

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

Crl. Misc. No.M-8944 of 2016 (O&M)

Date of Decision: 18.10.2016

Shah Alam

.. Petitioner

Vs.

Sabnam

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Arjun Atri, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

Crl. Misc. No. 32531 of 2016 is allowed and Annexure P-7 is taken on record.

In a petition filed under Section 125 Cr.P.C., Shah Alam, the petitioner was proceeded against ex-parte on 07.09.2013. The petition was finally disposed of on 30.01.2014. The respondent was awarded maintenance @ Rs.2500/- per month from the date of filing of petition.

On 30.05.2014 the petitioner filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment dated 30.01.2014. He claimed that he had no notice or knowledge about the petition and came to know of it only on 11.05.2014 when notice of execution was served upon him. The respondent filed reply to the application and opposed the prayer. It was pleaded that the petitioner intentionally avoided appearance and failed to appear despite service of notice through his father. The Court below framed issues and the parties led their evidence. Vide order dated 14.12.2015 the application was dismissed and it was observed that Shah

Alam was rightly proceeded ex-parte. The appeal preferred by the petitioner

was also dismissed on 27.01.2016.

With this background and dis-satisfied with the orders dated 30.01.2014 and 27.01.2016, the petitioner has filed the instant petition under Section 482 Cr.P.C. seeking quashing of the aforesaid orders.

Learned counsel for the petitioner had urged that the Courts below failed to appreciate that there was no personal service upon the petitioner and it was through his father and the petitioner was living separately and there was no occasion for the father to apprise him about the pendency of any petition under Section 125 Cr.P.C. and the trial Court ought to have resorted to publication of the petitioner if it found that the petitioner could not be served through ordinary process. He had further urged that there was no relation between the parties and the petitioner is under no obligation to pay the maintenance amount to the respondent.

I have heard learned counsel for the petitioner and have perused the paper-book.

As per pleadings and the evidence, there is no express denial to the fact that notice of the petition under Section 125 Cr.P.C. for 07.09.2013 was received by the father of the petitioner and he was proceeded ex-parte due to non-appearance on 07.09.2013. The stand taken by the petitioner was that he was residing separately from his father, but he failed to substantiate the plea. The summons, Ex.P2 issued to the petitioner for different dates prior to 07.09.2013 reveal that the service was avoided on one pretext or the other. It had come on record that father of the petitioner was working as Munshi in the Court. He was expected to be vigilant and would have known the consequences. The father also failed to point out that his son had been residing separately, rather it was reported that if his son would come home,

he would be sent to the Court. It has also come on record that the petitioner and his father are facing prosecution in a case under Section 498-A IPC as well. It cannot be believed that during the period interregnum i.e. the date of proceeding ex-parte and the filing of application for setting aside the ex-parte judgment, the petitioner had not met his father. The address of the petitioner in petition under Section 125 Cr.P.C. and the execution application as well as in the application for setting aside the ex-parte judgment are same i.e. of village Akera. He failed to prove that he had never visited his house or met his father during these years. Even in the application filed for setting aside the ex-parte judgment, it was not his stand that he was not living with his father. It appears that the plea was just an after-thought and taken to wriggle out of the responsibility cast upon the petitioner. It was not a case where the publication was necessary as the summons were served upon the adult member of the family. The petitioner had an opportunity to defend, but he willfully failed to avail that opportunity and permitted the proceedings to continue and culminate in favour of the respondent. It now does not lie in his mouth to say that the judgment was passed without affording an opportunity of hearing. The Courts below had examined the evidence and had rightly dismissed the application. No ground for interference is made out. The petition is dismissed.

October 18, 2016

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No