowed. The factum of complaint under Section 494 IPC filed by the respondent having been dismissed has been pressed as a circumstance to say that the respondent wife has failed to establish the allegation of bigamy and as such there is no reason for her to refuse to live with the petitioner.

I have taken into consideration the contentions of the counsel for the petitioner husband as well as that of the respondent wife. The dismissal of the complaint under Section 494 IPC by granting benefit of doubt to the husband is indicative of the fact that respondent was not able to substantiate the allegation of adultery and bigamy but the acquittal by giving benefit of doubt to the petitioner will not dis-entitle the respondent to stay away from the petitioner on account of his conduct of having committed the acts of physical and mental cruelty as mentioned in her petition under

Section 125 of the Code of Criminal Procedure.

In our adversory judicial system, a person is not able to get benefit of weakness of case of others. The respondent having not been able to substantiate her plea of petitioner having not living in adultery with a named lady named Sunita will not ipso-facto establish that the respondent can stay with the petitioner. The ailment of the petitioner warrants sympathy but it can not be ignored that the Revisional Court has fixed the maintenance amount at the bare minimum i.e. Rs.2,000/- per month. No ground is made out for interference in the order passed by the Revisional Court.

I have also considered the contention of the counsel for the petitioner that grant of maintenance w.e.f. the date of application is not appropriate in the present case and find force in the same. The peculiar circumstances of this case are that the petition under Section 125 Code of Criminal Procedure was filed by the respondent in 2004 by giving incorrect address of petitioner as such the petitioner was proceeded ex parte. He was able to get ex parte order set aside on 20.11.2012. Taking into consideration the peculiar facts of this case, it is ordered that the petitioner would be liable to pay the maintenance fixed by the Revisional Court w.e.f. 20.11.2012 and not from 2004.

December 8, 2015
TSG

(M.M.S.BEDI)
JUDGE