

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 256

Criminal Miscellaneous No.M-135 of 2011 (O & M)
Date of Decision: September 02, 2016

Shiv Dayal

..... PETITIONER

VERSUS

Riban Kaur

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. A.P. Bhandari, Advocate, for the petitioner.

Ms. Prabhjot Kaur, Advocate, for the respondent.

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Jaspal Singh, J

1. Through the instant petition, preferred under Section 482 Cr.P.C., petitioner has sought quashing of order dated November 11, 2010 (Annexure P-9) passed by the Additional District Judge, Yamuna Nagar at Jagadhri and order dated October 06, 2009 (Annexure P-7) passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, as well as for setting aside judgment dated February 11, 2006 (Annexure P-5) and exparte proceedings order dated August 02, 2002 (Annexure P-4), with further prayer that the case be remanded back to the court of Chief Judicial Magistrate, Yamuna Nagar to decide the same on merits.

2. The facts necessary for disposal of the instant petition are that marriage of respondent – Riban Kaur was solemnized with petitioner –

Shiv Dayal on June 26, 1991 as per Hindu rites and ceremonies, and three daughters were born out of their wedlock. After sometime of marriage, the relations between them became strained and petitioner – husband refused to maintain her which constrained her to prefer a petition under Section 125 Cr.P.C. seeking maintenance allowance. It was specifically alleged by the respondent that she is unable to keep and maintain herself and has no independent source of income whereas petitioner is employed in Home Guard Department and earns ₹ 5,000/- per month as salary. Since the petitioner did not appear, despite due service, in the proceedings under Section 125 Cr.P.C., he was ordered to be proceeded against exparte vide order dated August 02, 2002. On the strength of exparte evidence adduced by the respondent – wife and hearing learned counsel, exparte judgment dated February 11, 2006 was passed whereby the petitioner – husband was directed to pay maintenance allowance @ 2,500/- per mensem from the date of filing of petition i.e. October 29, 2001 till the date of her re-marriage, if any. Besides it, petitioner – husband was also directed to pay ₹ 2,500/- to the wife as litigation expenses.

3. On coming to know about passing of judgment/order dated February 11, 2006, Shiv Dayal filed an application for setting aside exparte order dated August 02, 2002 alongwith subsequent proceedings as well as exparte judgment dated February 11, 2006. The said application was dismissed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, vide order dated October 06, 2009 observing that petitioner - husband was duly served in the proceedings under Section 125 Cr.P.C., but in spite of due service as well as having knowledge regarding pendency of petition against him, he did not opt to appear and contest the petition.

4. Aggrieved against the aforesaid order dated October 06, 2009 passed by the Chief Judicial Magistrate, petitioner preferred an appeal but that was also dismissed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide judgment dated November 11, 2010 which necessitated the filing of instant petition whereby all the three orders mentioned in Para 1 of this judgment have been challenged.

5. While assailing impugned order dated October 06, 2009 passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri as well as judgment dated November 11, 2010 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri, it has been contended by learned counsel for the petitioner that petitioner was totally unaware of criminal proceedings which were pending against him before the Chief Judicial Magistrate in which he was ordered to be proceeded against exparte on August 02, 2002. It is the specific stand of petitioner in the application for setting aside exparte order as well as judgment that he is residing at House No.73, Shivpuri Colony, Yamuna Nagar and if report of Chowkidar is taken into consideration, it discloses that petitioner left his village Akalgarh Ka Majra; his house is found locked; and he is residing somewhere in the rented house. It is also the specific stand of petitioner that Munadi was not effected at the spot. The factum of passing of exparte proceedings/order as well as exparte judgment dated February 11, 2006 came to the knowledge of petitioner only on February 17, 2006. Immediately after obtaining the certified copies of the record, he moved an application for setting aside of order dated August 02, 2006 and judgment dated February 11, 2006. Though, it is amply proved on record that petitioner was not duly served and was not aware about the pendency of proceedings under Section 125 Cr.P.C., yet both the courts

proceedings. Since the petitioner was not properly served, prior to passing of exparte order dated August 02, 2002 as well as exparte judgment dated February 11, 2006, the impugned orders are not sustainable in the eyes of law and after setting aside the same, matter is required to be remanded, dealt with and disposed of by the trial court after hearing both the parties.

6. On the other hand, learned counsel for the respondent has supported the impugned orders. While controverting the pleas taken by learned counsel for the petitioner, referred to above, it has been argued by learned counsel for the respondent that on coming to know the official address of petitioner – Shiv Dayal, the Process Server approached him in his office but he refused to receive notice. Subsequently, he was ordered to be served through Munadi and by way of affixation of summons on the conspicuous place of his house. Though, Munadi was not effected but the summons were pasted on the conspicuous place of his house. Despite all this, petitioner - husband did not opt to appear and as such, he has been rightly proceeded against exparte.

7. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned orders as well as other documents available on file, this Court does not find any merit in the submissions made by learned counsel for the petitioner.

8. A glance at the impugned orders transpires that initially, the petition was moved on October 29, 2001 under Section 125 Cr.P.C., notice of which, was issued to petitioner for March 14, 2002. The summons were received back with the report of Process Server that he (Process Server) came to know about that Shiv Dayal is serving in Home Guard Department. As such, he approached the petitioner – husband in his office and showed

thereafter he was directed to be served through Munadi as well as by way of affixation. The needul was done for August 02, 2002. Petitioner did not appear despite having knowledge about the pendency of proceedings under Section 125 Cr.P.C. and as such, he was rightly proceeded against exparte on August 02, 2002. Consequently, petition under Section 125 Cr.P.C. was allowed vide exparte judgment dated February 11, 2006 passed by the Chief Judicial Magistrate. Order dated October 06, 2009 passed by the Chief Judicial Magistrate, dismissing the application for setting aside of exparte order dated August 02, 2002 and exparte judgment dated February 11, 2009 have been upheld by learned Additional Sessions Judge, Yamuna Nagar vide order/judgment dated November 11, 2010. This Court does not find any infirmity, illegality, impropriety or perversity in the orders either passed by the Chief Judicial Magistrate or order dated November 11, 2010 passed by the Additional Sessions Judge, upholding order dated October 06, 2009. Rather, this Court is of the considered view that both the orders are absolutely in consonance with the evidence available on file as well as settled canons of law applicable to the facts and circumstances of the case in hand.

9. Now coming to exparte judgment dated February 11, 2006 passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, concededly, on the basis of exparte evidence adduced by the wife Ms. Riban Kaur, petitioner was directed to pay maintenance @ ₹ 2,500/- per month from the date of filing of application i.e. October 29, 2001 besides litigation expenses to the tune of ₹ 2,500/-.

10. The contention of learned counsel for the petitioner is that grant of maintenance @ ₹ 2,500/- is exorbitant keeping in view the

financial and social status of petitioner who is employed in Home Guard Department and has been earning ₹ 5,000/- per month.

11. It an undisputed fact that after the marriage of parties to the instant lis, three daughters namely Nisha, Neha and Kusum were born who are being brought up and taken care of by their father (petitioner). So, petitioner is not only maintaining himself but also his three daughters. Keeping in view the income of petitioner as well as his responsibility towards his daughters as well, this Court is of the considered view that grant of maintenance @ ₹ 2,500/- per mensem to respondent – wife is on higher side. Thus, ends of justice would meet in case the maintenance allowance awarded @ ₹ 2,500/- per month is reduced to ₹ 1,500/- with no further change from the date of its operation. Ordered accordingly. However, the amount already paid by the petitioner towards maintenance, in compliance of order dated February 11, 2006, shall be adjustable.

12. With the aforesaid modification, the instant petition stands dismissed.

13. No order as to costs.

September 02, 2016
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No