

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6458 of 2016

Date of Decision: 19.07.2017

Alka @ Prachi

...Petitioner

Vs.

Sanjay @ Sanju Midha

...Respondent

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajiv Sidhu, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. As per office note, notice issued to sole respondent has been received back duly served. No one appears on behalf of respondent. Respondent is proceeded against *ex parte*. Heard Mr. Sidhu.

2. Only a short legal point is involved in this case which is covered by precedent of this Court in favour of the petitioner. This petition arises out of the order dated August 17, 2016 passed by the learned Additional District Judge, Kurukshetra, (Family Court) in a divorce petition filed by the respondent in HMA Case No.71 of 2015 case titled as Sanjay @ Sanju vs. Alka @ Prachi. The Kurukshetra Court has dismissed the application filed under Section 24 of Hindu Marriage Act, 1955 by the petitioner for the reason that the respondent-wife was already in receipt of maintenance allowance @ ₹ 7,000/- per month from the petitioner-husband granted in a petition under Section 125 Cr.P.C. While dismissing the application, the Court below has awarded a sum of ₹ 5500/- in lump sum as litigation expenses alone and refused to pass orders on the main prayer for interim maintenance.

3. The view taken by the learned Additional District Judge, Kurukshetra, cannot be sustained. In Sudeep Chaudhary vs. Radha

Chaudhary, (1997) 1 SCC 286, the Supreme Court held that the amount awarded under Section 125 Cr.P.C. for maintenance is adjustable against the amount awarded in the matrimonial proceedings. Following the dictum in *Sudeep Chaudhary's* case (supra) and noticing the ruling in Smt. Sonia vs. Om Prakash, 2010(2) RCR(Civil) 160, guiding that the law on the subject which is crystal clear that an order for grant of maintenance has to be passed under Section 24 of the Act even if there is also in existence an order passed for grant of maintenance under Section 125 of Cr.P.C. The Single Bench of this Court in the judgment in Vikas Kumar vs. Ritu, 2015(1) HLR 50 has applied the law in the aforesaid judgments which makes the research on the point easier.

4. Learned counsel further cites Shivani Sharma vs. Kunal Sharma, 2014(2) PLR 21 which is also from the Single Bench on the same point by this Court. It is another matter that Court in a case may adjust the interim maintenance by justly balancing the total maintenance impact on the husband as per the facts and circumstances of the case and as per his status since he has to maintain his wife in the same status if they were living together. Trite it is to say that interim maintenance granted under Section 24 of Hindu Marriage Act, 1955 operates only till the conclusion of the divorce proceedings under Section 13 of Hindu Marriage Act. But to say that the application under Section 24 of the HMA is not maintainable in the presence of the previous order is rewriting the law and improper exercise of jurisdiction vested in the Court.

5. In view of the settled legal position, this Court is constrained to set aside the order dated August 17, 2016 as not sustainable and to remit the case to the learned Additional District Judge, Kurukshetra to pass a fresh

order in accordance with law.

6. However, in the remand proceedings, the learned Additional District Judge, Kurukshetra will make an endeavour to ensure at the outset of the fresh proceedings the arrears of unpaid maintenance, being the liability of the husband under Court orders passed under Section 125 Cr.P.C., are liquidated up to date, failing which, it would consider striking off the defence of the respondent-husband in the divorce petition. If such situation prevails the Family Court may even take resort to such measures as are lawful and which might compel discharge of unpaid maintenance to the wife and to further direct payments be made regularly every month as per previous maintenance order and then proceed to determine what may be just and adequate quantum of civil maintenance allowable to the petitioner in the remand proceedings and to adjust payments in case the figure arrived at is more than the already awarded amount.

7. Accordingly, the petition is partially allowed in the above terms.

8. Parties are directed to appear before the learned Additional District Judge, Kurukshetra concerned on 21.08.2017. Copy of this order be sent by the office to the respondent and the court concerned at Kurukshetra.

(RAJIV NARAIN RAINA)
JUDGE

19.07.2017

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Whether speaking/reasoned
Whether reportable

Yes
Yes