

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

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CRL. MISC. No.M-21875 OF 2016 (O&M)
DATE OF DECISION : 27th OCTOBER, 2016

Krishan Kumar & another

.... Petitioners

Versus

Bharat Sharma

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Sherry K. Singla, Advocate for the petitioner.

Ms. Ritu Pathak, Advocate for the respondent
along with respondent in person.

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A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with consent of rival parties in view of short controversy involved.

It is not in dispute that the marriage between the deceased Sonica and Bharat Sharma-respondent No.1 had taken place on 28.05.2006 and out of the wedlock a girl child was born on 05.05.2007. It is also not in dispute that Sonica had died on 07.03.2015 due to cancer. During her lifetime she had lodged FIR against the husband and his relatives, which was registered under Sections 498-A & 406 IPC. In other words, there was matrimonial discord between the husband and wife and ultimately a settlement was arrived at the Mediation Centre of this Court vide Annexure P-3 dated 11.11.2014. Pursuant to the settlement, out of ₹17,00,000/- an amount of ₹13,50,000/- as stated by learned counsel for the respondent-husband, was deposited with the

Registrar of the Supreme Court and the same was invested in the fixed deposit in the name of the minor girl Aditi Sharma.

The learned counsel for the petitioners makes a categorical statement on behalf of his clients that the petitioners do not have any interest or eye on the said amount which solely belongs to Aditi Sharma and would never claim the said amount deposited by the respondent in the name of Aditi Sharma. The statement is fair and enough to take care of the apprehension of the respondent-husband that the petitioners have an eye on the money. Statement is accepted.

The trial court made impugned order Annexure P-2 dated 20.06.2016 in the proceedings under Section 97 Cr.P.C. initiated by respondent No.1-husband for search of Aditi Sharma aged about 8 years in the custody of the petitioners. The order was *ex parte* order. The petitioners approached this court by the present petition on 22.06.2016 and challenged the order dated 20.06.2016. This court on 27.06.2016 stayed the said order.

In my opinion, in the wake of the fact that there was a dispute as arising out of matrimony between the parties, it was wholly risky for the trial Court to issue *ex parte* orders under Section 97 Cr.P.C. It is not advisable to make *ex parte* order for search of minor girl who was admittedly in the custody of her maternal-grand-parents for some years. At the most if the trial Court was convinced that there was an emergency the trial Court could have issued show cause notice to the other side and kept the matter on the same day or on the next day but to make such an *ex parte* order issuing search warrant for the search of the minor child, was certainly not justified.

In that view of the matter, in my opinion, the power under Section 482 Cr.P.C. is required to be exercised for correcting the error.

In the result, I make the following order:

ORDER

- (i) CRL. MISC. No.M-21875 OF 2016 is partly allowed.
- (ii) Impugned order dated 20.06.2016 (Annexure P-2) is quashed and set aside.
- (iii) Proceedings under Section 97 Cr.P.C. which are pending before the trial Judge shall now be taken up for final hearing and disposal and shall be completed within a period of three months from the date of receipt of this order by the trial Court.
- (iv) Needless to say that both the rival parties are directed to cooperate with the proceedings as would be advised and trial Court shall take into consideration the entire matter, documents and evidence and then decide the application under Section 97 Cr.P.C. on its own merits.
- (v) The interim order dated 27.06.2016 made by this court shall continue till the disposal of the application under Section 97 Cr.P.C.
- (vi) Petitioners to submit this order before the trial Court.

27th OCTOBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No.