

**CRM-M-11342 of 2017**

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**In the High Court of Punjab and Haryana at Chandigarh**

**CRM-M-11342 of 2017**

**Date of Decision:25.4.2017**

**Santosh Kumar**

**---Petitioner**

**vs.**

**Ganga Kumari**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**\*\*\***

**Present:** Ms. Payel Mehta, Advocate  
for the petitioner

**\*\*\***

**Rekha Mittal, J.**

The present petition directs challenge against orders dated 12.1.2016 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Kharar and dated 3.2.2017 (Annexure P-1) by the Additional Sessions Judge, Mohali whereby the petitioner has been directed to pay maintenance to the respondent at the rate of Rs. 2500/- per month under Section 125 of the Criminal Procedure Code (in short "Cr.P.C.").

Counsel for the petitioner has challenged grant of maintenance primarily on two grounds. The first submission made by counsel is that in the order passed by the trial court, there is reference to the reply purported to be filed by the petitioner when as a matter of fact, the petitioner did not file any reply to the petition. Another submission made by counsel is that the petitioner did not engage any counsel but since presence of a counsel on his behalf has been recorded in some of the zimni orders as well as in the

final order, the petitioner might have been provided assistance of a legal aid counsel but the petitioner has not been provided with an opportunity to adduce evidence, therefore, orders passed by the courts below are liable to be set aside and the matter may be remitted to the trial court for adjudication afresh.

I have heard counsel for the petitioner, perused the paper book and the original records.

On a pointed query raised by the Court, counsel for the petitioner has fairly informed that the petitioner has not made any payment to the respondent in pursuance of interim maintenance at the rate of Rs. 2500/- per month granted vide order dated 14.8.2015 or the final order dated 12.1.2016. It has further been informed to the Court that for failure of the petitioner to pay interim maintenance, the petitioner was sent in custody.

The provisions of Section 125 Cr.P.C. are a benevolent social legislation for providing quick relief to the wife, child and parents to save them from vagrancy. There is no dispute that the respondent is the legally wedded wife of the petitioner. As the petitioner did not pay interim maintenance in pursuance of order dated 14.8.2015 passed by the Judicial Magistrate and eventually he was taken in custody for his failure to pay interim maintenance, the petitioner disentitled himself to adduce evidence even though the trial court has not passed a specific order striking off defence of the petitioner.

The mere fact that in the order passed by the trial court, there is reference to reply of the petitioner is not sufficient to set aside the order and remit the matter for adjudication afresh at the cost of aggravating agony and

misery of a wife who is pursuing her remedy since 2015 but has not been provided any money to meet her livelihood

Another important aspect of the matter is that the courts below have allowed maintenance at the rate of Rs. 2500/- per month. The amount may not be sufficient to meet two square meals of the respondent what to talk of providing for clothing, housing and comforts. No doubt, maintenance is to be granted by the Court in view of financial status of the parties. There is nothing on record suggestive of the fact that the petitioner has suffered from any disability rendering him unable to work and earn livelihood for his family. The trial court by taking into consideration wage of a labourer has assessed income of the petitioner at Rs. 6000/- per month. That being so, I do not find any reason to interfere in the orders impugned in exercise of jurisdiction under Section 482 Cr.P.C. Conversely, setting aside the orders impugned at the behest of the petitioner who could afford to go to jail in place of providing meager maintenance to his wife would be nothing short of travesty of justice against the respondent. I would hasten to add that counsel for the petitioner has denied to deposit litigation expenses and part of arrears of maintenance necessary to call upon the respondent to appear before the court to examine possibility of an amicable settlement.

For the foregoing reasons, the petition fails and is accordingly dismissed.

**(Rekha Mittal)**  
**Judge**

**25.4.2017**  
paramjit

Whether speaking/reasoned: Yes/No  
Whether reportable : Yes/No