

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4189-2012 (O&M)

Date of Decision:- 26.10.2016

Simran and another

....Petitioners

Versus

Ajay Kumar Sahni

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. R.S. Kundu, Advocate,
for the petitioners.**

**Mr. Sanjay Jain, Advocate
for the respondent.**

RITU BAHRI, J. (Oral)

Present revision petition is against order dated 25.09.2012 passed by District Judge, Family Court, Ambala, whereby an application under Section 125 Cr.P.C. made through grandmother, namely, Kulwant Kaur, regarding maintenance to the children, has been dismissed.

The mother of the minor children has been granted divorce and it was settled that ₹1 lac was to be paid to the mother of the petitioners in lieu of maintenance past, present and future and ₹50,000/- for both the petitioners in the form of FDRs from State Bank of India, Naggal. After the grant of divorce, vide judgment (Ex.R1), the children have lost their rights

under Section 125 Cr.P.C. A joint statement was made at the time of grant

of divorce where the wife of the respondent has accepted 3 FDRs of total amount of ₹1,80,000/- on behalf of herself and on her two minor children. The decree of divorce was granted on 01.08.2006 and thereafter, the present application under Section 125 Cr.P.C. for grant of maintenance has been filed on 13.05.2008.

Parties are present in Court.

Learned counsel for the respondent has informed that the respondent is doing *Kariyana* work on a rented shop and does not file any income tax return. He has solemnized second marriage and has two children from that wedlock.

After hearing the learned counsel for the parties and going through the record, the question for consideration in the present case would be whether the maintenance accepted at the time of grant of decree of divorce under Section 13-B of HMA, would debar the minor children to claim maintenance under Section 125 Cr.P.C. or not.

This aspect has come for consideration before the Supreme Court in **Nagendrappa Natikar Vs. Neelamma, 2013(2) RCR (Criminal) 424** whereby the question for consideration before the Supreme Court was that whether wife has accepted permanent alimony in a proceeding under Section 125 Cr.P.C. could preclude from her claiming maintenance in a suit filed under Section 18 of Hindu Adoption and Maintenance Act, 1956. Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife, who unable to maintain herself and her children. It is not intended to provide for a full and final determination of the status and personal rights of the parties. The order

determination of the rights in a civil court and in this background even compromise arrived in the proceedings cannot foreclose the remedy available to a wife under Section 18(2) of the Hindu Adoption and Maintenance Act, 1956.

In Khursheed Ahmad Vs. Smt. Zakira, 2007(3) CCC, 363, whereby the wife was not held entitled for maintenance under Section 125 Cr.P.C. when after the decree of restitution of conjugal rights has been passed against her and the same had attained finality, however, at the same time, decree of restitution of conjugal rights would not debar the rights of children to claim maintenance under Section 125 Cr.P.C., as minor children have independent rights to claim maintenance. In this case the husband had challenged the order granting maintenance to the children, however, while dismissing this petition the Court has taken *suo motu* notice on behalf of the minor children and enhanced the interim maintenance from ₹200 to ₹500 per month keeping in view that father was a teacher in a school and his income was not less than ₹3000/- per month.

Similar view was followed by the Division Bench of this Court in Nirmal Singh Vs. Gurvinder Kaur and others, 2008(3) CCC 236 where this Court held that even if a compromise has been effected in a petition under the Hindu Marriage Act and a lump sum payment has been accepted by the mother on behalf of the minor children, their independent right to claim the maintenance under Section 125 Cr.P.C. could not be washed out as the children were not party in the petition filed under HMA and the statement made by their mother could not curtail their statutory right of maintenance under Section 125 Cr.P.C.. In paragraph Nos.8 and 9 of the

“I have perused the compromise (Ex. C1) today produced before me by the learned Counsel for the petitioner. It nowhere reflects that respondent No. 3 has accepted the maintenance amount in full and final settlement on behalf of respondents No. 1 and 2 also. The receipt attached with Exhibit C1 reflects that a lump-sum amount of Rs. 70,000/- was accepted by respondent No. 3 as her past as well as future maintenance at the time of disposal of Hindu Marriage petition. No interim maintenance was allowed to them in that petition. It is not the case of the petitioner that a petition under Section 26 of the Hindu Marriage Act was filed wherein any interim maintenance was fixed for the children. In the absence thereof also, statement of wife Manjit Kaur is of no value that she will maintain and educate the minor children.

7. The question of grant of maintenance of the children is governed by the statutes under the Hindu Adoptions & Maintenance Act, 1956. The plea of the petitioner is falsified from the receipt which forms part of compromise, Ex. C1, which shows that no maintenance was ever accepted by their mother Manjit Kaur on their behalf. The question of making any statement by wife Manjit Kaur against the interest of the children is also not to be taken into account, unless a certificate is issued by a counsel representing the minors that the compromise is for the welfare of the minors. Order 32 Rule 7 of the Code of Civil Procedure provides safeguard to the future interests of the minors.”

In the facts of the present case, the marriage of the parents of the petitioners was solemnized on 03.12.1998 and they were granted divorce by mutual consent on 01.08.2006 and at that time the petitioners were studying in a school when their school fee was ₹600/- per month. In the year 2006 the mother had accepted FDRs of ₹50,000/- each on behalf of her children. This amount was taken in the year 2006 and as of date 10 years has gone by and the mother has only ₹5,000/- per year to spend on the education of the children.

As per the judgments referred to above and keeping in view the facts of the present case, the petitioners could not be denied maintenance on the ground that their mother has accepted ₹50,000/- (for each petitioner)

maintenance at the time of grant of divorce by mutual consent in a petition under Section 13 HMA. Accordingly, the present revision petition is allowed and order dated 25.09.2012, passed by the District Judge, Family Court, Ambala, is hereby set aside. Consequently, as per status of the parties, the maintenance of ₹2,000/- each is being awarded to the petitioners from the date of application i.e. 13.05.2008.

October 26, 2016
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No