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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4544-2015

Date of decision : 07.11.2016

Indu Bala and others

... Petitioners

Versus

Sudhir Kumar Rehni

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Nain, Advocate
for the petitioners.

Mr. Virender Kumar, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 30.04.2015, whereby the application seeking rejection of the plaint qua its maintainability has been dismissed.

Mr. M.S. Nain, learned counsel appearing on behalf of the petitioners-defendants submits that the suit seeking following relief *ex facie* is not maintainable.

“declaration to the effect that the plaintiff is entitled to get the determination of paternity identification through DNA Test Analysis of Miss Vanishka, defendant No.3 and if the DNA Test analysis does not confirm paternity of plaintiff and confirms that the plaintiff is not the father of Miss Vanishka then the plaintiff is entitled not to pay the maintenance qua Miss Vanishka which she is obtaining under Section 125 Cr.P.C. in the Hon'ble Court and plaintiff is also entitled to recover back

the arrears of amount of maintenance already received by Miss Vanishka being not the real father of defendant No.3-Miss Vanishka.”

The respondent-plaintiff had already admitted the factum of the owning children in the proceedings initiated under Section 125 of the Cr.P.C., which has attained finality upto the highest Court of this Country. No doubt an *ex parte* divorce has been granted way back in the year 1993, but the civil suit has been filed after 17 years, thus, not maintainable. It is, in this background of the matter, an application aforementioned was moved, but the same has erroneously been dismissed. Such type of suit is liable to be dismissed at threshold.

Mr. Virender Kumar, learned counsel appearing on behalf of the respondent-plaintiff submits, that already the trial Court vide impugned order framed the issues. The suit is at the stage of plaintiff's evidence. The maintainability of the suit is a mixed question of the fact and law which can be ascertained by way of evidence. No prejudice would be caused to the petitioners, in case the same was decided on merits, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that for seeking the rejection of the plaint, much less, dismissal, the averments of the plaint have to be seen. The respondent-plaintiff had been fair enough to the Court to indicate the previous round of litigation regarding the culmination of the proceedings under Section 125 Cr.P.C are not on record as yet to be proved. Prima facie it does not appear to be a guarded language enabling to rise a cause of action, to the petitioners-defendants, to persuade the Court from looking

into the defence already taken in the written statement. Since the issues have been framed, nothing prevented the parties to lead evidence and disprove the claim in the suit by leading the direct and cogent evidence. It is a settled law that the findings of the criminal court are not binding upon the civil court.

For the foregoing reasons, I do not intend to differ with the findings rendered by the trial Court as no illegality and perversity has been pointed out. The impugned order dated 30.04.2015 cannot be said to be without jurisdiction. No ground is made out for interference and accordingly, the revision petition is dismissed.

07.11.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**